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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 354

[Docket No. APHIS–2006–0096]

RIN 0579–AC06

Agricultural Inspection and AQI User Fees Along the U.S./Canada Border; Delay of Effective Date

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; delay of effective date.

SUMMARY: We published an interim rule on August 25, 2006, amending the foreign quarantine and user fee regulations by removing the exemptions from inspection for imported fruits and vegetables grown in Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers entering the United States from Canada. That interim rule had an effective date of November 24, 2006. Subsequently, we published a notice announcing the delay of the effective date of the removal of the user fee exemption for international air passengers until January 1, 2007, and the effective date for the remaining provisions of the rule, including the removal of the exemption from user fees for commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft entering the United States from Canada, until March 1, 2007. We are now further delaying the effective date of the removal of the exemption from user fees for commercial trucks and railroad cars from Canada until June 1, 2007. We are making this change to allow additional time for us to conclude discussions with the Government of Canada regarding risks, inspections, and costs associated with land-border traffic entering the United States from Canada.

DATES: The effective date for the amendments to 7 CFR 354.3(c)(1), (c)(2), (c)(3), (d)(2), and (d)(4) published on August 25, 2006 (71 FR 50320) and delayed on November 22, 2006 (71 FR 67436) is further delayed to June 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Alan S. Green, Executive Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737; (301) 734–8261.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. Similarly, the regulations in 9 CFR subchapter D prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of pests or diseases of livestock. The regulations in 7 CFR part 354 provide rates and requirements for overtime services relating to imports and exports and for user fees.

On August 25, 2006, we published an interim rule in the **Federal Register** (71 FR 50320–50328) amending the regulations in 7 CFR parts 319 and 354 by removing the exemptions from inspection for imported fruits and vegetables grown in Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers entering the United States from Canada. As a result of this action, all agricultural products imported from Canada were to be subject to inspection, and commercial conveyances, as well as airline passengers arriving on flights from Canada, were to be subject to inspection and user fees. The interim rule had an effective date of November 24, 2006.

Delay in Effective Date

We received comments from industry representatives and the Government of Canada expressing concern about the possible impact of the rule on affected entities and questioning whether the November 2006 effective date allowed adequate time for those entities to prepare to comply with the new inspection and collection procedures that we would be instituting in order to enforce the interim rule. After evaluating the comments, on November 22, 2006, we published a document in the **Federal Register** (71 FR 67436) announcing that we were delaying the effective date of the removal of the user fee exemption for international air passengers until January 1, 2007, and the effective date for the remaining provisions of the interim rule, including the removal of the exemption from user fees for commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft entering the United States from Canada, until March 1, 2007.

We are now further delaying the removal of the exemption from user fees for commercial trucks and railroad cars entering the United States from Canada until June 1, 2007. We are making this change to allow additional time for us to conclude discussions with the Government of Canada regarding risks, inspections, and costs associated with land-border traffic entering the United States from Canada. The March 1, 2007, effective date for the removal of the exemption from user fees for commercial vessels and commercial aircraft entering the United States from Canada will remain unchanged.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of February 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–3255 Filed 2–23–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM369, Special Conditions No. 25–345–SC]

Special Conditions: Raytheon Aircraft Company Model BAe.125 Series 800A; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model BAe.125 Series 800A airplanes modified by Duncan Aviation Inc. These modified airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of electronic flight and engine instrument systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for protecting these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 12, 2007. We must receive your comments by March 28, 2007.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM369, 1601 Lind Avenue SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the address indicated above. You must mark your comments: Docket No. NM369. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested persons to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On October 27, 2006, Duncan Aviation, Inc., 15745 South Airport Road, Battle Creek, Michigan 49015, applied for a supplemental type certificate (STC) to modify Raytheon Aircraft Company Model BAe.125 Series 800A airplanes currently approved under Type Certificate No. A3EU. The Model BAe.125 Series 800A airplanes are small transport category airplanes. They are powered by two turbojet engines, with maximum takeoff weight of 31,000 pounds as modified by Modification No. 253379A or 26,866 pounds as modified by Modification No. 25B047A. These airplanes operate with 2-person crew and can seat up to 15 passengers. The proposed modification is to install the Rockwell Collins Pro Line 21 Integrated Display Systems. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under 14 CFR 21.101, Duncan Aviation, Inc. must show the Raytheon Aircraft Company Model BAe.125 Series 800A aircraft, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU. They must also continue to meet the applicable regulations in effect on the date of application for the change. We commonly refer to the regulations incorporated by reference in the type certificate as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A3EU include Part 10 of the British Civil Airworthiness Requirements. This certification is equivalent to Civil Air Regulations (CAR) 4b dated December 1953, as amended by Amendment 4b–1 through Amendment 4b–11, exclusive of CAR 4b 350(e). It includes Special Regulation SR 422B. In addition, the certification basis includes certain later amendments to 14 CFR part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model Bae.125, Series 800A airplanes, because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Besides the applicable airworthiness regulations and special conditions, the Raytheon Aircraft Company Model BAe.125, Series 800A airplanes, must comply with the fuel vent exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

We issue special conditions, as defined in 14 CFR 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation Inc., apply later for a supplemental type certificate to modify any other model included on Type Certificate No. A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

As noted earlier, the Raytheon Aircraft Company Model BAe.125 Series 800A aircraft, as modified by Duncan Aviation, Inc., will incorporate the Rockwell Collins Pro Line 21 Integrated Display Systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the

adverse effects of HIRF. Therefore, we consider this system to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model BAe.125 Series 800A airplanes modified by Duncan Aviation, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function because of both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Raytheon Aircraft Company Model BAe.125 Series 800A airplanes modified by Duncan Aviation, Inc. Should Duncan Aviation, Inc. apply later for a supplemental type certificate to modify any other model included on Type Certificate No. A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Raytheon Aircraft Company Model BAe.125 Series 800A airplanes as modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to send views that may not have been sent in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon Aircraft Company Model BAe.125 Series 800A airplanes modified by Duncan Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3231 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD; Amendment 39–14959; AD 2007–04–26]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines that were reassembled with previously used high pressure compressor (HPC) exit brush seal packs and new or refurbished HPC exit diffuser air seal lands. That AD currently requires replacing the HPC exit inner and outer brush seal packs with new brush seal packs, or replacing the HPC exit brush seal assembly with a new HPC exit brush seal assembly. This AD requires replacing the HPC exit inner and outer brush seal packs with new brush seal packs, using either original equipment manufactured (OEM) parts, or FAA-approved part manufacturer approval (PMA) parts. This proposed AD also applies to engines reassembled with a PMA HPC exit inner and or outer brush seal packs. This AD results from a request to include PMA HPC exit inner and outer brush seal packs and to include the engines with PMA parts already installed, in the AD. We are issuing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

DATES: This AD becomes effective April 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5213; telephone (781) 238–7751; fax (781) 238–7199; e-mail: *antonio.cancelliere@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines that were reassembled with previously used HPC exit brush seal packs and new or refurbished HPC exit diffuser air seal lands. We published the proposed AD in the **Federal Register** on November 20, 2006 (71 FR 67073). That action proposed to require replacing the HPC exit inner and outer brush seal packs with new brush seal packs, using either OEM parts, or FAA-approved PMA parts. That action also proposed to apply to engines reassembled with a PMA HPC exit inner and or outer brush seal packs.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Request To Add Part Numbers in the AD Applicability

One commenter, All Nippon Airways, requests that we add Pratt & Whitney and PMA part numbers in the AD applicability to avoid confusion as to what parts are to be removed and replaced.

We do not agree. We adequately identified the parts requiring replacement, as well as the unsafe condition, in the proposed AD. Pratt & Whitney part numbers can be found in Alert Service Bulletin No. PW4G–112–A72–280, Revision 2, dated January 12, 2007, which we refer to as additional information. We did not change the AD.

Request To Allow Installing an HPC Exit Brush Seal Assembly

One commenter, Pratt & Whitney, requests that we also allow installing an HPC exit brush seal assembly, in lieu of installing an HPC exit brush seal pack, to comply with the AD.

We agree. Compliance with the AD can be achieved by installing either an HPC exit brush seal pack or an HPC exit brush seal assembly. Although installing an HPC exit brush seal assembly may be more costly for operators, it may be more convenient. We changed the AD compliance to allow for either replacement.

Used Part Prohibition

For clarification, we added a used part prohibition paragraph in the compliance section. It states that engine reassembly with used OEM or used FAA-approved PMA HPC exit inner and outer brush seal packs with OEM or FAA-approved PMA new HPC exit inner and outer brush seal lands, is prohibited.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 76 Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 9 work-hours per engine to perform the parts replacement, and that the average labor rate is $80 per work-hour. Required parts will cost about $99,990 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $7,653,950.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14729 (71 FR 49335, August 23, 2006), and by adding a new airworthiness directive, Amendment 39–14959, to read as follows:

2007–04–26 Pratt & Whitney: Amendment 39–14959. Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 2, 2007.

Affected ADs

(b) This AD supersedes AD 2006–17–08, Amendment 39–14729.

Applicability

(c) This AD applies to Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines that were:

(1) Reassembled with a previously used original equipment manufacturer (OEM) or part manufacturer approval (PMA) high pressure compressor (HPC) exit inner brush seal pack; and

(2) Reassembled with a new or refurbished OEM or PMA HPC exit diffuser air seal inner land.

(d) These engines are installed on, but not limited to, Boeing 777 airplanes.

Unsafe Condition

(e) This AD supersedure results from a request to include PMA HPC exit inner and outer brush seal packs and to include the engines with PMA parts already installed, in the AD. This AD action is the result of a report of oil leaking into the high pressure turbine (HPT) interstage cavity and igniting, leading to an engine case penetration and engine in-flight shutdown. We are issuing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

Compliance

(f) You are responsible for having the actions required by this AD performed at the following compliance times, unless the actions have already been done.

(g) Replace the HPC exit inner and outer brush seal packs with OEM or FAA-approved PMA new HPC exit inner and outer brush seal packs, or an OEM or FAA-approved PMA new HPC exit brush seal assembly, as follows:

(1) By 3,000 cycles-in-service (CIS) since a used HPC exit inner brush seal pack and a new or refurbished HPC exit diffuser air seal land were installed in the engine, or by March 31, 2007, whichever occurs later; however

(2) If on March 31, 2007, the used HPC exit inner brush seal pack coupled with a new or refurbished HPC exit diffuser air seal inner land assembly has not accumulated 3,000 CIS, then by 3,000 CIS, or December 31, 2008, whichever occurs first.

Used Part Prohibition

(h) Engine reassembly with used OEM or used FAA-approved PMA HPC exit inner and outer brush seal packs with OEM or FAA-approved PMA new HPC exit inner and outer brush seal lands, is prohibited.

(i) Information on replacing HPC exit inner and outer brush seal packs can be found in the Pratt & Whitney Alert Service Bulletin No. PW4G–112–A72–280, Revision 2, dated January 12, 2007, and in the engine overhaul manual.

Alternative Methods of Compliance

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

Related Information

(k) Pratt & Whitney Alert Service Bulletin No. PW4G–112–A72–280, Revision 2, dated January 12, 2007, also pertains to the subject of this AD.

(l) Contact Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5213; telephone (781) 238–7751; fax (781) 238–7199; e-mail: *antonio.cancelliere@faa.gov* for more information about this AD.

Issued in Burlington, Massachusetts, on February 16, 2007.

Peter A. White,

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

[FR Doc. E7–3017 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26311; Airspace Docket No. 06–AWP–19]

RIN 2120–AA66

Modification of Class D Airspace; Luke Air Force Base, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Luke Air Force Base (LUF), AZ. This modification is necessary to contain and protect circling maneuvers for Category E aircraft executing these maneuvers in conjunction with Standard Instrument Approach Procedures (SIAPs) at the airport.

DATES: *Effective Date:* 0901 UTC, May 10, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Francie Hope, System Support Specialist, Western Service Center, AJO2–W2, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

History

On December 7, 2006, the FAA published in the **Federal Register** (71 FR 70910) a notice of proposed rulemaking to revise the Class D airspace at Luke Air Force Base, AZ. Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. On January 11, 2007, a notice of proposed rulemaking correction was published in the **Federal Register** (72 FR 1301), changing the legal description to better describe the requisite airspace. No comments were received. This modification is the same as that proposed in the notice. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class D airspace area for Luke Air Force Base, AZ. This modification is necessary to contain and protect circling maneuvers for Category E aircraft executing these maneuvers in conjunction with Standard Instrument Approach Procedures (SIAPs) at the airport. This action modifies the existing LUF Class D airspace to extend upward from the surface to, but not including, 4000 feet mean sea level (MSL) and within a 5.6-mile radius of Luke AFB from a point intersecting the northwest portion of the Goodyear Class D airspace clockwise to a point intersecting the northern portion of the Glendale Class D airspace; and within a 4.4 mile radius of Luke AFB from the intersection of the southern portion of the Glendale Class D airspace clockwise to the intersection of the Goodyear Class D airspace; and excluding that portion within the Glendale, AZ, and Goodyear, AZ Class D airspace areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefor, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP AZ D Phoenix, Luke AFB, AZ [Amended]

Phoenix Luke AFB, AZ
(Lat. 33°32′06″ N, long. 112°22′59″ W)

That airspace extending upward from the surface to but not including 4,000 feet MSL and within a 5.6-mile radius of Luke AFB from a point intersecting the northwest portion of the Goodyear Class D airspace clockwise to a point intersecting the northern portion of the Glendale Class D airspace; and within a 4.4 mile radius of Luke AFB from the intersection of the southern portion of the Glendale Class D airspace clockwise to the intersection of the Goodyear Class D airspace; and excluding that portion within the Glendale, AZ, and Goodyear, AZ Class D airspace areas. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continually published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on February 5, 2007.

Teri L. Bristol,

Acting Director of Terminal Operations, Western Service Area.

[FR Doc. 07–856 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27110; Airspace Docket No. 07–AGL–1]

Modification of Class E Airspace; Peru, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Class E airspace area at Peru, Illinois Valley Regional-Walter A. Duncan Field, IL. The cancellation of the Non Directional Beacon (NDB) Instrument Approach Procedure (IAP) and subsequent decommissioning of the Valley NDB requires modification of the Class E airspace area extending upward from 700 feet above the surface of the earth. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft executing Standard Instrument Approach Procedures (SIAPs) to Peru, Illinois Valley Regional-Walter A. Duncan Field, IL.

DATES: This direct final rule is effective on 0901 UTC, May 10, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before March 15, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27001/ Airspace Docket No. 07–AGL–1, at the beginning of your comments. you may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nicols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at Peru, Illinois Valley Regional-Walter A. Duncan Field, IL. The northwest extension to the E5 airspace area is deleted and the reference to the Valley NDB is removed from the legal description. This modification brings the legal description of the Peru, Illinois Valley Regional-Walter A. Duncan Field, IL Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E

airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation would not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27110/Airspace Docket No. 07–AGL–1.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures in Peru, Illinois Valley Regional-Walter A. Duncan Field, IL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Peru, IL

Peru, Illinois Valley Regional-Walter A. Duncan Field, IL
(Lat. 41°21′07″ N., long. 89°09′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Illinois Valley Regional-Walter A. Duncan Field Airport.

* * * * *

Issued in Fort Worth, TX on February 14, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–804 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25944; Airspace Docket No. 06–ACE–14]

Establishment of Class E5 Airspace; Potosi, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E airspace area extending upward from 700 feet above the surface at Potosi, MO. The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Potosi Washington County Airport, MO and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION:

History

On Friday, December 22, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Potosi, MO (71 FR 76954). The proposal was to establish a Class E5 airspace area to bring Potosi, MO airspace into

compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This rule amends Title 14 Code of Federal Regulations part 71 by establishing a Class E airspace area extending upward from 700 feet above the surface at Potosi Washington County Airport, MO. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) to Runways 2 and 20 have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Potosi Washington County Airport, MO. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. of the same Order. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Potosi Washington County Airport, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Potosi, MO

Potosi, Washington County Airport, MO
(Lat. 37°55′45″ N., long. 90°43′53″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Potosi, Washington County Airport, MO.

* * * * *

Issued in Fort Worth, TX, on February 14, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–805 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

Guidance Concerning the Carriage of Service Animals in Air Transportation Into the United Kingdom

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of guidance concerning the carriage of service animals in air transportation from the United States to the United Kingdom.

SUMMARY: This notice publishes guidance concerning the carriage of service animals in air transportation from the United States (U.S.) to the United Kingdom (U.K.). These guidelines address the differences between U.K. laws regulating the transport of service animals on flights into the U.K. and U.S. law with respect to the carriage of service animals in air transportation. U.K. laws affecting the transport of service animals in air travel differ significantly from the requirements of the Air Carrier Access Act (ACAA), 49 U.S.C. 41705, and its implementing regulation in 14 CFR Part 382, resulting in uncertainty for carriers and persons with disabilities about the requirements that apply on flights into or transiting the U.K.

The purpose of this guidance document is to assist U.S. and foreign carriers, as well as passengers with disabilities, in complying with both U.S. and U.K. regulations concerning the transport of service animals on flights from the U.S. to the U.K. by: (1) Explaining the procedures passengers must follow to comply with the U.K.'s Pet Travel Scheme (PETS); (2) explaining the procedures U.S. and foreign carriers must follow to obtain an approved Required Method of Operation (RMOP) from the U.K.'s Department for Environment Food and Rural Affairs (DEFRA); and (3) notifying both U.S. and foreign carriers operating flights between the U.S. and the U.K. that failure to obtain an approved RMOP from DEFRA will be considered a violation of the ACAA and may subject such carriers to enforcement action by the U.S. DOT.

ADDRESSES: This guidance document is available on the Department's Web site at *http://airconsumer.ost.dot.gov/* and future updates or revisions will also be posted there. Questions regarding this notice may be addressed to the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, C–70, 400 Seventh Street, SW., Room 4116, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Blank Riether, Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–9342; e-mail *kathleen.blankriether@dot.gov*.

Introduction

Service animals perform many tasks to improve the quality of life and independence of persons with disabilities. Accordingly, the ability to travel with a service animal is critically important to those passengers who rely on them to assist with their disabilities. For health and safety reasons, until

February 2000, all animals traveling into the U.K. were subject to quarantine for six months. From February 2000 to April 2004, U.K. law allowed certain animals to enter the U.K. without a six-month quarantine, but required, among other things, that they travel in a sealed kennel on flights into the U.K. In April 2004, U.K. laws were changed to remove the requirement that dogs and cats meeting the requirements of the U.K.'s Pet Travel Scheme (PETS) must be transported in a sealed kennel when traveling by air into the U.K. Consequently, airlines could seek approval to legally transport PETS-compliant animals in the aircraft passenger cabin for the first time, opening the door for carriers to comply with many of the U.S. service animal requirements on flights into the U.K.

U.S. service animal requirements are based on the ACAA, which was enacted in 1986 to prohibit U.S. carriers from discriminating against air travelers on the basis of disability. The ACAA was amended in 2000, by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Pub. L. 106–181 (April 5, 2000), to specifically cover foreign carriers. The Department's rule implementing the ACAA, 14 CFR Part 382 (Part 382), which was adopted in 1990, does not by its terms address foreign carriers. However, DOT's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) gave notice, on May 18, 2000, of its intent to use Part 382 as guidance in applying the ACAA to foreign carriers until that rule is amended to cover those carriers. In November 2004, DOT published a proposed rule to modify Part 382 to cover foreign carriers. The Department expects to complete that rulemaking in 2007.

DOT has received a number of complaints against foreign and U.S. carriers from passengers alleging unlawful discrimination under the ACAA because they were prevented from traveling into the U.K. with their service animals. DOT has also received inquiries from members of the U.S. Congress on behalf of their constituents on this issue. Among a number of actions taken in response to these complaints and inquiries, the Department (1) Investigated several U.S. and foreign carriers; (2) reviewed relevant European Union (EU) and U.K. laws and agency guidance documents; (3) consulted with members of the U.K. government; and (4) spoke with an international working group seeking to establish consensus on best practices for transporting guide and assistance dogs in the passenger cabin, particularly on long haul flights such as those from the U.S. to the U.K. We found that there were many complexities involved in the transport of service animals in the passenger cabin on flights into the U.K. and concluded that guidance for foreign and U.S. carriers, as well as passengers with disabilities, was needed to clarify their respective rights and responsibilities under the ACAA and Part 382 in the context of U.K. laws and agency guidance.

Background

Until 2000, all animals traveling into the U.K. were subject to a six-month quarantine upon entry in order to ensure that they were not contaminated with rabies. On February 28, 2000, the U.K. implemented the Pet Travel Scheme (PETS), a regulatory plan administered by the U.K.'s Department for Environment, Food and Rural Affairs (DEFRA), that allows certain animals holding appropriate documentation and transported by an approved air carrier—initially dogs and cats, and as of July 2004 also ferrets—from certain countries to enter England without a six-month quarantine as long as the animals are identified by microchip, vaccinated against rabies, blood tested (except ferrets), and treated against certain parasites.

In May 2003, European Union Regulation (EC) No. 998/2003 established the current health requirements for animals traveling under the Pet Travel Scheme between European Union (EU) member states or into a member state from third countries, superseding the earlier U.K. laws. The EU regulation allows the U.K. to broadly continue its domestic Pet Travel Scheme for dogs and cats and covers import requirements for some other species, including ferrets. It should be noted that the Council of the European Union subsequently adopted a community regulation on July 5, 2006, concerning the rights of disabled persons and persons with reduced mobility when traveling by air, which will apply to commercial carriers flying into, from, or through an airport situated in an EU member state. The regulation, effective July 26, 2008, will require carriers to transport recognized assistance dogs in the aircraft cabin free of charge, subject to national legislation. See *http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_204/l_20420060726en00010009.pdf*.

Following the adoption of the 2003 EU regulation, the U.K. Parliament passed the Non-Commercial Movement of Pet Animals (England) Regulations 2004 No. 2363 (NCMPAR 2004), which became effective on October 1, 2004, implementing and enforcing the EU regulation in England only. The other regions within the U.K., Scotland, Wales and Northern Ireland, each have their own PETS regulations. However, as of January 1, 2007, the only DEFRA-approved routes for service animals to enter the U.K. from the U.S. are into England, primarily through the London Gatwick and London Heathrow airports.

NCMPAR 2004 outlines the responsibilities and conditions that carriers and passengers must meet to comply with the EU and U.K. regulations with respect to the transport of dogs, cats and ferrets into England. Carriers seeking approval to participate in PETS must submit written procedures to DEFRA for transporting these animals into England from listed countries on specific routes in accordance with NCMPAR 2004. Listed countries, which include the U.S., are those from which the movement of animals into the EU Community under the Pet Travel Scheme may be authorized, provided that certain requirements are met, under regulation (EC) No. 425/2005. See DEFRA's Web site for listed and non-listed countries at *http://www.defra.gov.uk/animalh/quarantine/pets/regulation/eu_reg.htm*.

Passengers wishing to transport dogs, cats and ferrets into England and U.K. airports that opt to accept such animals also have responsibilities that they must meet. Passengers are obliged to take specific steps to ensure their animals meet PETS health requirements before entering the U.K. U.K. airports must establish an onsite DEFRA-approved animal reception center (ARC) facility in order to participate in PETS. An animal reception center is a facility located at the airport and operated by a public or private sector organization for the purpose of verifying the PETS compliance status of animals arriving on flights into the U.K. before they deplane or are removed from the cargo area. Animals found not to be PETS-compliant are detained at the ARC until they can be transferred to a quarantine facility or removed from the country.

Although PETS now allows dogs, cats, and ferrets to enter the U.K. without a six-month quarantine and without being sealed in a kennel, from February 2000 to April 2004, PETS required the animals to travel in a sealed kennel on flights into England. Given the space constraints in the aircraft cabin, participating carriers (*i.e.*, carriers approved by DEFRA for transporting PETS-compliant animals) would only transport such kennels in the cargo hold of the aircraft. This restriction discouraged persons with disabilities

from traveling from the U.S. to the U.K. with a service animal because the passenger necessarily would be separated from his or her service animal during flight. Separating a service animal from the passenger with a disability can impair the passenger's ability to function independently when the animal is unavailable to perform a vital task (*e.g.*, navigation, mobility assistance, seizure alert, etc.). The disability community also advises that separation can create stress on the service animal, affecting its ability to perform necessary tasks for its owner when the service animal and its user reconnect.

With the PETS amendment of April 2004, participating carriers were in a position to seek DEFRA approval to transport PETS-compliant animals accompanied by their owners in the passenger cabin of aircraft on approved routes into England. This substantive change in the PETS order then prompted the U.K.'s Civil Aviation Authority (CAA) to issue a Flight Operations Department Communication (FODCOM) on March 11, 2005, addressing cabin safety considerations concerning the carriage of guide and assistance dogs in the aircraft cabin. Besides defining the criteria for the acceptance of guide and assistance dogs qualifying for carriage in the passenger cabin, the FODCOM explained that all other animals should be treated as pets and that other arrangements be made for their transport. See Carriage of Guide Dogs and Assistance Dogs in the Aircraft Cabin, FODCOM 3/2005 (March 11, 2005). The CAA has informed DOT that compliance with FODCOM provisions, which interpret U.K. safety regulations, is mandatory for all U.K. carriers.

In sum, these changes to EU and U.K. law have allowed individual carriers to modify their policies and procedures and obtain DEFRA approval to carry guide and assistance dogs in the passenger cabin. In addition, to comply with the ACAA and Part 382, U.S. carriers operating flights from the U.S., or any other listed country, into the U.K. must obtain DEFRA approval to transport all PETS-compliant animals that serve as service animals in the cabin on approved routes into any participating U.K. airport (*i.e.*, approved by DEFRA to receive animals coming into the U.K.) served by the carrier. (See GLOSSARY for the definition of ''listed country.'') It is the position of the Enforcement Office that the ACAA itself imposes the same obligation on non-U.K. foreign carriers for flights from the U.S. into the U.K. Similarly, it is the position of the Enforcement Office that the ACAA itself requires U.K. carriers to obtain DEFRA approval to transport PETS-compliant guide and assistance dogs in the cabin and all other PETS-compliant animals that serve as service animals in the cargo hold in accordance with FODCOM 3/2005, which is mandatory for such carriers.

Guidance Concerning the Carriage of Service Animals in Air Transportation From the United States to the United Kingdom

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Glossary

A. Overview

1. What Is the Purpose of This Guidance?

As previously stated in the opening summary, this guidance assists carriers in addressing the differences between U.K. and U.S. law with respect to the carriage of service animals into the U.K., (*e.g.*, the ACAA requirement that carriers generally must transport all service animals in the passenger cabin versus the U.K. rule that requires carriers to restrict in-cabin transport to guide and assistance dogs only).

In addition, this guidance notifies carriers that failure to obtain approval to participate in the U.K.'s Pet Travel Scheme (PETS) when flying from the U.S. (or for U.S. carriers, from any listed country) into participating U.K. airports violates the ACAA and may subject the carrier to enforcement action by the DOT.

Most importantly, this guidance provides both carriers and passengers an overview of what they must do to comply with U.K. and U.S. laws affecting the carriage of service animals accompanying passengers with disabilities on flights between the U.S. and U.K.

2. To Whom Does This Guidance Apply?

Foreign carriers operating to and from U.S. airports are subject to the provisions of the ACAA, while U.S. carriers must comply with the ACAA and the rules set forth in Part 382 wherever they operate. Accordingly,

this guidance applies to U.S. carriers under the ACAA and Part 382 on flights from any point of origin within a listed country to the U.K. It also applies to foreign carriers under the ACAA on flights from the U.S. to the U.K.

It is worth noting that U.S. and foreign carriers operating flights from the U.S. into the U.K. under code-share agreements both have a responsibility for ensuring the transport of PETS-compliant service animals consistent with U.S. and U.K. law.

3. What Service Animals May Accompany a Passenger With a Disability on Flights Into the U.K.?

a. U.S. carriers, under sections 382.55(a)(1) and (2), are required to permit service animals used by individuals with a disability to accompany the person in the aircraft passenger cabin in accordance with applicable safety regulations. It is the Enforcement Office's position that this requirement also applies under the ACAA to foreign carriers operating to and from the U.S. absent a direct conflict of law.

b. U.S. regulatory guidance generally defines as service animals those animals that are individually trained to perform functions to assist passengers who are qualified individuals with a disability, but recognizes that an emotional support animal or an animal such as a seizure alert animal may be capable of performing functions to assist a qualified individual with a disability without formal training regarding the assistance it performs. Similarly under DOT guidance, a service animal is (i) An animal individually trained to perform a function and which performs that function to assist a person with a disability; (ii) an animal that has been shown to have the innate ability to assist a person with a disability, *e.g.*, a seizure alert animal; or (iii) an emotional support animal. Regardless of the function it performs to assist a passenger with his or her disability, a service animal should be trained to behave properly in the airport and in the passenger cabin (*e.g.*, not to run around freely, bark, bite other persons, or urinate in the cabin). Improper behavior indicating a lack of training may result in the service animal legitimately being denied transport in the cabin.

c. Under FODCOM 3/2005, which interprets U.K. safety regulations, only guide and assistance dogs may accompany their owners in the passenger cabin on a flight. The FODCOM defines guide and assistance dogs as dogs trained by an individual or organization accepted by and affiliated with the International Guide Dog Federation to provide assistance to a person with a disability and requires formal identification indicating such training. Dogs not meeting the above criteria for guide or assistance dogs, as well as cats and ferrets, are considered pets and are not recognized as service animals in the U.K., even if trained to perform a function to assist a person with his or her disability. FODCOM 3/2005, which is mandatory for U.K. carriers and guidance for non-U.K. carriers, states that PETS-compliant animals other than guide and assistance dogs should be carried in the cargo hold.

d. Under Part 382, U.S. carriers must accept PETS-compliant service dogs and service cats for transport in the aircraft cabin on flights into the U.K. when they can behave appropriately and can be accommodated without violating FAA safety regulations. When not, carriers must transport such animals in the cargo hold. It is the position of the Enforcement Office that the requirement to transport service dogs and service cats also applies to non-U.K. foreign carriers under the ACAA on flights from the U.S. to the U.K. It is also the position of the Enforcement Office that U.K. carriers, to whom FODCOM 3/2005 applies, are subject to its requirement to permit only guide and assistance dogs in the aircraft cabin. Since U.K. law does not prohibit U.S. and non-U.K. foreign carriers from transporting PETS-compliant animals in the cabin in accordance with a carrier's approved required method of operation (RMOP), these carriers must request an approved RMOP for transporting PETS-compliant service dogs and service cats in the cabin in order to comply with the ACAA and Part 382. (For further explanation of an RMOP, see ''What Steps Must a Carrier Take To Obtain DEFRA Approval To Participate in PETS?'')

e. Although ferrets may be accepted for transport under PETS, U.S. regulatory guidance permits carriers to refuse transport to ferrets for safety reasons (See ''Under What Circumstances May a Carrier Refuse Transport to a Service Animal?'')

f. Under section 382.57, U.S. carriers may not charge for transporting service animals from the U.S. or any listed country to the U.K. It is the Enforcement Office's position that this prohibition also applies to all foreign carriers under the ACAA on flights from the U.S. to the U.K. absent a direct conflict of law. The cost of animal inspections and other fees to the passenger that airport animal reception centers bill directly to carriers for administrative convenience may be charged back to the passenger by the carrier.

g. Because section 382.55(a) requires that service animals be permitted to accompany persons with disabilities on their flights, U.S. carriers with routes into participating U.K. airports must also participate in PETS so that the aforementioned service animals can enter the U.K. in accordance with applicable U.K. laws. Under the ACAA, it is the Enforcement Office's position that all foreign carriers operating flights from the U.S. to the U.K. must also participate in PETS. The Enforcement Office may pursue enforcement action against carriers that fail to participate in the U.K.'s Pet Travel Scheme, which is a necessary component to accepting service animals accompanying passengers with disabilities on flights to the U.K.

4. What About Service Animals That Are Not PETS-Compliant?

a. Due to U.K. law requiring animals that are not PETS-compliant to be quarantined or removed from the country and the penalties that may result to the carrier for an illegal landing, a service animal for which a passenger cannot demonstrate PETS compliance may be denied transport.

b. Carriers have discretion to transport dogs, cats and ferrets that are not PETS-compliant into the U.K. under the terms and conditions of a U.K. quarantine import license. Dogs, cats and ferrets that must be quarantined because they do not meet all PETS requirements on the day they enter the UK, but at a later date can be shown to meet the necessary PETS requirements, can be released early from the six-month quarantine.

c. Carriers may choose to transport other service animals under the terms and conditions of a U.K. quarantine import license, which includes a six-month quarantine of the animal upon entry to the U.K.

d. For further information on import licensing and quarantine procedures, see DEFRA's Web site at *http://www.defra.gov.uk/animalh/quarantine/pets/procedures/support-info/listq&a.htm*.

5. Under What Circumstances May a Carrier Refuse Transport to a Service Animal?

a. Under U.S. law and regulatory guidance, refusing any type of service animal for transport in the aircraft cabin is permitted only when the animal's presence on the aircraft (1) Poses a direct threat to the health or safety of passengers or crewmembers (*e.g.*, airlines are not required to transport, either in the cabin or in the cargo hold,

snakes, other reptiles, ferrets, rodents, and spiders as DOT has determined that these animals pose unavoidable safety and/or public health concerns), or (2) would cause a significant disruption to the airline service in the cabin (*e.g.*, the service animal is not trained to behave properly in public settings so the animal barks at other persons on the aircraft, jumps on people or urinates in the cabin), or (3) would violate an applicable Federal Aviation Administration (FAA) safety regulation (*e.g.*, accepting a service animal for carriage in the cabin that would block egress to the aisle from any row of seats on the aircraft), or (4) is prohibited in the cabin by the law of the country where the carrier operates.

b. Under section 382.37(c), U.S. carriers are required to transport in the cargo hold any PETS-compliant service dogs and service cats that cannot be accommodated in the cabin either for safety reasons or due to behavior that significantly disrupts cabin service. It is the position of the Enforcement Office that the same requirement applies to foreign carriers under the ACAA.

c. U.S. and non-U.K. foreign carriers that permit only service dogs and service cats to accompany their owners in the passenger cabin (or in the cargo hold when safety requires) on flights from the U.S. into the U.K. will be considered in compliance with the ACAA and Part 382. U.K. carriers that permit only guide and assistance dogs in the passenger cabin (or in the cargo hold when safety requires), and transport other PETS-compliant service animals in the cargo hold on flights from the U.S. into the U.K. will also be considered in compliance with the ACAA. Due to the quarantine restrictions for other animal species and their subsequent unavailability to their owners for six months following entry to the U.K., carriers that accept only PETS-compliant animals on flights from the U.S. into the U.K. will be considered in compliance with the ACAA and Part 382.

6. Are Carriers Permitted To Require Passengers To Provide Documentation That Their Animal is a Service Animal as a Condition for Transport in the Cabin?

a. Under the ACAA and Part 382, carriers may look for indicators to confirm that an animal is a service animal either through (1) An ID issued by a guide or assistance dog organization or state or local government agency; (2) service equipment on the animal such as a harness, vest, or side-packs; or (3) the credible verbal assurance of the qualified individual with a disability using the animal. Under the ACAA and Part 382, any of these observations or procedures may be sufficient to make the determination.

b. Under FODCOM 3/2005, a guide or assistance dog should meet the full membership criteria in an accredited organization (*e.g.*, Guide Dogs for the Blind Association, Assistance Dogs International, etc.) and have formal identification. Therefore, U.K. carriers may require passengers to present such identification as a condition for acceptance of a guide or assistance dog in the passenger cabin. For other PETS-compliant animals, U.K. carriers should use as indicators of service animal status those defined under the ACAA and Part 382.

c. U.S. law allows carrier personnel to request documentation for service animals other than emotional support animals as a means of verifying that the animal is a service animal only in limited circumstances. However, the Enforcement Office urges U.S. and foreign carriers, in the absence of a conflict of law, not to require documentation as a condition for accepting a PETS-compliant dog or cat for transport as a service animal in the cabin or the cargo hold unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation (e.g., a service animal organization membership ID). See Notice of Policy Guidance Concerning Service Animals in Air Transportation, 68 FR 24,874 (May 9, 2003), available at *http://airconsumer.ost.dot.gov/rules/20030509.pdf*.

d. In order to prevent abuse by passengers who do not have a medical need for an emotional support animal, DOT permits carriers to require recent medical documentation of the passenger's disability-related need as a condition for acceptance of an emotional support animal as a service animal under the ACAA and Part 382. (See Notice of Policy Guidance Concerning Service Animals in Air Transportation at the above-noted Web site.)

e. The ACAA, Part 382 and FODCOM 3/2005 allow guide and assistance dogs in the cabin of any breed and size provided they can be carried in the cabin in accordance with applicable safety regulations.

7. Why Must Carriers Obtain Approval From DEFRA To Carry Service Animals on Flights Into the U.K.?

a. The Enforcement Office considers a covered carrier's approval by DEFRA to transport PETS-compliant service animals on flights from the U.S. to participating U.K. airports, in accordance with this guidance, necessary to comply with the ACAA since without such approval service animals may not be legally transported into the U.K. See ''To Whom Does This Guidance Apply?'' for the definition of a covered carrier.

b. U.S. air carriers operating between the U.S. or any other listed country and the U.K., and foreign carriers operating between the U.S. and the U.K., are put on notice that a failure to obtain DEFRA approval may result in enforcement action initiated by DOT's Enforcement Office for violating the ACAA.

c. To demonstrate to the Enforcement Office that a carrier is seeking to participate in PETS, the office recommends that the carrier retain all relevant records of the steps taken to obtain DEFRA approval until it is granted.

B. Specific Requirements for Carrier Compliance With British Laws Governing the Carriage of Animals Into the U.K.

1. What Steps Must a Carrier Take To Obtain DEFRA Approval To Participate in PETS?

a. Before a carrier can participate in PETS, it first must prepare a proposed Required Method of Operation (RMOP) and submit it to DEFRA for approval. The RMOP must describe the specific procedures the carrier will follow to ensure the proper transport of PETS-compliant animals in accordance with applicable DEFRA, CAA and the International Air Transport Association (IATA) requirements.

b. The RMOP for carriage of animals should include all relevant details on:

i. How the carrier will transport the animals in the passenger cabin and in the cargo hold;

ii. How the carrier will ensure that the passenger presents the required PETS documentation for the animal prior to departure;

iii. How the carrier will ensure that the animals are checked-in by the animal reception center (ARC) upon arrival into the U.K.;

iv. What contingency plans the carrier intends in the event of emergencies or route deviations; and

v. On what routes (point-to-point between city pairs) the carrier proposes to transport animals in the passenger cabin and cargo hold.

c. There is no charge for filing an RMOP. Instructions for preparing an RMOP covering the carriage of service animals in the passenger cabin and in the cargo hold can be obtained from

DEFRA by contacting *quarantine@defra.gsi.gov.uk*.

d. Carriers must coordinate a written service level agreement (SLA) with the local ARC at each airport they serve with an ARC in the U.K. and submit a copy with their proposed RMOPs to DEFRA. The SLA is an agreement between the ARC and the carrier that the ARC will verify the PETS compliance status of any animal arriving at the local airport over one of the carrier's approved routes. This step is necessary to obtain final approval to participate in PETS.

e. Failure to reach agreement with DEFRA on a proposed RMOP does not exempt the carrier from its obligation to accommodate service animals under Part 382 and/or the ACAA. If a carrier's initial proposed RMOP is not approved, the carrier is obliged to pursue good faith efforts with DEFRA until an agreement on procedures acceptable to DEFRA is reached and approval is granted.

f. The approved RMOP and SLA spell out the carrier's legal obligations with respect to the transport of animals into the U.K. Failure to adhere to their terms may result in liability of the carrier under U.K. law.

2. On Which Routes Must Carriers Participate in PETS?

a. London Heathrow and London Gatwick are the primary U.K. airports participating in PETS that serve flights from the U.S. See DEFRA's Web site at *http://www.defra.gov.uk/animalh/quarantine/pets/procedures/support-info/assistance-air.htm#noneu* for a list of approved routes from the U.S. to the U.K.

b. DEFRA approves a carrier's participation in PETS on a per-carrier, route-by-route basis. To remain in compliance with the ACAA, U.S. carriers must seek approval from DEFRA to participate in PETS on all direct routes from the U.S., or any other listed country, to participating U.K. airports. Foreign carriers must seek approval from DEFRA to participate in PETS on all of its direct routes from the U.S. to participating U.K. airports. For example, a carrier that only operates direct flights between Dulles International Airport and London Heathrow must seek approval for only that route. However, if a U.S. carrier operates direct flights from a number of cities to participating U.K. airports, it must seek DEFRA approval for all such routes.

c. The carrier's RMOP should be submitted with a list of all routes (point-to-point between city pairs) on which it proposes to transport service animals in the aircraft cabin and cargo hold.

d. Although carriers must request approval for all routes they operate between the U.S. and participating U.K. airports, they will be held responsible under the ACAA and Part 382 for transporting PETS-compliant service animals only on those routes for which they have received approval from DEFRA.

3. Who is Responsible for Ensuring That a Service Animal is PETS Compliant Before Traveling to the U.K.?

a. It is the passenger's responsibility to obtain the correct documentation verifying that his or her service animal is PETS-compliant, and to present it to the carrier before take off and again to the ARC officer upon landing. See ''What Documentation Must Be Presented Upon Arrival in the U.K. Demonstrating That a Service Animal is PETS Compliant?''

b. The ARC may require these documents to be faxed to it by the passenger up to 14 days before travel to allow sufficient time to notify the passenger of any deficiencies in the documentation that must be corrected to avoid quarantine of the animal upon landing. Passengers should contact the ARC to determine how far in advance the ARC will require the documents. Final clearance will be given only after the service animal's microchip has been checked and documents have been found to be in order by ARC personnel upon the passenger's arrival in the U.K.

c. The carrier's sole responsibilities with respect to PETS documentation are (1) To ensure that the passenger is carrying a third country official veterinary certificate or an EU pet passport and supporting documents upon boarding the aircraft with the animal or when checking the animal in as cargo; and (2) to affix these documents to the kennel in the manner prescribed by DEFRA for animals transported in the cargo hold.

4. What Other Requirements Apply to Carriers?

a. The carrier must notify the ARC at least 24 hours before the scheduled departure of a flight to the U.K. if an animal will be onboard. The carrier must comply with this notification requirement or be subject to possible prosecution and penalty by local U.K. authorities for an illegal landing. (See Veterinary Checks Legislative Directive, EU 91/268.) As a best practice, DEFRA and the Enforcement Office urge carriers to fax notification to the ARC at the time of booking, or at least 72 hours before departure, to ensure that ARC staff are available for dispatch to the proper aircraft and/or cargo location upon landing.

b. If the carrier discovers a smuggled animal onboard a flight into the U.K., the pilot must ensure that the ARC is notified before landing.

c. Carriers transporting a PETS-compliant service animal in the cargo hold must ensure that (1) The animal's kennel meets IATA specifications, and (2) the animal's third country official veterinary certificate or EU pet passport and supporting documents provided by the passenger are affixed to the kennel in the manner prescribed by DEFRA.

5. Are There Penalties for a Carrier's Noncompliance With U.K. Regulations?

a. U.K. regulations require carriers to (1) Obtain approval from DEFRA to participate in PETS; (2) comply with the terms and conditions of the approval; and (3) notify the ARC at least 24 hours prior to a flight's departure to the U.K. that an animal will be onboard.

b. A carrier that transports an animal into the U.K. without meeting any one of the above requirements may be prosecuted for an illegal landing and fined up to £5,000 (approximately $9,890 as of early January 2007) by the local U.K. enforcement authorities. For example, a carrier that transports animals into the U.K. without an approved RMOP, or a DEFRA-approved carrier that fails to follow its RMOP (*e.g.*, brings animals into the country with insufficient or no documentation, or that fails to comply with the ARC notification requirement) may be prosecuted and fined by the local U.K. enforcement authorities as stated above.

c. If the carrier notifies the ARC of an animal's arrival as described above, and upon landing the ARC determines that the animal is not compliant with U.K. regulations, the passenger, and not the carrier, will be held liable for any penalties that may result from the illegal landing.

C. Specific Guidelines for Air Carriers on Dual Compliance With U.K. Regulations and the ACAA/Part 382

1. May Carriers Require Advance Notice That a Qualified Individual With a Disability Plans To Travel With a Service Animal Between the U.S. (or Any Other Listed Country) and the U.K.?

• U.K. law requires carriers to coordinate with the ARC at least 24 hours in advance when carrying an animal into the U.K. to ensure adequate time to schedule the PETS inspection required upon landing. Carriers may legitimately deny boarding to a service animal when the ARC has had

insufficient notice to schedule an inspection. Therefore, carriers may strongly recommend that passengers with disabilities intending to travel with a service animal on a flight from the U.S. to the U.K. notify them of their intention when making a reservation, or at the latest 72 hours before departure, to avoid the service animal being denied boarding. Carriers must inform passengers traveling with a service animal, and who make a reservation less than 72 hours before departure, that the service animal may be denied boarding if the ARC has insufficient time to schedule the required inspection.

2. May Carriers Limit the Number of Service Animals Allowed Per Flight?

a. U.K. regulatory guidance does not limit the number of guide or assistance dogs allowed in the passenger cabin on a given flight, but the Enforcement Office notes that foreign carriers may wish to take into account the safety provisions outlined in the European Joint Airworthiness Regulations (JAR–OPS 1.260, Carriage of Persons with Reduced Mobility) requiring carriers to ensure that persons with disabilities do not occupy seats where their presence could: (1) Impede the crew in their duties, (2) obstruct access to emergency equipment, or (3) impede the emergency evacuation of the aircraft.

b. Under Part 382, U.S. carriers may not limit the number of service animals allowed in the passenger cabin on any given flight except for safety reasons. It is the position of the Enforcement Office that the same requirement applies to foreign carriers operating to and from the U.S. under the ACAA.

c. Therefore, carriers may only limit the number of service animals in the cabin for legitimate safety reasons.

3. May Carriers Limit the Duration of Flights on Which a Service Animal Will Be Allowed to Travel?

• There are no U.K. laws specifically addressing this issue. The Enforcement Office's view is that U.S. law does not allow carriers covered by Part 382 and/or the ACAA to limit flight duration for service animals on flights between the U.S. and the U.K.

4. May Carriers Require an Early Check-In for a Passenger With a Disability Who Intends To Travel Between the U.S. (or Any Other Listed Country) and the U.K. With a Service Animal?

• It is the Enforcement Office's position that carriers may not require advance check-in times for passengers with service animals beyond what is required of other passengers; however, carriers may strongly recommend early arrival at the airport to allow adequate time to complete all check-in requirements.

5. May Carriers Designate Seating for Qualified Individuals With a Disability Who Travel With a Service Animal?

a. U.S. carriers must and foreign carriers should provide a bulkhead seat or any other seat consistent with safety regulations, as requested by a passenger accompanied by a service dog.

b. Under Part 382, U.S. carriers must permit a service animal to accompany the passenger with a disability at any seat in which the person sits unless a legitimate safety reason would preclude it (*e.g.*, a dog obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation). It is the Enforcement Office's position that foreign carriers operating to and from the U.S. must also provide similar accommodations under the ACAA.

c. If a service animal cannot be accommodated at the seat location of the passenger with a disability, U.S. carriers must and foreign carriers should offer the passenger the opportunity to move with the animal to a seat location in the same class of service, if present on the aircraft, where the animal can be accommodated.

6. Are There Any Special Equipment Requirements for Carrying Service Animals in the Passenger Cabin or in the Cargo Hold on Flights Between the U.S. (or Any Other Listed Country) and the U.K.?

a. The FODCOM, which is mandatory for U.K. carriers and guidance for non-U.K. carriers, states that as a matter of safety assistance dogs should be properly secured by a harness during take-off, landing, and turbulence. Accordingly, U.K. carriers may require that passengers use a harness to restrain guide and assistance dogs in the cabin on flights between the U.S. and U.K. U.S. and non-U.K. foreign carriers, unless required by their nation's laws, should not require that a harness be used to restrain service animals transported in the passenger cabin on flights from the U.S. to the U.K.

b. Although it is a standard practice by some foreign carriers to require that absorbent mats be placed under guide and assistance dogs traveling in the aircraft cabin, it is not required by U.K. regulations. It is the Enforcement Office's view that carriers may require an absorbent mat to be placed under a service animal during travel in the cabin, but should not require passengers to provide the mat. Carriers that require the use of absorbent mats should have such mats available.

c. Service animals traveling in the cargo hold must be transported in kennels that meet specifications for size, construction, etc., set forth in IATA's Live Animal Regulations.

7. May Carriers Charge a Passenger With a Disability For Carrying a Service Animal on Flights Between the U.S. and the U.K.?

• Under Part 382, and it is the Enforcement Office's position that under the ACAA itself, carriers may not impose charges for transporting service animals. However, carriers are encouraged to inform qualified individuals with a disability traveling with a service animal that the passenger is responsible for any on-the-ground fees or charges by a public or private sector organization for the purpose of ensuring the animal is compliant with PETS. Inspection fees for assistance dogs are waived by some U.K. airports. Charges to the carrier by the ARC for inspections and other services related to ensuring an animal is PETS-compliant may be passed on to the passenger along with a reasonable administrative fee to cover payment processing expenses. The passenger will also be responsible for any veterinary, kenneling and other costs resulting if the animal is not PETS-compliant and must be treated after arrival, placed in temporary quarantine for up to six months, or removed from the country.

8. May Carriers Require Documentation of PETS Compliance and a Signed Release Before They Will Transport a Passenger's Service Animal Into the U.K.?

• It is the Enforcement Office's position that, as a condition for transporting a PETS-compliant service animal accompanying a qualified individual with a disability into the U.K., a carrier may require the individual to: (1) Present a third country official veterinary certificate or EU pet passport with supporting documents at the gate or when checking a service animal in for cargo hold transport; and (2) sign a release assuming responsibility for fees charged by the ARC to verify that the animal is PETS-compliant and for other costs (*e.g.*, quarantine charges, treatment fees, etc.), including penalties assessed to the passenger by the ARC for failing to ensure the animal is PETS-compliant.

9. May Carriers Require Passengers to Contact the ARC for Confirmation That Their PETS Documentation is in Order?

• Carriers may require that passengers contact the ARC for a pre-approval document indicating that their PETS documentation is in order if the ARC requires a pre-approval document be presented to the ARC inspector upon landing. Otherwise, the carrier should strongly recommend that passengers contact the ARC in advance to verify that the necessary documents are in order and avoid the possibility of the animal being held in quarantine.

10. What Information Must Be Made Available to Passengers Regarding PETS?

a. Under section 382.45, U.S. carriers are required to make available, upon request, information concerning facilities and services related to providing air transportation to qualified individuals with disabilities. This would include information concerning the transport of service animals from the U.S. or other listed country into the U.K. It is the position of the Enforcement Office that such information must also be provided by foreign carriers under the ACAA on flights from the U.S. to the U.K. upon request.

b. Even if not requested, carriers are encouraged to provide all passengers who wish to travel to or transit the U.K. with an animal, whether or not the animal is a service animal, with as much information as possible regarding PETS. It is recommended that this information include the potential consequences of an illegal landing such as prosecution, fines, and quarantine. If a carrier chooses to provide information on PETS compliance to passengers, U.S. carriers are advised that under section 382.55(a)(3), they must provide this information to all passengers accompanied by animals traveling with the carrier into the U.K., including those accompanied by service animals. Foreign carriers operating flights from the U.S. to the U.K. are also urged to provide all passengers traveling with animals into the U.K. with information on PETS compliance, even if not requested.

D. Guidance for Passengers With Service Animals Traveling on Flights Into the U.K.

1. What Should Passengers Know About Bringing a Service Animal Into the U.K.?

a. The U.K. is a rabies-free country and its rules governing the entry of animals into the country, including service animals, are strictly enforced. These rules apply to the transport of animals on flights that either terminate in or transit the U.K. enroute to a third country.

b. Under U.K. law, only airlines granted official approval by DEFRA may transport animals into the U.K. on approved routes under PETS. U.K. carriers having an approved RMOP may only transport PETS-compliant guide and assistance dogs in the aircraft cabin and must transport other PETS-compliant service animals in the cargo hold. Non-U.K. carriers having an approved RMOP may transport PETS-compliant dogs, cats or ferrets in the cabin or in the cargo hold of the aircraft. However, under Part 382, U.S. carriers having an approved RMOP must transport PETS-compliant service dogs and service cats in the aircraft cabin consistent with FAA safety requirements. It is the position of the Enforcement Office that non-U.K. foreign carriers also must transport PETS-compliant service dogs and service cats in the aircraft cabin on flights into the U.K., consistent with applicable safety requirements, unless prohibited by their nation's laws.

c. Dogs, cats and ferrets that are not PETS-compliant must be carried in the cargo hold and are subject to U.K. import licensing requirements.

d. The ACAA and Part 382 leave it to the discretion of carriers to accept or reject ferrets as service animals, even for transport in the cargo hold.

e. It is a passenger's responsibility to ensure that his or her service animal is fully compliant with PETS requirements. Passengers living outside the U.K. must have a licensed veterinarian certify that all PETS requirements have been met by completing, signing and date-stamping a third country official veterinary certificate for domestic dogs, cats and ferrets. See the question below ''What Documentation Must Be Presented by Passengers Upon Arrival in the U.K. Demonstrating That a Service Animal is PETS Compliant?''

f. The ARC may require that passengers fax the third country official veterinary certificate and supporting documents to the ARC up to 14 days prior to the date of travel. The ARC may issue a pre-approval document to the passenger indicating that these documents are in order and require that it be presented to the ARC inspector. The passenger is responsible for obtaining all documents the particular ARC requires for presentation upon landing. The Heathrow ARC can be contacted at *HARC.GeneralEnq@cityoflondon.gov.uk,* 011 44 20 8745 7894 (telephone) or 011 44 20 8759 3477 (fax). The Gatwick ARC can be contacted at *animalaircare@btconnect.com,* 011 44 12 9346 2180, or 011 44 12 9366 6841 (fax).

g. An animal that leaves the aircraft in a non-listed country will be refused re-entry into the U.K. under PETS until a new blood test and 6 month waiting period have elapsed.

h. Passengers traveling with a service animal should provide notice to the carrier at the time the reservation is made or at the latest 72 hours prior to the flight's departure. This will allow the carrier to give the ARC ample notice to plan for the animal's PETS inspection upon the flight's arrival in the U.K.

i. The passenger must present the required documents to airline personnel at the gate prior to departure and to ARC personnel upon landing in the U.K. before deplaning.

j. There are costs and fees associated with PETS compliance, all of which are paid by the passenger, unless the carrier has voluntarily arranged with the ARC to pay the fee for the initial inspection upon landing, or the ARC provides initial inspection services free of charge (*e.g.*, at the time this guidance was published the London Heathrow ARC inspected guide and assistance dogs at no charge). Passengers should check with the ARC concerning any fees for which they are responsible and acceptable payment methods.

k. Failing to comply with PETS will result in additional costs to the passenger. Egregious or repeated violations may result in prosecution and the imposition of fines by the local British enforcement authorities.

2. What Documentation Must Be Presented by Passengers Upon Arrival in the U.K. Demonstrating That a Service Animal is PETS Compliant?

a. Upon landing in the U.K., a passenger accompanied by a PETS-compliant service animal must present either a date-stamped third country official veterinary certificate, signed by a veterinarian licensed by an approved country or an EU pet passport demonstrating that the animal has received:

i. A microchip implant readable by an ISO (International Standards Organization)-compatible scanner or by another scanner compatible with the implanted microchip provided by the passenger,

ii. A vaccination against rabies,

iii. A rabies antibodies blood test (except for ferrets). This test must be completed at least six months before the animal's initial entry to the U.K. This waiting period applies only once as long as subsequent rabies boosters are

administered in accordance with the vaccine manufacturer's instructions; and

iv. Treatment for certain parasites.

b. A model of the third country official veterinary certificate can be found at *http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_065/l_06520040303en00130019.pdf.*

c. For PETS-compliant service animals traveling in the cargo hold, the veterinary certificate or pet passport must be presented to the carrier at check-in so that the carrier can affix the certificates to the kennel in the manner prescribed by DEFRA. If the service animal is found not to be PETS-compliant, it may be placed in quarantine for up to 6 months or removed from the country, as determined by the ARC.

3. What Specific Steps Must a Passenger Take To Ensure a Service Animal Is PETS-Compliant?

• See DEFRA's Web site at *http://www.defra.gov.uk/animalh/quarantine/pets/procedures/owners.htm* for detailed *current* information about compliance procedures, including a compliance checklist and approved carriers and routes between the U.S. and U.K.

4. What Costs and Fees Must a Passenger Pay To Bring a Service Animal Into the U.K.?

a. The passenger will be responsible for paying all veterinary costs associated with preparing an animal for travel and any fees charged by the ARC for checking the animal upon arrival unless the airline has voluntarily arranged with the ARC to pay the fee for the initial inspection upon landing or the ARC provides initial inspection services free of charge. Passengers may also be required to pay a reasonable administrative fee to the airline to cover the cost of processing these payments to the ARC.

b. If an animal is not PETS-compliant, the passenger will be responsible for any costs associated with quarantine for tick and tapeworm treatment, a six-month quarantine after a rabies vaccination and follow-up blood test, or removing the animal from the country, as determined by the ARC.

c. Any penalties resulting from the illegal landing will be the sole responsibility of the passenger, unless it can be shown that the carrier made no attempt to check for the required PETS documents when accepting the animal for transport or to notify the ARC in advance of an animal on board or both.

5. What Are the Penalties to the Passenger for Failing To Comply With PETS?

• In egregious cases of noncompliance such as concealing and smuggling an animal not vaccinated against rabies, or for repeated failures to have the necessary treatments and tests performed and certified, a passenger may be prosecuted by the local British authorities and be subject to a penalty of up to £5,000 (approximately $9,890 in early January 2007).

Glossary

ACAA—Air Carrier Access Act: U.S. legislation prohibiting discrimination on the basis of disability by both U.S. and foreign carriers in providing air transportation services.

ARC—Animal Reception Center: A facility at an airport for receiving and inspecting animals arriving in the U.K. from an EU or third country to ensure their compliance with EU and domestic regulations on animal health.

CAA—U.K. Civil Aviation Authority.

Community—A collective term referring to those countries that comprise the European Union.

DEFRA—U.K. Department for Environment, Food and Rural Affairs.

Direct conflict of law—A contradiction between a requirement of the ACAA and an applicable provision of the law of a foreign nation, precluding compliance with both.

FAA—U.S. Federal Aviation Administration.

IATA—International Air Transport Association.

ISO—International Standards Organization.

(*EC) No. 425/2005*—European Union regulation amending the list of third countries from which the movement of pet animals into the Community may be authorized.

(EC) No. 998/2003—European Union regulation on the animal health requirements applicable to the non-commercial movement of pet animals between member states and from listed third countries. The regulation allows the U.K. to broadly continue with its domestic Pet Travel Scheme for cats and dogs. Conditions for the entry of ferrets into member states from other member states and from listed third countries come directly within the scope of this regulation.

Listed Country—A country listed in (EC) No. 425/2005, from which the movement of pet animals into a European Community member state may be authorized, provided that certain requirements are met.

Member State—A country that is a member of the European Union.

NCMPAR 2004—Non-Commercial Movement of Pet Animals (England) Regulations 2004: U.K. legislation implementing and enforcing the EU regulation EC 998/2003.

PART 382—Nondiscrimination on the Basis of Disability in Air Travel: U.S. regulation implementing the Air Carrier Access Act, which presently does not by its terms address foreign carriers except with respect to disability reporting requirements.

Participating Airport—An airport having an animal reception center approved by DEFRA to receive animals transported into the U.K. by air from an EU Community country or a listed third country.

Participating Carrier—A carrier whose required method of operation document (RMOP) has been approved by DEFRA, authorizing it to transport animals into the U.K. under the Pet Travel Scheme.

Pet Passport—A document that clearly identifies an animal and officially records the health information necessary under the Pet Travel Scheme (PETS) to verify its compliance with EU and local animal health regulations. A pet passport allows animals to travel easily between EU member countries without undergoing quarantine.

PETS (Pet Travel Scheme)—A regulatory plan administered by the U.K.'s Department for Environment, Food and Rural Affairs (DEFRA), that allows certain animals—dogs, cats, and as of July 2004, ferrets—from certain countries to enter the U.K. without a six-month quarantine as long as the animals are identified by microchip, vaccinated against rabies, blood tested (except ferrets), treated against certain parasites, accompanied by appropriate documentation and transported by an approved carrier.

Qualified Individual With a Disability—An individual with a disability who (a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

(b) With respect to obtaining a ticket for air transportation on an air carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(c) With respect to obtaining air transportation, or other services or accommodations required by 14 CFR Part 382: (1) Purchases or possesses a valid ticket for air transportation on an

air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and (2) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers.

Required Method of Operation (RMOP)—An agreement between a carrier and DEFRA concerning the procedures the carrier will use to ensure the proper transport of animals into the U.K. under PETS. This document must be approved by DEFRA before the carrier can begin PETS participation.

SLA (Service Level Agreement)—An agreement between an ARC and a carrier that the ARC will verify the PETS compliance status of any animal arriving at the local airport over one of the carrier's approved routes.

Issued in Washington, DC, on February 20, 2007.

Samuel Podberesky,

Assistant General Counsel for Aviation, Enforcement and Proceedings.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

[Docket No. RM05–32–003, Order No. 667–C]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

Issued February 20, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final order; order denying rehearing.

SUMMARY: By this order, the Federal Energy Regulatory Commission denies rehearing of Order No. 667–B. Order No. 667–B addressed requests for clarification and rehearing of prior orders that implemented repeal of the Public Utility Holding Company Act of 1935 and enactment of the Public Utility Holding Company Act of 2005.

DATES: *Effective Date:* This order is effective on March 28, 2007.

FOR FURTHER INFORMATION CONTACT:

Lawrence Greenfield (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6415.

Laura Wilson (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6128.

James Guest (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6614.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Subtitle F of Title XII of the Energy Policy Act of 2005 (EPAct 2005) repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935) and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005).[1] In Order No. 667, the Federal Energy Regulatory Commission (Commission) issued regulations to implement Subtitle F.[2] In Order No. 667–A, the Commission denied rehearing in part and granted rehearing in part of Order No. 667.[3] In Order No. 667–B, the Commission granted clarification in part, denied rehearing in part and granted rehearing in part of Order No. 667–A.[4] In the present order, we deny rehearing of Order No. 667–B.

1. American Public Power Association together with National Rural Electric Cooperative Association (APPA/NRECA) and Florida Municipal Power Agency together with Seminole Electric Cooperative, Inc. (FMPA/Seminole) raise one issue on rehearing of Order No. 667–B: whether PUHCA 2005's accounting, record retention and reporting requirements should apply to a holding company system whose traditional utility operations are confined substantially to one state but that holds significant interests in out-of-state exempt wholesale generators (EWGs), foreign utility companies (FUCOs), and qualifying facilities (QFs). They assert that these requirements should apply because, they claim, regulators would not otherwise have access to relevant accounts and records and therefore would be unable to prevent inappropriate cross-subsidization or other misallocations of costs within the holding company system. We deny rehearing as discussed below.

Background

2. Under the Commission's regulations under PUHCA 2005, a ''single-state holding company system'' is eligible for waiver of the Commission's PUHCA 2005 accounting, record retention and reporting requirements.[5] In Order No. 667–A, the Commission defined ''single-state holding company system'' as a system that derives no more than 13 percent of its ''public-utility company'' revenues from outside a single state.[6] In Order No. 667–B, the Commission clarified that revenues from EWGs, FUCOs or QFs do not constitute public-utility company revenues for purposes of determining status as a single-state holding company system.[7] As a result, a single-state holding company system as defined in Order Nos. 667–A and 667–B may hold interests in EWGs, FUCOs and QFs without, by virtue of those interests, being subject to the Commission's PUHCA 2005 accounting, record retention and reporting requirements.

3. The Commission reasoned that this approach follows the approach taken under section 3(a) of PUHCA 1935, which exempted a holding company from plenary oversight under PUHCA 1935 if the holding company's traditional utility operations were largely confined to one state.[8] The exemption in section 3(a) reflected Congress' assessment that other state and federal corporate and rate regulation was sufficient to protect against abuse in those circumstances. Further, the 13 percent standard adopted by the Commission in Order Nos. 667–A and B to determine who qualifies for the single state holding company waiver was the same standard applied by the SEC under PUHCA 1935, thus resulting in no more onerous regulatory requirements than those in place under PUHCA 1935. In Order No. 667–B, the Commission found that other state and federal regulation continues to be sufficient to protect against abuse, without subjecting a holding company system to the Commission's PUHCA 2005 accounting, record retention and

[1] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[2] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005).

[3] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006).

[4] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006).

[5] 18 CFR 366.3(c)(1).

[6] Order No. 667–A, FERC Stats. & Regs. ¶ 31,213 at P 28.

[7] Order No. 667–B, FERC Stats. & Regs. ¶ 31,224 at P 20.

[8] U.S.C. 79c(a); *see* 15 U.S.C. 79z–5a and 79z–5b.

reporting requirements due to the holding company system's ownership of out-of-state EWGs, FUCOs and QFs.[9]

Requests for Rehearing

4. APPA/NRECA and FMPA/Seminole envision a holding company system whose traditional utility operations are confined to one state but that has EWGs, FUCOs and QFs in multiple jurisdictions. They assert that, if such a holding company system is not subject to the Commission's PUHCA 2005 accounting, record retention and reporting requirements, regulators will have insufficient access to the holding company system's accounts and records and therefore will be unable to protect against misallocations of costs and other potential abuses within the holding company system.

Decision

5. In adopting the SEC's 13 percent of revenue standard (and exclusion of EWGs, FUCOs and QFs from consideration in the 13 percent of revenue calculation) for purposes of determining who qualifies for the single state holding company waiver of the Commission's PUHCA 2005 accounting, record retention and reporting requirements, the Commission sought to be consistent with the general intent of Congress, in repealing PUHCA 1935, to remove unnecessary regulatory burdens and not to create new ones in PUHCA 2005. Furthermore, APPA/NRECA and FMPA/Seminole have presented no convincing argument that other state and federal regulation will be insufficient to protect against abuse in the circumstances envisioned by APPA/NRECA and FMPA/Seminole, without imposition of the Commission's PUHCA 2005 accounting, record retention and reporting requirements. The Commission will still have full access under the FPA to the accounts and records of the traditional public utility within the holding company system (*i.e.*, the utility with captive customers and traditional regulated rates) and of the holding company and any other company controlled by the holding company, insofar as they relate to transactions with or the business of the public utility.[10] From those accounts and records, the Commission will be able to discern whether the public utility is attempting to recover, from its captive customers, costs that are properly attributable to other businesses within the holding company system.

6. Moreover, with respect to state regulatory authority access to books and records of holding companies and their associate and affiliate companies, nothing in our waivers affects section 1265 of PUHCA 2005, which expressly provides for such access.[11] We add that no state regulatory authority has suggested that it has insufficient authority in the circumstances envisioned.

7. For these reasons, we deny rehearing.

The Commission Orders

APPA/NRECA's and FMPA/Seminole's requests for rehearing are hereby denied.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3234 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

[9] Order No. 667–B, FERC Stats. & Regs. ¶ 31,224 at P 20–22.

[10] 16 U.S.C. 824d–e, 825; Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 3–6; *accord* 15 U.S.C. 717c–d, 717g (identifying Commission authority with respect to natural gas companies).

[11] 42 U.S.C. 16453. The Federal Power Act, in particular section 201(g), 16 U.S.C. 824(g), also grants state regulatory authorities certain access to books and records.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–016]

Drawbridge Operation Regulations; Housatonic River, Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Metro North Devon Bridge, across the Housatonic River, mile 3.9, at Stratford, Connecticut. Under this temporary deviation the draw may remain in the closed position from 8 a.m. through 11 p.m. on March 3, 2007. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 8 a.m. through 11 p.m. on March 3, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Metro North Devon Bridge across the Housatonic River, mile 3.9, at Stratford, Connecticut, has a vertical clearance in the closed position of 19 feet at mean high water and 25 feet at mean low water. The existing operating regulations are listed at 33 CFR 117.207(b).

The bridge owner, Metro North, requested a temporary deviation to allow the bridge to remain in the closed position to facilitate scheduled bridge maintenance. Under this temporary deviation the Metro North Devon Bridge may remain in the closed position from 8 a.m. through 11 p.m. on March 3, 2007.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 15, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–3206 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–015]

Drawbridge Operation Regulations; Reynolds Channel, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Long Island Railroad Bridge, across Reynolds Channel, mile 4.4, at New York City, New York. Under this temporary deviation the draw may remain in the closed position for 24-hours on both March 3, 2007 and March 10, 2007. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective on March 3, 2007, and March 10, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Long Island Railroad Bridge across Reynolds Channel, mile 4.4, at New York City, New York, has a vertical clearance in the closed position of 3 feet at mean high water and 7 feet at mean low water. The existing operating regulations are listed at 33 CFR 117.5.

The bridge owner, Long Island Railroad, requested a temporary deviation to allow the bridge to remain in the closed position to facilitate scheduled bridge maintenance. Under this temporary deviation the bridge may remain in the closed position for 24-hours on both March 3, 2007, and March 10, 2007.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 15, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–3202 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–07–021]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1012.6, North Palm Beach, Palm Beach County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the PGA Boulevard Drawbridge, across the Atlantic Intracoastal Waterway mile 1012.6, North Palm Beach, Palm Beach County, Florida. This deviation allows the drawbridge to remain on single-leaf operations with a double-leaf opening available with a two-hour notice to the bridge tender. This deviation allows for several drawbridge closures in order to complete bridge repairs. The exact dates of the drawbridge closures will be published in the Local Notice to Mariners. The deviation is necessary to provide for worker and mariner safety during repairs to the drawbridge.

DATES: This deviation is effective from February 26, 2007 until 7 p.m. on March 31, 2007.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–07–021] will become part of this docket and will be available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The PGA Boulevard Drawbridge, across the Atlantic Intracoastal Waterway mile 1012.6, North Palm Beach, Palm Beach County, Florida, is being repaired. The contractor representing The Florida Department of Transportation notified the Coast Guard that the current operation of the drawbridge would need to be temporarily changed to allow for final repairs to the structure. The current operating regulation in 33 CFR 117.261(s) requires that the drawspan shall open on the hour and half-hour.

Under this deviation, the PGA Boulevard Drawbridge, across the Atlantic Intracoastal Waterway mile 1012.6, North Palm Beach, Palm Beach County, Florida, will operate the drawspan on single-leaf operations with a double-leaf opening available with a two-hour notice to the bridge tender. This deviation will allow for several closures in order to complete bridge repairs. The exact dates of the closures will be published in the Local Notice to Mariners. This deviation from the operating regulation is authorized under 33 CFR 117.35.

Dated: February 13, 2007.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. E7–3201 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

[FDMS Docket # NARA–07–0002]

RIN 3095–AB49

NARA Reproduction Fees

AGENCY: National Archives and Records Administration (NARA).

ACTION: Interim final rule; request for comments.

SUMMARY: NARA is revising its regulations relating to reproduction of records and other materials in the custody of the Archivist of the United States. We have determined that it is not appropriate to include in those regulations the reproduction of records of other Federal agencies stored in NARA Federal records centers that are not in our legal custody. This interim final rule will affect individuals and Federal agencies who request copies of Federal agency records in NARA Federal records centers.

DATES: This interim final rule is effective May 29, 2007. Comments on this interim final rule must be received by April 27, 2007 at the address shown below. NARA intends to publish any changes to the rule resulting from this comment period before the May 29, 2007 effective date.

ADDRESSES: NARA invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: Submit comments by facsimile transmission to 301–837–0319.

Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1850 or fax at 301–837–0319.

SUPPLEMENTARY INFORMATION: Elsewhere in the Proposed Rules section of today's

Federal Register, NARA is proposing to revise the reproduction fee schedule in 36 CFR part 1258 to reflect the current costs of providing copies of archival records. In the past, NARA has applied the fee schedule in § 1258.12 to our records center holdings when the agency that owns the records did not have a separate fee schedule.

NARA provides records storage services at the Federal Records Center Program (FRCP) national and regional records centers on a reimbursable basis to Federal agencies. The FRCP charges the agencies for the use of the space, retrieving and refiling records, and other administrative matters related to agency records. The records of other agencies stored in Federal records centers still belong to the agencies that created and maintained them, and NARA provides public access to those records only as authorized by the owning agency.

As a fully reimbursable program, FRCP must recover all costs for making copies of agency records from the agency or the agency's customer. Because we are providing copies in accordance with the owning agency's instructions, the agency, not NARA, must determine the extent to which the costs will be borne by the agency or the agency's customer. Thus, it is not appropriate to include the records center program in the fee schedule set forth in part 1258.

This interim final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individual researchers. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1258

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1258 of title 36, Code of Federal Regulations, as follows:

PART 1258–FEES

■ 1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c) and 2307.

■ 2. Amend § 1258.2 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 1258.2 What does the NARA reproduction fee schedule cover?

* * * * *

(b) Records filed with the Office of the Federal Register.

Dated: February 20, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–3162 Filed 2–23–07; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R03–OAR–2006–0625; FRL–8280–8]

State Operating Permit Programs; West Virginia; Amendment to the Definitions of a ''Major Source'' and ''Volatile Organic Compound''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the State of West Virginia's operating permit program to correct the definitions of ''major source'' and ''volatile organic compound.'' West Virginia's revision was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to submit to EPA program revisions in accordance with the Federal Title V regulations. EPA granted final approval of West Virginia's operating permit program on November 23, 2001. West Virginia amended its operating permit program to address the Federal EPA amendment to the Federal Title V regulations, which went into effect on November 27, 2001, and this action approves this amendment. Any parties interested in commenting on this action granting approval of West Virginia's amendment to the Title V operating permit program should do so at this time.

DATES: This rule is effective on April 27, 2007 without further notice, unless EPA receives adverse written comment by March 28, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0625 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: campbell.dave@epa.gov.

C. *Mail:* EPA–R03–2006–0625, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–2006–0625. 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650

Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, (215) 814–3377, or by e-mail at *nino.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: On September 10, 2003, the State of West Virginia submitted an amendment to its State operating permit program. This amendment is the subject of this document and this section provides additional information on the amendment by addressing the following questions:

What is the State operating permit program?
What are the State operating permit program requirements?
What is being addressed in this document?
What is not being addressed in this document?
What changes to West Virginia's operating permit program is EPA approving?
Changes to West Virginia's Operating Permit Program That Corrects a Deficiency
What action is being taken by EPA?

What is the State operating permit program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain Federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10 and PM2.5); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

What are the State operating permit program requirements?

The minimum program elements for an approvable operating permit program are those mandated by Title V of the Clean Air Act Amendments of 1990 and established by EPA's implementing regulations at title 40, part 70—''State Operating Permit Programs'' in the Code of Federal Regulations (40 CFR part 70). Title V required state and local air pollution control agencies to develop operating permit programs and submit them to EPA for approval by November 23, 2001. Under Title V, State and local air pollution control agencies that implement operating permit programs are called ''permitting authorities''.

The State was granted final full approval effective on November 23, 2001. On September 10, 2003, West Virginia submitted an amendment to its currently EPA-approved Title V operating permit program. In general, West Virginia amended its operating permit program regulation (45 CSR 30) to correct (1) the definition of ''major source;'' (2) strike the existing definition of ''volatile organic compound'' (VOC) and insert in its place the reference to the federal definition of VOC; and, (3) to make other administrative corrections, i.e., revise Director to Secretary, Division to Department, Office to Division and filing and effective date changes. These changes will make regulation 45 CSR 30 consistent with the corresponding provisions of 40 CFR part 70, which went into effect on November 27, 2001.

What is being addressed in this document?

West Virginia has revised 45 CSR 30, Section 2, Definitions of the State of West Virginia Regulations Governing the Control of Air Pollution to be consistent with the provisions of 40 CFR part 70.2 which went into effect on November 27, 200l. West Virginia amended the definition of a ''major source'' by removing part of the existing definition which stated ''All other stationary source categories regulated by a standard promulgated under section 111 or section 112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category'' and inserted in its place ''Any other stationary source category, which as of August 7, 1980 is being regulated under section 111 or 112 of the Clean Air Act.'' This would require a source belonging to a source category subject to federal New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants Standards (NESHAPs) standard to include fugitive emissions of all regulated pollutants, not just the pollutants regulated by the particular NSPS or NESHAP, in its calculation of major source status only if the relevant standard was promulgated as of August 7, 1980.

West Virginia has stricken the definition of ''volatile organic compound'' (VOC) and inserted in its place the reference to the Federal definition of VOC. This change will make this aspect of 45 CSR 30 consistent with the Federal rule. EPA has no objection to this revision.

In addition, West Virginia included the following administrative corrections: (1) Revise Director to Secretary, Division to Department, Office to Division; (2) filing date from June 21, 2001 to April 21, 2003, the effective date from July 1, 2001 to June 1, 2003; and the former rule dates for filing from April 27, 1994 to June 21, 2001 and effective April 27, 1994 to July 1, 2001. EPA has no objection to these revisions.

What is not being addressed in this document?

EPA is not opening the entirety of West Virginia's Title V operating permit program up to public comment, we are only addressing changes listed above.

What changes to West Virginia's operating permit program is EPA approving?

West Virginia has revised 45 CSR 30—Definitions (''major source,'' ''volatile organic compound,'' and other administrative changes as mentioned above) of the State of West Virginia Regulations Governing the Control of Air Pollution to be consistent with the provision of 40 CFR part 70, which went into effect on November 27, 2001.

Changes to West Virginia's Operating Permit Program That Corrects a Deficiency

EPA has reviewed West Virginia's September 10, 2003 program amendment in conjunction with the portion of West Virginia's program that was earlier approved. Based on this review, EPA is granting full approval of

West Virginia's amended operating permit program. EPA has determined that this amendment to West Virginia's operating permit program adequately addresses any deficiency. West Virginia's operating permit program, including this amendment submitted on September 10, 2003, fully meets the minimum requirements of 40 CFR part 70.

What action is being taken by EPA?

The State of West Virginia has satisfactorily addressed a program deficiency when EPA made a change to the Federal rule. The operating permit program amendment that is the subject of this document considered together with that portion of West Virginia's operating permit program that was earlier approved fully satisfy the requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is taking direct final action to fully approve the West Virginia Title V operating permit program in accordance with 40 CFR 70.2 definitions of ''a major source'' and ''volatile organic compound.''

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rule'' section of today's **Federal Register** EPA is publishing a separate document that will serve as the proposal to approve this amendment to West Virginia's operating permit program if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on April 27, 2007. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing State operating permit program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 27, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action fully approving West Virginia's Title V operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Operating permits, Reporting and recordkeeping requirements.

Dated: February 16, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to Part 70 is amended by adding paragraph (e) in the entry for West Virginia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

West Virginia

* * * * *

(e) The West Virginia Department of Natural Resources and Environmental Control submitted program amendment on September 10, 2003. This rule amendment contained in the September 10, 2003 submittal is necessary to make the current definitions of a ''major source'' and ''volatile organic compound'' consistent with the corresponding provisions of 40 CFR part 70, which went into effect on November 27, 2001. The State is hereby granted approval effective on April 27, 2007.

* * * * *

[FR Doc. 07–847 Filed 2–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8281–3]

Idaho: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Idaho applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). On November 9, 2006, EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA–R10–RCRA–2006–0830. The comment period closed on December 11, 2006. EPA has decided that these revisions to the Idaho hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization and is authorizing these revisions to Idaho's authorized hazardous waste management program in this final rule.

DATES: *Effective Date:* Final authorization for the revisions to the hazardous waste program in Idaho shall be effective at 1 p.m. e.s.t on February 26, 2007.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Mail Stop AWT–122, U.S. EPA Region 10, Office of Air, Waste, and Toxics, 1200 Sixth Avenue, Seattle, Washington 98101, phone (206) 553–0256. *E-mail: hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA Section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). EPA also granted authorization for revisions to Idaho's program effective on June 5, 1992 (57 FR 11580, April 6, 1992), on August 10, 1992 (57 FR 24757, June 11, 1992), on June 11, 1995 (60 FR 18549, April 12, 1995), on January 19, 1999 (63 FR 56086, October 21, 1998), on July 1, 2002 (67 FR 44069, July 1, 2002), on March 10, 2004 (69 FR 11322, March 10, 2004), and on July 22, 2005 (70 FR 42273, July 22, 2005).

Today's final rule addresses a program revision application that Idaho submitted to EPA in June 2006, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On November 9, 2006, EPA published a proposed rule announcing its intent to grant Idaho final authorization for revisions to Idaho's hazardous waste program and provided a period of time for the receipt of public comments. The proposed rule can be found at 71 FR 65765.

B. What Were the Comments to EPA's Proposed Rule?

EPA received one comment letter, dated December 4, 2006, from Mr. Chuck Broscious on behalf of the Environmental Defense Institute, Keep Yellowstone Nuclear Free, and David B. McCoy, collectively, ''the commenters.'' The comment letter focused on the Idaho Department of Environmental Quality's (DEQ) permitting and oversight of the Idaho National Laboratory (INL) facility located near Idaho Falls, Idaho. In short, the commenters question whether continued authorization of the revised hazardous waste program in Idaho is appropriate given concerns the commenters previously raised with EPA and its Office of the Inspector General (OIG) with respect to the permitting of the INL facility. Specifically, the commenters question whether Idaho's program provides adequate enforcement of compliance with the requirements of Subchapter C of RCRA given the application of the program at the INL facility.

The comment letter focuses on recent permitting activities conducted by DEQ at the INL facility. In a petition submitted to OIG on April 28, 2006, the commenters requested that OIG review DEQ's permitting activities at the INL facility. Similar questions were raised in petitions submitted to EPA on August 8, 2000, on September 13, 2001, and in follow-up letters and correspondence in 2003, 2004, and 2006 related to the 2000 and 2001 petitions.

In the 2001 petition, the commenters sought EPA's withdrawal of Idaho's authorization to implement the hazardous waste program under RCRA after citing permitting concerns at the INL facility. EPA, in response to that petition, conducted an informal investigation and determined that sufficient evidence did not exist to initiate formal withdrawal proceedings. EPA's determination was issued on March 20, 2002, with a follow-up response on June 20, 2002. The supporting documentation was provided to the commenters at that time and the documentation is currently available to the public under the Freedom of Information Act.

In 2003, the OIG requested that Region 10 conduct a second investigation to answer a series of follow-up questions related to the 2001 petition. EPA conducted this second investigation and issued its findings in 2003. These investigation results were also provided to Mr. David McCoy, one of the current commenters, as part of an October 13, 2004 Freedom of

Information Act response. On February 5, 2004, after conducting independent field work, OIG issued a final evaluation report which concluded, ''Region 10 generally relied on appropriate regulatory requirements and standards in reaching its conclusion that evidence did not exist to commence proceedings to withdraw the State of Idaho's authority to run its RCRA Hazardous Waste program.'' The evaluation report concluded that evidence did not exist to commence withdrawal proceedings. The OIG did identify areas of concern for further Regional and State follow-up. As detailed in the Evaluation Report, OIG and Region 10 agreed to specific follow-up actions. To document resolution of these action items, Region 10 submitted quarterly progress reports to the OIG Audit Liaison on January 13, 2004, April 16, 2004, July 15, 2004, October 12, 2004, February 9, 2005, and April 8, 2005. These reports documented the steps taken by EPA and DEQ to meet the specific actions recommended by OIG. Hard copies of all the quarterly reports were made available to the public as part of EPA's last authorization action effective July 22, 2005 (70 FR 42273). In response to a request by Mr. Chuck Broscious, one of the current commenters, EPA made a hardcopy version of the 2005 authorization docket available at the University of Idaho Library in Moscow, Idaho. As EPA stated in the 2005 authorization action (70 FR 42273), EPA considers its response to the September 13, 2001 withdrawal petition and recommendations in the February 5, 2004 OIG Evaluation Report complete.

In the current December 4, 2006 comment letter, the commenters contend that permitting the Integrated Waste Treatment Unit using a Class 3 permit modification to the existing Volume 14 INL permit results in inappropriate and abbreviated public participation. EPA addressed the issue of Class 3 permit modifications in the March 20, 2002 petition response. Page 26 of that EPA response states that:

> * * *[I]t should be noted that the Class 3 permit modification public participation requirements are as stringent as those under initial permit submissions. Under the authorized program in Idaho at IDAPA 16.01.05.012; 40 CFR Part 270.42(c), Class 3 permit modifications fully incorporate public participation through both pre-submission and draft issuance public comment periods. Including the High-level Liquid Waste Evaporator as a Class 3 permit modification to the permit is a reasonable means of addressing complex, interrelated units in accordance with legally allowable partial permitting under IDAPA 16.01.05.012; 40 CFR 270.1(c)(4), and ensuring public participation.

The commenters also contend that DEQ's regulation of radiological wastes, and enforcement of those requirements, are not adequate. With respect to radiological issues, EPA addressed this same comment in the 2004 revision to Idaho's authorized program (69 FR 11322), concerning closure of the INL Tank Farm Facility. EPA stated, ''[t]he commenters failed to distinguish the RCRA 'mixed waste' authority and its application to the tanks from those radioactive solid waste issues which may be the subject of the NWPA [Nuclear Waste Policy Act] or the AEA [Atomic Energy Act].'' Under the authorized hazardous waste program, DEQ has authority to regulate the hazardous components of mixed waste; however, regulation of the radiological component is outside the scope of the RCRA program and not within the scope of the program EPA has authority to authorize. This same point was made in the 2005 revision to Idaho's authorized program (70 FR 42273). EPA stated, ''* * * EPA observes that defense activities related to nuclear production and propulsion programs will generally not meet the definition of solid waste under the RCRA regulations and may be regulated by other federal authorities.''

In publishing the Radioactive Mixed Waste Rule, EPA recognized that wastes containing both hazardous waste and radioactive waste are subject to regulation under RCRA. (*See* 51 FR 24505, July 3, 1986.) EPA considers radioactive mixed waste to be a solid waste under the Federal RCRA program and requires states to demonstrate regulation of the hazardous components of radioactive mixed wastes. However, Section 1006 of RCRA precludes EPA or a State from regulating the radioactive components where such regulation would be inconsistent with the Atomic Energy Act, as amended (AEA). Specifically, RCRA excludes from the definition of solid waste of ''source, special nuclear, or byproduct material'' as defined by the AEA. Consequently, ''source, special nuclear and byproduct material'' is exempt from the definition of *hazardous waste* and therefore from Subtitle C of RCRA. Idaho's authorized hazardous waste program is constrained by the limitations of RCRA statutory authority and by EPA's findings and interpretations. EPA cannot find Idaho's program to be inadequate when that authorized hazardous waste program is addressing mixed waste to the extent permitted by the RCRA program.[1]

[1] Additional information regarding radioactive mixed waste is located on EPA's webpage at *http://www.epa.gov/radiation/mixed* waste.

The commenters also reference an April 28, 2006 petition to the EPA Office of Inspector General citing concerns with the INL Advanced Test Reactor. Most of the concerns pertain to radiological issues outside the scope of the authorized RCRA program as described above. However, in addition to the radiological concerns, the commenters argue that this facility is in violation of RCRA Subtitle C because it disposes of hazardous waste, specifically beryllium reflector blocks from the Advanced Test Reactor, without a permit. Since beryllium powder is listed as a P–waste under 40 CFR 261.33, the commenters argue that both EPA and IDEQ have neglected their enforcement responsibility under RCRA Subtitle C. As described on page III–20 of the 2006 RCRA Orientation Manual (*http://www.epa.gov/epaoswer/general/orientat/*), P and U listed hazardous waste determinations apply specifically to the disposal, spillage, or container residue of unused, 100% pure or technical grade chemical commercial products. Under 40 CFR 261.33, EPA and authorized states have the authority to regulate the disposal of unused chemical products such as beryllium powder; however, this provision does not provide unlimited authority to regulate all beryllium-containing wastes or discarded products, unless they are defined as a hazardous waste under a different section of 40 CFR Part 261. Inspections of the Advanced Test Reactor, as documented by inspection reports submitted to the Office of Inspector General Liaison on July 15, 2004 and February 9, 2005, found no treatment, storage, or disposal activities that would require a RCRA permit. At the time of the inspections, all identified hazardous wastes were being handled within the regulatory criteria for large quantity generators. Copies of these inspection reports were made available as part of the docket for the 2005 authorization action and are currently available to the public under the Freedom of Information Act.

Lastly, the commenters cite concerns over the ''applicable or relevant and appropriate requirements'' (ARARs) for the INL CERCLA Disposal Facility under EPA's Superfund Program (CERCLA). Unlike it does in the RCRA hazardous waste program, EPA does not authorize states to act in lieu of EPA under CERCLA authority. Therefore, the question of whether a particular requirement is an ''applicable or relevant and appropriate requirement'' is a question for EPA's CERCLA program and is outside the scope of EPA's evaluation of the authorized

hazardous waste program in Idaho. For the above reasons, EPA has determined that the comments included in the current comment letter do not provide a basis to deny Idaho's application for program revision.

C. What Decisions Have We Made in This Rule?

EPA has made a final determination that Idaho's revisions to the Idaho authorized hazardous waste program meet all of the statutory and regulatory requirements established by RCRA for authorization. Therefore, EPA is authorizing the revisions to the Idaho hazardous waste program and authorizing the State of Idaho to operate its hazardous waste program as described in the revision authorization application. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA).

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implemented by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Idaho, including issuing permits or portions of permits, until the State is authorized to do so.

D. What Will Be the Effect of This Action?

The effect of today's action is that a facility in Idaho subject to RCRA must comply with the authorized State program requirements and with any applicable Federally-issued requirement, such as, for example, the federal HSWA provisions for which the State is not authorized, and RCRA requirements that are not supplanted by authorized State-issued requirements, in order to comply with RCRA. Idaho has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

—Conduct inspections; require monitoring, tests, analyses or reports;
—Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations; suspend, modify or revoke permits; and
—Take enforcement actions regardless of whether the State has taken its own actions. This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho's program is being authorized are already effective under State law.

E. What Rules Are We Authorizing With This Action?

In June 2006, Idaho submitted a complete program revision application, seeking authorization for all delegable federal hazardous waste regulations codified as of July 1, 2005, as incorporated by reference in IDAPA 58.01.05(002)–(016).

F. Who Handles Permits After This Authorization Takes Effect?

Idaho will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits or portions of permits issued by EPA prior to final authorization of this revision will continue to be administered by EPA until the effective date of the issuance, re-issuance after modification, or denial of a State RCRA permit or until the permit otherwise expires or is revoked, and until EPA takes action on its permit or portion of permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit or portion of permit. EPA will continue to issue permits or portions of permits for HSWA requirements for which Idaho is not yet authorized.

G. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State's authorized rules in 40 CFR Part 272. EPA is reserving the amendment of 40 CFR Part 272, Subpart F for codification of Idaho's program at a later date.

H. How Does This Action Affect Indian Country (18 U.S.C. 1151) in Idaho?

EPA's decision to authorize the Idaho hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151. This includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho; (2) Any land held in trust by the U.S. for an Indian tribe; and (3) Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151.

I. Statutory and Executive Order Reviews

1. Executive Order 12866

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 final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since this final rule does not establish or modify any information or record-keeping requirements for the regulated community, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act

(SBREFA), 5 U.S.C. 601 *et seq.*, generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR Part 121 ; (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. EPA has determined that this action will not have a significant impact on small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law. After considering the economic impacts of today's rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (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 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 the 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. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of Section 203 of the UMRA do not apply to this rule.

5. 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 various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This rule addresses the authorization of pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 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 Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

9. 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) 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 bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable

voluntary consensus standards. This rule does not involve ''technical standards'' as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule addresses authorizing pre-existing State rules and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

11. Congressional Review Act

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

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 12, 2007.

Julie Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. E7–3207 Filed 2–23–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061020273–7001–03; I.D. 013107C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 3,914 lb (1,775 kg) of commercial summer flounder quota to the State of New Jersey from its 2007 quota. Bythis action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective February 21, 2007 through December 31, 2007, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery arefound at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process toset the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer floundercommercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 3,914 lb (1,775 kg) of its 2007 commercial quota to New Jersey to cover landings of a North Carolina vessel granted safe harbor in New Jersey aftersuffering damage as a result of rough seas. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2007 are: North Carolina, 2,749,866 lb (1,247,318 kg); and New Jersey, 1,682,017 lb (762,950 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: February 20, 2007.

James P. Burgess,

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

[FR Doc. 07–862 Filed 2–21–07; 2:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060906236–7028–02; I.D. 083006B]

RIN 0648–AU83

Fisheries of the Northeastern United States; Method For Measuring Net Mesh Size

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing how fishing net mesh size is measured in the Northeast. This change will increase the weight used to measure mesh at or larger than 120 mm in all fisheries. The intent of this rule is to ensure consistent and accurate measurements of fishing net mesh size.

DATES: Effective May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In recent months, fishing industry representatives have expressed concern that net measurements of larger mesh sizes may not result in accurate measurements. They have claimed that the twine bars of stiffer twines for the larger meshes may not align properly under a load of 5 kg, which is the currently required weight for wedge-shaped gauges used to measure nets. In response to these concerns, the New England Fishery Management Council (Council) sent a letter, on April 19, 2006, to the Administrator, Northeast Region, NMFS (RA) requesting than an 8–kg weight be required to be used for meshes at or greater than 120 mm. The Council recommended the 8–kg weight because it appears to be consistent with international standards of net measurements.

Upon consideration of this request and a survey of international standards, and in consultation with law enforcement officials, the RA determined that the Council's request was reasonable and that an increase in the weight of the wedge gauge may result in more accurate and consistent measurements. The 5–kg weight would still be used to measure meshes smaller than 120 mm. Enforcement officials have recently clarified that, in using the wedge-shaped gauge to measure meshes, they will not shake the net or press on the gauge to force it deeper into the mesh opening.

The increased weight is not expected to result in any de facto reduction in legal mesh size. The increased weight is not enough to significantly distort the mesh and is not expected to result in the use of mesh smaller than that considered in previous analyses of environmental impacts.

Comments and Responses

NMFS received seven written comments during the 30–day comment period for the September 26, 2006, proposed rule. Five respondents supported the proposed measure. One individual supported the adoption of a different measurement system for measure net mesh size. One commenter did not refer to the specific rule proposed. Significant issues and concerns are summarized as follows.

Comment 1: One commenter supported the rule and additionally requested that NMFS arrange for training for all law enforcement personnel, including U.S. Coast Guard and state agencies, to assure uniform and consistent measurement of mesh size throughout the region. The commenter further expressed an interest in the U.S. Coast Guard being available to check net mesh size at the dock, perhaps in conjunction with safety checks.

Response: Although not within the scope of this rule, NMFS encourages coordination among the various law enforcement agencies to ensure consistency in procedures throughout the region. Regarding the presence of U.S. Coast Guard personnel being available to check net mesh size at the dock, the U.S. Coast Guard determines the procedures that it considers most appropriate for its enforcement activities.

Comment 2: Two commenters supported the rule and requested that the heavier weight be used for specific twine thickness or material, in addition to mesh size.

Response: NMFS considers regulations that would require determining the specific twine material and/or thickness at sea would be too difficult to implement and enforce.

Comment 3: One commenter supported the use of increased force for measuring large mesh sizes, but questioned the justification cited in the proposed rule for switching to an 8–kg weight. He felt that the proposed rule was not supported by the report cited, that 8 kg would not produce sufficient force, and that further justification should be provided. The commenter felt that the wedge gauge should be abandoned in favor of the new electronic OMEGA gauge.

Response: NMFS considers the OMEGA gauge, introduced in 2005, as not yet having demonstrated the long-term reliability under field conditions that would be necessary before its adoption as an enforcement tool. Concerns have been raised about the requirement to calibrate the force measurement of the load cell by hanging a calibrated weight from the fixed jaw, since this can only be done under stable conditions that may not be present at sea. In addition, the electronic gauge does not have the long and established legal case history of the wedge gauge.

The international standard EN ISO 16663–1:2003 specifies that a measuring force equivalent to a mass of 8 kg be applied to a wedge gauge for netting of mesh size above 120 mm. It also specifies that a force equivalent to 5 kg be used for mesh size above 50 mm up to 120 mm and a 2–kg weight be used for mesh of 50 mm or less. This final rule is consistent with these accepted international standards.

One commenter did not specifically address the issues in the proposed rule but did express concerns about the pace of NMFS action and the prospects for marine sanctuaries. This final rule is not the proper mechanism to address these issues.

Classification

This final rule is promulgated under NMFS's general rule making authority specified at 16 U.S.C. 1855(d) in order to carry out and enforce effectively the gear requirements of all Fishery Management Plans (FMPs) administered by the Northeast Region. The RA determined that this final rule is consistent with the Region's FMPs, is necessary for the conservation and management of the fisheries, and determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The RA has determined that this final rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification or on the economic impacts of the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated:February 20, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.51, paragraph (a)(2)(ii) is revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(a) * * *

(2) * * *

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

* * * * *

■ 3. In § 648.80, paragraph (f)(2) is revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(f) * * *

(2) *All other nets.* With the exception of gillnets, mesh size is measured by a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

* * * * *

■ 4. In § 648.104, paragraph (a)(2) is revised to read as follows:

§ 648.104 Gear restrictions.

* * * * *

(a) * * *

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

* * * * *

[FR Doc. E7–3241 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 061227341–7031–02; I.D. 120406A]

RIN 0648–AU99

Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii Shallow-set Longline Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to permanently remove the 7–day delay in effectiveness when closing the Hawaii-based shallow-set longline fishery as a result of reaching interaction limits for sea turtles. This final rule allows for an immediate closure of the fishery to enhance protection for sea turtles.

DATES: This final rule is effective March 28, 2007.

ADDRESSES: Copies of this final rule, the regulatory amendment, environmental assessment, regulatory impact review, and regulatory flexibility analyses may be obtained from William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the World Wide Web at the Office of the Federal Register: *http://www.gpoaccess.gov/fr/index.html.*

Background

The Hawaii-based pelagic longline fishery for swordfish, tunas, and related species is managed under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP). The Pelagics FMP was developed by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the Pelagics FMP appear at 50 CFR part 665 and subpart H of 50 CFR part 600.

The regulations at § 665.33(b)(1) set the maximum allowable annual limits on the numbers of interactions between longline fishing operations and sea turtles. These limits apply to physical interactions with fishing gear deployed from vessels registered under Hawaii longline limited-access permits while engaged in shallow-set longline fishing, i.e., fishing that is directed at swordfish. There are calendar-year annual limits on physical interactions for two species of sea turtles, one for leatherback sea turtles set at 16, and one for loggerhead sea turtles set at 17.

Pursuant to a Section 7 consultation under the Endangered Species Act, NMFS is required by a 2004 Biological Opinion to maintain 100 percent observer coverage in the Hawaii shallow-set longline fishery. Interactions with turtles are monitored using data from scientific observers placed by NMFS aboard all vessels engaged in shallow-set longline fishing.

The current regulations at § 665.33(b)(2) prescribe that as soon as the physical interaction limit for either of the two turtle species has been determined to have been reached in a given year, the shallow-set component of the Hawaii-based longline fishery must be closed by NMFS for the remainder of the calendar year, after giving permit holders at least 7 days advance notice. Once that component of the fishery is closed, no vessel registered under a Hawaii longline limited-access permit may engage in shallow-set longline fishing north of the Equator.

The 7–day delay was intended to give NMFS adequate time to notify permit holders and vessel operators of the fishery closure. Based on the best information available on fishing activity levels and anticipated turtle interaction rates at the time when the regulations were first implemented, the 7–day delay in effectiveness offered by the advance notice provision was thought to provide adequate protection to sea turtles, while also providing adequate notice of the fishery closure to vessels at sea. At the time when the current regulations were implemented, NMFS observers placed aboard longline vessels were not issued satellite telephones, and other communication methods were considered ineffective for immediately notifying vessels at sea of a closure. More effective means of providing immediate notification to active

fishermen now exist; NMFS observers carry satellite telephones that enable effective communications between NMFS and each shallow-set longline vessel at sea.

Fishing activity levels and rates of turtle interactions in early 2006 were higher than expected, resulting in the fishery quickly reaching the limit on turtle interactions. To respond to the greater fishing activity and turtle interaction rates, and to prevent additional adverse impacts to turtles, an emergency rule was issued that suspended the 7–day delay in effectiveness when closing the fishery; the emergency rule was effective on March 20, 2006 (71 FR 14416, March 22, 2006). NMFS published a notification closing the 2006 shallow-set fishery from March 20, 2006, through December 31, 2006 (71 FR 14824, March 24, 2006). When the fishery was closed, NMFS also notified the operator of each Hawaii-based shallow-set longline vessel, directly via the satellite telephone carried by the NMFS observer placed on the vessel. This allowed for immediate closure of the fishery. The limit on turtle interactions was not exceeded, maximizing protection to the turtles. NMFS subsequently published a document extending the emergency rule that suspended the advance notice provision until March 19, 2007 (71 FR 54769, September 19, 2006).

The intent of the final rule is to enhance the protection for sea turtles through the permanent removal of the 7–day delay in effectiveness when closing the Hawaii-based shallow-set longline fishery as a result of reaching turtle interaction limits.

Additional background information on this final rule may be found in the preamble to the proposed rule published on January 16, 2007 (72 FR 1700), and is not repeated here.

Comments and Responses

On January 16, 2007, NMFS published a notice of the proposed rule (72 FR 1700). The public comment period for the notice ended on January 31, 2007. NMFS received 1,038 comments from the public; nearly all were identical form letters received via email. All of the public comments supported this action, and some commenters provided additional remarks on the proposed rule. NMFS responds to those additional comments that are relative to this action, as follows:

Comment 1: The longline fishery should be closed permanently to protect sea turtles.

Response: NMFS and the Council believe that a well-managed and economically-viable fishery, with the proper mechanisms in place to protect threatened and endangered species, can coexist with sea turtles. Thus, a permanent closure of the shallow-set swordfish fishery was not a management alternative considered by the Council or NMFS at this time.

Comment 2: The management alternative, discussed by the Council but not recommended to NMFS for rulemaking, that should have been chosen would establish short-term time and/or area closures for the shallow-set fishery designed to provide protection for sea turtles beyond measures already in place.

Response: Although the Council did not recommend this alternative for rulemaking, NMFS agrees that well-defined time and area management measures would also meet the purpose and need for this action. Because the high turtle interaction rates experienced in the 2006 fishing year may have been an anomaly, and in future years the fishery may not reach either turtle interaction limit, the time/area closures as proposed in Alternative 4 are not preferred at this time. To design and implement such measures, additional information is needed about sea turtle migration and foraging behavior, and the nature of interactions between fishing gear and sea turtles. The Council and NMFS may revisit such management alternatives in the future, if needed and practicable.

Comment 3: NMFS should improve the collection of information about sea turtle interactions in the fishery, and provide this information more quickly to the fishing community and interested public, including regular updates to PIRO's turtle interaction web page. NMFS PIRO and NMFS Southwest Regional Office (SWRO) should also coordinate their management efforts for shared resources, including sea turtles.

Response: Advances in communication systems allow for more effective and near real-time transfer of information about the interactions between turtles and fishing operations. Indeed, PIRO's public web site is updated twice monthly, or when a turtle interaction is documented, with the goal of keeping the regulated fishing industry and the general public apprised of developments. For the management of shared resources, NMFS PIRO and SWRO maintain close communication, and work together in the development of collaborative research, protection strategies, and management measures.

Changes to the Proposed Rule

No changes to the proposed rule were made in this final rule.

Classification

The NOAA Assistant Administrator for Fisheries (AA) determined that this FMP amendment is necessary for the conservation and management of the affected fisheries, and that the action is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

An Environmental Assessment (EA) was prepared for this action, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. NMFS determined that the preferred management alternative has the greatest likelihood of achieving the purpose and need for this Federal action. In addition, all beneficial and adverse impacts of this action have been addressed to reach the conclusion of no significant impact. A copy of the EA is available from William L. Robinson (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Consistent with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA) for the regulatory amendment, as described below.

NMFS prepared this FRFA for the final rule. This FRFA incorporates the initial regulatory flexibility analysis (IRFA). The Classification section in the proposed rule included a detailed summary of the analysis contained in the IRFA, and that discussion is not repeated in its entirety here. The need for and the objectives of the action are explained in the preambles to the proposed rule and final rule and are not repeated here. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 665. No comments were received on the IRFA or on the economic impacts of the proposed rule.

Based on recent levels of participation in the shallow-set longline fishery, it is estimated that approximately 35 shallow-set vessels may be affected by this rulemaking. All are considered to be small entities as defined by the Small Business Administration. Any fish-harvesting business is a small business if it is independently-owned and operated, not dominant in its field of operation, and has annual receipts not in excess of $4 million. Furthermore, there are no disproportionate impacts among the affected population of small entities based on vessel size, fishing gear, or geographical considerations, e.g., home port.

The loss in revenues could be mitigated by providing vessels with an

early warning of projected closures, thus allowing the affected vessels to better plan for fishing operations. Better planning would avoid unnecessary trip preparation and allow the opportunity to change gear for fishing in alternative longline fisheries, such as the Hawaii-based deep-set (tuna) longline fishery. Alternative 1 (no action) would prevent direct economic losses to affected vessels. However, this alternative would not provide adequate protection to sea turtles. Alternatives 3 (shifting the shallow-set fishing season) and 4 (limited time/area closures) could partially mitigate the economic impacts to small entities associated with the proposed alternative by lengthening the fishing season, which would distribute landings to avoid flooding the market and allowing for price stability. The small entities also would be better able to plan their fishing operations, especially if they participate in another fishery when not targeting swordfish, and mitigate adverse economic impacts, such as unreasonably low prices, which can arise from the market becoming flooded as the fishery is closed and all vessels return to port. Because the high turtle interaction rates experienced in the 2006 fishing year may have been an anomaly, and in future years the fishery may not reach either turtle interaction limit, the time/area closures as proposed in Alternative 4, and the shifting of the shallow-set fishing season as proposed in Alternative 3 are not preferred at this time. Also, to design and implement such measures as identified in Alternative 4, additional information is needed about sea turtle migration and foraging behavior, and the nature of interactions between fishing gear and sea turtles.

There are no recordkeeping or reporting requirements associated with this final rule.

Small Business Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. The guide will be sent to all holders of permits for the Hawaii-based longline fishery. Copies of the small business compliance guide are available from the William L. Robinson (see **ADDRESSES**) and are also available at the NMFS PIRO web site *http://www.fpir.noaa.gov*.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reportingand recordkeeping requirements.

Dated: February 20, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

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

■ 2. In § 665.22, revise paragraphs (ss) and (tt) to read as follows:

§ 665.22 Prohibitions.

* * * * *

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b), in violation of § 665.33(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b), in violation of § 665.33(i).

* * * * *

■ 3. In § 665.33, remove paragraphs (b)(2)(iii) and (iv), and revise paragraphs (b)(2)(i) and (ii) to read as follows:

§ 665.33 Western Pacific longline fishing restrictions.

* * * * *

(b) * * *

(2) * * *

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification of the sea turtle interaction limit having been reached. The notification will include an advisement that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, until the end of the calendar year in which the sea turtle interaction limit was reached. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, to all holders of Hawaii longline limited access permits via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(3)(i) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set component of the longline fishery shall be closed.

* * * * *

[FR Doc. E7–3243 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 022007D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 ft (18.3 m) LOA and Longer Using Hook-and-Line Gear 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 ft (18.3 meters (m)) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2007 Pacific cod total allowable catch (TAC) allocated to catcher vessels using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 21, 2007, through 2400 hrs, A.l.t., June 10, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 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 A season allowance of the 2007 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI is 121 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 subsequent adjustment (71 FR 13777, March 17, 2007).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the A season apportionment of the 2007 Pacific cod directed fishing allowance allocated to catcher vessels using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels 60 ft (18.3 m) LOA and longer using hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 20, 2007.

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: February 21, 2007.

James P. Burgess,

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

[FR Doc. 07–864 Filed 2–21–07; 2:26 pm]

BILLING CODE 3510–21–S

Proposed Rules

Federal Register
Vol. 72, No. 37
Monday, February 26, 2007

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2006–0030]

RIN 0583–AD25

Eligibility of Chile To Export Poultry and Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to add Chile to the list of countries eligible to export poultry and poultry products to the United States. Reviews by FSIS of Chile's laws, regulations, and inspection implementation show that its poultry inspection system requirements are equivalent to the relevant provisions of the Poultry Products Inspection Act (PPIA) and its implementing regulations.

Under this proposal, poultry and poultry products processed in certified Chilean establishments may be exported to the United States. All such products will be subject to re-inspection at United States ports-of-entry by FSIS inspectors.

DATES: Comments must be received on or before April 27, 2007.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2006–0030 to submit or view public comments and to view supporting and related materials available electronically.

Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov*.

All submissions received by mail or electronic mail must include the Agency name and docket number FSIS–2006–0030. All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index*.

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

The Food Safety and Inspection Service (FSIS) is proposing to amend its poultry products inspection regulations to add Chile to the list of countries eligible to export poultry and poultry products to the United States (9 CFR 381.196). Chile is not currently listed as eligible to export such products to the United States.

Statutory Basis for Proposed Action

Section 17 of the PPIA (21 U.S.C. 466) prohibits importation into the United States of slaughtered poultry, or parts or products thereof, of any kind unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient that renders them unhealthful, unwholesome, adulterated, or unfit for human food. Under the PPIA and the regulations that implement it, poultry products imported into the United States must be produced under standards for safety, wholesomeness, and labeling accuracy that are equivalent to those of the United States. Section 381.196 of Title 9 of the CFR sets out the procedures by which foreign countries wanting to export poultry and poultry products to the United States may become eligible to do so.

Section 381.196(a) provides that a foreign country's poultry inspection system must include standards equivalent to those of the United States, and that the legal authority for the inspection system and its implementing regulations must also be equivalent to those of the United States. Specifically, a country's regulations must impose requirements equivalent to those of the United States with respect to: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; and (6) official controls over condemned product.

The foreign country's inspection system must ensure that establishments preparing poultry or poultry products for export to the United States, and their products, comply with requirements equivalent to those of the PPIA and the regulations promulgated by FSIS under the authority of that statute. The foreign country certifies the appropriate establishments as having met the required standards. The country must satisfy FSIS that the certifications it issues are reliable before FSIS will grant approval to the country to export poultry or poultry products to the United States (9 CFR 381.196). To assess the reliability of the foreign country's certifications, FSIS evaluates the country's inspection system and performs ongoing reviews of that system. To ensure that products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS randomly re-inspects and samples those products before they enter the United States.

In addition to meeting the certification requirements, a foreign country's inspection system must be evaluated by FSIS before eligibility to export poultry or poultry products to

the United States can be granted. This evaluation consists of two processes: a document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to effect its inspection program. To help the country in organizing its material, FSIS gives the country questionnaires asking for detailed information about the country's inspection practices and procedures in five risk areas. These five risk areas, which are the focus of the evaluation, are sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program, including laboratories and individual establishments within the country. The process of determining equivalence is described fully on the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/equivalence_process/index.asp*.

The PPIA and the regulations that implement it require that foreign countries be listed as eligible in the Code of Federal Regulations. FSIS must do rulemaking to list a country as eligible. Countries found eligible to export poultry or poultry products into the United States are listed in the poultry inspection regulations at 9 CFR 381.196(b). Once listed, it is the responsibility of the eligible country to certify that establishments meet the requirements to export poultry or poultry products to the United States, and to ensure that products from these establishments are safe, wholesome, and not misbranded.

Evaluation of the Chilean Inspection System for Poultry and Poultry Products

In response to a request from Chile for approval to export poultry and poultry products to the United States, FSIS conducted a review of Chile's poultry slaughter inspection system to determine whether it is equivalent to the U.S. poultry inspection system. First, FSIS compared Chile's poultry inspection laws and regulations with U.S. requirements. The Agency concluded that the requirements contained in Chile's poultry slaughter inspection laws and regulations are equivalent to the PPIA and to the regulations that FSIS has adopted under the PPIA to effect that statute. FSIS then conducted two on-site reviews of Chile's poultry slaughter inspection system in operation. The FSIS review team concluded that, as implemented, Chile's poultry slaughter standards and procedures are equivalent to those of the United States. The full report on Chile's poultry slaughter inspection system can be found on the FSIS Web site at *http://www.fsis.usda.gov/regulations/foreign_audit_reports/index.asp*.

As a country eligible to export poultry and poultry products to the United States, the government of Chile must certify to FSIS those establishments that wish to export such products to the United States and that operate in accordance with these requirements. FSIS will retain the right to verify that the establishments certified by Chile's government are meeting the U.S. requirements. This verification will be done through annual reviews of the establishments while they are in operation.

Although a foreign country may be listed as eligible to export poultry to the United States, the exporting country's products must also comply with all applicable U.S. requirements. These requirements include restrictions under 9 CFR part 94 of the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) regulations, which also regulate the exportation of meat or poultry products from foreign countries to the United States.

If this proposed rule is adopted, any poultry and poultry products exported to the United States from Chile will be subject to re-inspection at the ports-of-entry for transportation damage, labeling, proper certification, general condition, and accurate count. FSIS will also conduct other types of inspection, including examination of products for defects and sampling and laboratory analysis of products for chemical residues or for microbiological contamination. Products that pass re-inspection will be stamped with the official United States mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and must be re-exported, destroyed, or converted to animal food.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866 by the Office of Management and Budget (OMB) and has been determined to be not significant for purposes of E.O. 12866. The proposed rulemaking would add Chile to the list of countries eligible to export poultry and poultry products to the United States.

Economic Impact Analysis

This rule was designated as non-significant. It is expected that approximately five establishments in Chile will be exporting poultry and poultry products to the U.S. Chile expects to export raw young chicken breast (de-boned) products, starting in 2007 with 5,000 Metric Tons (MT) and reaching an estimated 12,000 MT in 2010. These estimates are based on Chile's actual and future production capacity and its decision to maintain an increasing presence in the export market. For comparison, FSIS estimated, based on data from the USDA Agricultural Marketing Service (AMS) and the National Agricultural Statistics Service (NASS), that in 2005 the U.S. produced about 1,444,000 MT of raw young chicken breast (deboned) products. Chile's estimated initial exports to the U.S. in 2007 should represent about three-tenths of one percent (5,000 MT/1,444,000 MT) of the U.S. domestic production of raw young chicken breast (deboned) products, in 2005. Further, if Chile's exports to the U.S. reach, in 2010, the estimate of 12,000 MT of raw young chicken breast (deboned) products, these imports will represent about eight-tenths of one percent (12,000 MT/1,444,000 MT) of the U.S. domestic production of raw young chicken breast (deboned) products in 2005.

The impact of this proposed rule on U.S. consumers is voluntary in that consumers will not be required to purchase poultry or poultry products produced and processed in Chile. Expected benefits from this type of proposed rule would accrue primarily to consumers in the form of lower prices. The small volume of trade stimulated by this proposed rule, however, will likely have little effect on supply and prices. Consumers, apart from any change in prices, would benefit in principle from increased choices at competitive price points in the marketplace.

The costs of this rule will accrue primarily to U.S. producers in the form of greater competition from Chile. Again, it must be noted that the volume of trade stimulated by this rule would be very small, likely having little discernible effect on supply and prices.

General benefits would include increased trade with Chile and the availability to U.S. consumers of a greater quantity of poultry and poultry products. Both nations would benefit from an expansion of trade in poultry and poultry products as part of a wide range of commodities.

Constraints on the expansion of trade in poultry and poultry products

between the United States and Chile are expected to occur mainly in the form of restrictions imposed under U.S. animal health laws. APHIS has agreed to supply FSIS with evaluations and current updates of the animal disease status of regions in Chile where establishments likely to export poultry and poultry product to the United States are located.

The additional poultry and poultry product shipments are likely to have only a slight effect on the Agency's assignment of import inspection resources at points of entry on the East and West coasts. It is unlikely, on the basis of current information, that any additional import inspection personnel would need to be hired.

Estimates of benefits and costs of increased trade in poultry and poultry products with Chile are based on data supplied by the FSIS Office of International Affairs and Office of Field Operations; Foreign Agricultural Service (FAS) databases and trade reports; Economic Research Service (ERS) databases, reports, and analyses; Agricultural Marketing Service (AMS) databases, reports, and analyses; National Agricultural Statistics Service (NASS) databases, reports, and analyses; and Census Bureau databases and reports. Standard economic analytical techniques were used in estimating effects of the proposed rulemakings.

The major source of uncertainty in estimating the effects of this proposed rule is in forecasting the number of establishments likely to be certified by Chile to export poultry and poultry products to the United States. Other, less important, sources of uncertainty include imprecision in the economic data consulted, e.g., estimates of demand and supply elasticities and probable errors in multi-year forecasts of prices for the poultry and poultry product commodities that would be regulated under the proposed rule.

Effect on Small Entities

The FSIS Administrator has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule would add Chile to the list of countries eligible to export poultry and poultry products to the United States. The volume of trade stimulated by this rule would be very small and would have minimal effect on poultry and poultry products supplies and prices. Therefore, this proposed rule is not expected to have a significant impact on small entities that produce these types of poultry and poultry products domestically.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted:

(1) all State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) no retroactive effect will be given to this rule; and

(3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export poultry and poultry products to the United States are required to provide information to FSIS certifying that their inspection systems effect standards equivalent to those of the United States, and that the legal authority for the systems and their implementing regulations are equivalent to those of the United States. FSIS collects this information one time only. FSIS gave Chile questionnaires asking for detailed information about the country's inspection practices and procedures to assist that country in organizing its materials. This information collection was approved under OMB number 0583–0094. The proposed rule contains no other paperwork requirements.

Government Paperwork Elimination Act (GPEA)

FSIS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of communicating electronically with the government to the maximum extent possible. The Agency will ensure that all forms used by the establishments are made available electronically.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp*.

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service that provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

List of Subjects in 9 CFR Part 381

Imported products.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

§ 381.196 [Amended]

1. Section 381.196 is amended in paragraph (b) by adding Chile in alphabetical order to the list of countries.

Done at Washington, DC, on February 20, 2007.

Bryce Quick,

Acting Administrator.

[FR Doc. E7–3155 Filed 2–23–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM370; Notice No. 25–07–06–SC]

Special Conditions: Dassault Aviation Model Falcon 7X Airplane; Side Stick Controllers, Electronic Flight Control System: Lateral-Directional and Longitudinal Stability, Low Energy Awareness, Flight Control Surface Position Awareness, and Flight Characteristics Compliance via the Handling Qualities Rating Method; Flight Envelope Protection: General Limiting Requirements, High Incidence Protection Function, Normal Load Factor (g) Limiting, and Pitch, Roll, and High Speed Limiting Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Dassault Aviation Model Falcon 7X airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include side stick controllers, electronic flight control systems, and flight envelope protections. These special conditions pertain to control and handling qualities of the airplane and protection limits within the normal flight envelope. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Dassault Model Falcon 7X airplanes.

DATES: We must receive your comments by March 28, 2007.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM370, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. *You must mark your comments:* Docket No. NM370. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

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

Background

On June 4, 2002, Dassault Aviation, 9 rond Point des Champs Elysees, 75008, Paris, France, applied for FAA type certificate for its new Model Falcon 7X airplane. The Dassault Model Falcon 7X airplane is a 19 passenger transport category airplane powered by three aft mounted Pratt & Whitney PW307A high bypass ratio turbofan engines. Maximum takeoff weight will be 63,700 pounds, and maximum certified altitude will be 51,000 feet with a range of 5,700 nautical miles. The airplane is operated using a fly-by-wire (FBW) primary flight control system. This will be the first application of a FBW primary flight control system in an airplane primarily intended for private/corporate use.

The Dassault Aviation Model Falcon 7X design incorporates equipment that was not envisioned when part 25 was created. This equipment includes side stick controllers, and an electronic flight control system that provides flight envelope protection. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 7X airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–108.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model Falcon 7X airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 7X airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 93–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Dassault Falcon 7X airplane will incorporate the following novel or unusual design features:

- Side stick controllers;
- *Electronic flight control system:* lateral-directional and longitudinal stability, low energy awareness,

• *Electronic flight control system:* flight control surface position awareness,

• *Electronic flight control system:* flight characteristics compliance via the handling qualities rating method (HQRM);

• *Flight envelope protection:* general limiting requirements,

• *Flight envelope protection:* high incidence protection function,

• *Flight envelope protection:* normal load factor (g) limiting,

• *Flight envelope protection:* pitch, roll, and high speed limiting functions.

Because of these rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions address equipment which may affect the airplane's structural performance, either directly or as a result of failure or malfunction. These proposed special conditions are identical or nearly identical to those previously required for type certification of other airplane models. Additional special conditions will be issued for other novel or unusual design features of the Dassault Model Falcon 7X airplane. Those additional special conditions will pertain to the following topics:

• Dive speed definition with speed protection system,

• Sudden engine stoppage, and

• Operation without normal electrical power.

Final special conditions have been issued for the Model Falcon 7X with the novel or unusual design feature pertaining to Pilot Compartment View-Hydrophobic Coatings in Lieu of Windshield Wipers (January 10, 2007; 72 FR 1135). Special conditions have been proposed for the Model Falcon 7X with the novel or unusual design features pertaining to Interaction of Systems and Structures, Limit Pilot Forces, and High Intensity Radiated Fields (HIRF) (October 18, 2006; 71 FR 61427).

Discussion

Because of these rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. Therefore, in addition to the requirement of part 25, subparts C and D, the following special conditions are proposed.

Proposed Special Condition No. 1. Side Stick Controllers

The Falcon 7X will use side stick controllers for pitch and roll control. Regulatory requirements for conventional wheel and column controllers, such as requirements pertaining to pilot strength and controllability, are not directly applicable to side stick controllers. Certain ergonomic considerations such as armrest support, freedom of arm movement, controller displacement, handgrip size and accommodations for a range of pilot sizes are not addressed in the regulations. In addition, pilot control authority may be uncertain, because the side sticks are not mechanically interconnected as with conventional wheel and column controls. Pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

These proposed special conditions require that the unique features of the side stick must be demonstrated through flight and simulator tests to have suitable handling and control characteristics.

Proposed Special Condition No. 2. Electronic Flight Control System: Lateral-Directional Stability, Longitudinal Stability, and Low Energy Awareness

In lieu of compliance with the regulations pertaining to lateral-directional and longitudinal stability, these special conditions ensure that the Model Falcon 7X will have suitable airplane handling qualities throughout the normal flight envelope.

The unique features of the Model Falcon 7X flight control system and side-stick controllers, when compared with conventional airplanes with wheel and column controllers, do not provide conventional awareness to the flightcrew of a change in speed or a change in the direction of flight. These special conditions require that adequate awareness be provided to the pilot of a low energy state (low speed, low thrust, and low altitude) below normal operating speeds.

a. *Lateral-directional Static Stability:* The electronic flight control system (EFCS) on the Falcon 7X contains fly-by-wire control laws that result in neutral lateral-directional static stability. Therefore, the conventional requirements of the regulations are not met.

The Model Falcon 7X airplane has a flight control design feature within the normal operational envelope in which side stick deflection in the roll axis commands roll rate. As a result, the stick force in the roll axis will be zero (neutral stability) during the straight, steady sideslip flight maneuver of § 25.177(c) and will not be ''substantially proportional to the angle of sideslip,'' as required by the regulation.

With conventional control system requirements, positive static directional stability is defined as the tendency to recover from a skid with the rudder free. Positive static lateral stability is defined as the tendency to raise the low wing in a sideslip with the aileron controls free. These proposed special conditions are intended to accomplish the following:

• Provide additional cues of inadvertent sideslips and skids through control force changes.

• Ensure that short periods of unattended operation do not result in any significant changes in yaw or bank angle.

• Provide predictable roll and yaw response.

• Provide acceptable level of pilot attention (i.e., workload) to attain and maintain a coordinated turn.

b. *Longitudinal Static Stability:* The longitudinal flight control laws for the Falcon 7X provide neutral static stability within the normal operational envelope. Therefore, it is inappropriate to require the airplane design to comply with the static longitudinal stability requirements of §§ 25.171, 25.173, and 25.175.

Static longitudinal stability on conventional airplanes with mechanical links to the pitch control surface means that a pull force on the controller will result in a reduction in speed relative to the trim speed, and a push force will result in higher than trim speed. Longitudinal stability is required by the regulations for the following reasons:

• Speed change cues are provided to the pilot through increased and decreased forces on the controller.

• Short periods of unattended control of the airplane do not result in significant changes in attitude, airspeed, or load factor.

• A predictable pitch response is provided to the pilot.

• An acceptable level of pilot attention (i.e., workload) to attain and maintain trim speed and altitude is provided to the pilot.

• Longitudinal stability provides gust stability.

The pitch control movement of the side stick is a normal load factor or ''g'' command which results in an initial movement of the elevator surface to attain the commanded load factor. That movement is followed by integrated movement of the stabilizer and elevator to automatically trim the airplane to a neutral (1g) stick-free stability. The flight path commanded by the initial side stick input will remain stick-free

until the pilot gives another command. This control function is applied during ''normal'' control law within the speed range from the speed at the angle of attack protection limit to initiation of the angle of attack protection limit. Once outside this speed range, the control laws introduce the conventional longitudinal static stability as described above.

As a result of neutral static stability, the Falcon 7X does not meet the part 25 requirements for static longitudinal stability. It would not be appropriate to apply the conventional part 25 requirements for static longitudinal stability to the unconventional control systems of the Falcon 7X. These proposed special conditions would require that the airplane be shown to have suitable static longitudinal stability in any condition normally encountered in service.

c. *Low Energy Awareness:* Static longitudinal stability provides an awareness to the flightcrew of a low energy state (low speed and thrust at low altitude). Past experience on airplanes fitted with a flight control system which provides neutral longitudinal stability shows there are insufficient feedback cues to the pilot of excursion below normal operational speeds. The maximum angle of attack protection system limits the airplane angle of attack and prevents stall during normal operating speeds, but this system is not sufficient to prevent stall at low speed excursions below normal operational speeds. Until intervention, there are no stability cues because the airplane remains trimmed. Additionally, feedback from the pitching moment due to thrust variation is reduced by the flight control laws. Recovery from a low speed excursion may become hazardous when the low speed is associated with low altitude and the engines are operating at low thrust or with other performance limiting conditions.

Because § 25.173 requires that the pilot receive speed change cues through increased or decreased forces on the controller, it would be inappropriate to apply those requirements for feedback cues to the Falcon Model 7X systems. These proposed special conditions would require that the airplane provide adequate awareness of a low energy state to the pilot.

Proposed Special Condition No. 3. Electronic Flight Control System: Flight Control Surface Position Awareness

With a response-command type of flight control system and no direct mechanical coupling from cockpit controller to control surface, the controller does not provide the Falcon 7X pilot with an awareness of the actual surface deflection position during flight maneuvers. Some unusual flight conditions, arising from atmospheric conditions or airplane or engine failures or both, may result in full or nearly full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface deflection limiting, the pilot or auto-flight system may encounter situations where loss of control or other unsafe handling or performance characteristics occur.

These special conditions would require that suitable annunciation be provided to the flightcrew when a flight condition exists in which nearly full control surface deflection occurs. Suitability of such a display must take into account that some pilot-demanded maneuvers (e.g., rapid roll) are necessarily associated with intended full or nearly full control surface deflection. Therefore, simple alerting systems which would function in both intended or unexpected control-limiting situations must be properly balanced between needed crew awareness and nuisance warnings.

Proposed Special Condition No. 4. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Qualities Rating Method (HQRM)

The Model Falcon 7X airplane will have an electronic flight control system (EFCS). This system provides an electronic interface between the pilot's flight controls and the flight control surfaces (for both normal and failure states). The system also generates the actual surface commands that provide for stability augmentation and control about all three airplane axes. Because EFCS technology has outpaced existing regulations—written essentially for unaugmented airplanes with provision for limited ON/OFF augmentation—suitable special conditions and a method of compliance are required to aid in the certification of flight characteristics.

These special conditions and the method of compliance presented in Appendix 7, FAA Handling Qualities Rating Method, of AC 25–7A, Flight Test Guide Certification of Transport Category Airplanes, would provide a means to evaluate flight characteristics—for example, ''satisfactory,'' ''adequate,'' or ''controllable''—to determine compliance with the regulations. The HQRM in Appendix 7 was developed for airplanes with control systems having similar functions and is employed to aid in the evaluation of the following:

- All EFCS/airplane failure states not shown to be extremely improbable and where the envelope (task) and atmospheric disturbance probabilities are each 1.
- All combinations of failures, atmospheric disturbance level, and flight envelope not shown to be extremely improbable.
- Any other flight condition or characteristic where 14 CFR part 25 proves to be inadequate for proper assessment of unique Falcon Model 7X flight characteristics.

The Handling Qualities Rating Method provides a systematic approach to the assessment of handling qualities. It is not intended to dictate program size or need for a fixed number of pilots to achieve multiple opinions. The airplane design itself and success in defining critical failure combinations from the many reviewed in Systems Safety Assessments would dictate the scope of any HQRM application.

Handling qualities terms, principles, and relationships familiar to the aviation community have been used to formulate the HQRM. For example, we have established that the well-known COOPER–HARPER rating scale and the proposed FAA three-part rating system are similar. This approach on the flying qualities of highly augmented/relaxed static stability airplanes in relation to regulatory and flight test guide requirements is reported in DOT/FAA/CT–82/130, Flying Qualities of Relaxed Static Stability Aircraft, Volumes I and II.

Proposed Special Condition No. 5. Flight Envelope Protection: General Limiting Requirements

These special conditions and the following ones—pertaining to flight envelope protection—would present general limiting requirements for all the unique flight envelope protection features of the basic Model Falcon 7X Electronic Flight Control System (EFCS) design. Current regulations do not address these types of protection features. The general limiting requirements are necessary to ensure a smooth transition from normal flight to the protection mode and adequate maneuver capability. The general limiting requirements also ensure that the structural limits of the airplane are not exceeded. Furthermore, failure of the protection feature must not create hazardous flight conditions. Envelope protection parameters include angle of attack, normal load factor, pitch angle, and speed. To accomplish these envelope protections, one or more significant changes occur in the EFCS control laws as the normal flight

envelope limit is approached or exceeded.

Each specific type of envelope protection is addressed individually in the special conditions that follow.

Proposed Special Condition No. 6. Flight Envelope Protection—High Incidence Protection Function

The Falcon 7X is equipped with a high incidence protection function that limits the angle of attack at which the airplane can be flown during normal low speed operation and that cannot be overridden by the flightcrew. This function prevents the airplane from stalling and therefore, the stall warning system is not needed during normal flight conditions. If there is a failure of the high incidence protection function that is not shown to be extremely improbable, the flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense, and stall warning must be provided in a conventional manner. This special condition would address these and other unique features of this function on the Model Falcon 7X.

The special conditions define a minimum steady flight speed, V_{MIN}, to be demonstrated during flight test, at which the airplane can develop lift normal to the flight path and equal to its weight at the angle of attack limit of the protection function. It further defines procedures for establishing the reference stall speed, V_{SR}, to be used for defining reference speeds during takeoff and landing.

In the absence of specific regulations in 14 CFR Part 25, these special conditions present High Incidence Protection Function requirements for the capability and reliability of the function, stall warning with a failure condition, handling qualities and characteristics at high incidence or angle of attack flight maneuvers, and specific applications of the newly defined V_{MIN} in lieu of current regulations.

Proposed Special Condition No. 7. Flight Envelope Protection: Normal Load Factor (G) Limiting

The Falcon 7X flight control system design incorporates a normal load factor limiting function on a full time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This limiting feature is active in the normal flight control mode and cannot be overridden by the pilot. There is no requirement in the regulations for this limiting feature.

This normal load factor limit is unique in that traditional airplanes with conventional flight control systems (mechanical linkages) are limited in the pitch axis only by the elevator surface area and deflection limit. The elevator control power is normally derived for adequate controllability and maneuverability at the most critical longitudinal pitching moment. The result is that traditional airplanes have a significant portion of the flight envelope in which maneuverability in excess of limit structural design values is possible.

Part 25 does not require a demonstration of maneuver control or handling qualities beyond the design limit structural loads. Nevertheless, some pilots have become accustomed to the availability of this excess maneuver capacity in case of extreme emergency, such as upset recoveries or collision avoidance.

Because Dassault has chosen to include this optional design feature on the Falcon 7X, for which part 25 does not contain adequate or appropriate safety standards, special conditions pertaining to this feature are included. These special conditions would establish minimum load factor requirements to ensure adequate maneuver capability during normal flight. Other limiting features of the normal load factor limiting function, as discussed above, that would affect the upper load limits are not addressed in these special conditions. The phrase ''in the absence of other limiting factors'' has been added relative to past similar special conditions to clarify that while the main focus is on the lower load factor limits, there are other limiting factors that must be considered in the load limiting function.

Proposed Special Condition No. 8. Flight Envelope Protection: Pitch, Roll, and High Speed Limiting Functions

The Model Falcon 7X will incorporate pitch attitude and high speed limiting functions via the Electronic Flight Control System (EFCS) normal operating mode. In addition, positive spiral stability and partial pitch compensation will be introduced in the lateral and pitch axes through the control laws for bank angles greater than 35 degrees.

The purpose of the pitch attitude limiting function, in conjunction with the high incidence protection function, is to prevent airplane stall during low speed, high angle of attack excursions.

The high speed limiting protection function prevents the pilot from inadvertently or intentionally exceeding the airplane maximum design speeds, V_D/M_D. Part 25 does not address such a function that would limit or modify flying qualities in the high speed region.

There are no specific hard limits on the Falcon 7X for bank angle. At bank angles up to 35 degrees, side movement of the controller commands roll rate depending on the amount of deflection. Bank angle is immediately accomplished by the control law function and deflection of the control surfaces. With the stick released to its neutral point, the airplane will maintain the commanded bank angle (neutral spiral stability). Positive spiral stability is introduced at and above 35 degrees band angle such that a stick force is required to maintain bank angle, and releasing the stick will return the airplane to 35 degrees.

In addition to the requirements of § 25.143, this special condition would establish requirements to ensure that pitch and high speed limiting functions do not impede normal maneuvering and that pitch and roll limiting functions do not restrict or prevent attaining bank angles necessary for emergency maneuvering.

Applicability

As discussed above, these special conditions are applicable to the Dassault Model Falcon 7X. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the Dassault Model Falcon 7X airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 7X airplane.

1. Side Stick Controllers

In the absence of specific requirements for side stick controllers, the following special conditions apply:

a. *Pilot strength:* In lieu of the ''strength of pilots'' limits shown in

§ 25.143(c) for pitch and roll, and in lieu of the specific pitch force requirements of §§ 25.145(b) and 25.175(d), it must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal.

b. *Pilot control authority:* The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of the controller status must be provided, and must not be confusing to the flightcrew.

c. *Pilot control:* It must be shown by flight tests that the use of side stick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence. In addition, pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

d. *Autopilot quick-release control location:* In lieu of compliance with § 25.1329(d), autopilot quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flightcrew.

2. Electronic Flight Control System: Lateral-Directional and Longitudinal Stability, and Low Energy Awareness

In lieu of the requirements of §§ 25.171, 25.173, 25.175, and 25.177(c), the following special conditions apply:

a. The airplane must be shown to have suitable static lateral, directional, and longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The showing of suitable static lateral, directional and longitudinal stability must be based on the airplane handling qualities, including pilot workload and pilot compensation, for specific test procedures during the flight test evaluations.

b. The airplane must provide adequate awareness to the pilot of a low energy (low speed/low thrust/low height) state when fitted with flight control laws presenting neutral longitudinal stability significantly below the normal operating speeds. ''Adequate awareness'' means warning information must be provided to alert the crew of unsafe operating conditions and to enable them to take appropriate corrective action.

c. The static directional stability—as shown by the tendency to recover from a skid with the rudder free—must be positive for any landing gear and flap position and symmetrical power condition, at speeds from 1.13 V_{SR1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

d. In straight, steady sideslips (unaccelerated forward slips), the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must be between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles—up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds (81.72 kg) is obtained—the rudder pedal forces may not reverse, and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a suitable sideslip indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady, unyawed flight.

3. Electronic Flight Control System: Flight Control Surface Position Awareness

In addition to the requirements of §§ 25.143, 25.671 and 25.672, the following special conditions apply:

a. A suitable flight control position annunciation must be provided to the crew in the following situation:

A flight condition exists in which—without being commanded by the crew—control surfaces are coming so close to their limits that return to normal flight and (or) continuation of safe flight requires a specific crew action.

b. In lieu of control position annunciation, existing indications to the crew may be used to prompt crew action, if they are found to be adequate.

Note: The term ''suitable'' also indicates an appropriate balance between nuisance and necessary operation.

4. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Quantities Rating Method (HQRM)

a. Flight characteristics compliance determination for electronic flight control system (EFCS) Failure Cases:

In lieu of compliance with § 25.672(c), the HQRM contained in Appendix 7, FAA Handling Qualities Rating Method, of the Flight Test Guide for Certification of Transport Category Airplanes, AC 25–7A, (or an equivalent method of compliance found acceptable to the FAA), must be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable.

The handling qualities ratings are:

(1) *Satisfactory:* Full performance criteria can be met with routine pilot effort and attention.

(2) *Adequate:* Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

(3) *Controllable:* Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration, so that the handling qualities are at least Adequate.

b. Handling qualities will be allowed to progressively degrade with failure state, atmospheric disturbance level, and flight envelope, as shown in Figure 12, ''Minimum HQ Requirements,'' of Appendix 7. Specifically, for probable failure conditions within the normal flight envelope, the pilot-rated handling qualities must be satisfactory in light atmospheric disturbance and adequate in moderate atmospheric disturbance. The handling qualities rating must not be less than adequate in light atmospheric disturbance for improbable failures.

Note: AC 25–7A, Appendix 7 presents a method of compliance and provides guidance for the following:

- Minimum handling qualities rating requirements in conjunction with atmospheric disturbance levels, flight envelopes, and failure conditions (Figure 12),
- Flight Envelope definition (Figures 5A, 6 and 7),
- Atmospheric Disturbance Levels (Figure 5B),
- Flight Control System Failure State (Figure 5C),
- Combination Guidelines (Figures 5D, 9 and 10), and
- General flight task list, from which appropriate specific tasks can be selected or developed (Figure 11).

5. Flight Envelope Protection: General Limiting Requirements

a. *General Requirements*

(1) Onset characteristics of each envelope protection function must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change the airplane flight path, speed, or attitude, as needed.

(2) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with the following:

(a) Airplane structural limits,

(b) Required safe and controllable maneuvering of the airplane, and

(c) Margins to critical conditions. Dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions—in any appropriate combination and phase of flight-must not result in a limited flight—parameter beyond the nominal design limit value that would cause unsafe flight characteristics.

(3) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics, such as damping and overshoot, must also be appropriate for the flight maneuver and limit parameter in question.

(4) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

b. *Failure States:* EFCS failures, including sensor failures, must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The crew must be alerted by suitable means, if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

6. Flight Envelope Protection: High Incidence Protection Function

a. *Definitions.* For the purpose of this special condition, the following definitions apply:

Electronic Flight Control System (EFCS) The electronic and software command and control elements of the flight control system.

High Incidence Protection Function An airplane level function that automatically limits the maximum angle of attack that can be attained to a value below that at which an aerodynamic stall would occur.

Alpha Limit The maximum angle of attack at which the airplane stabilizes with the high incidence protection function operating and the longitudinal control held on its aft stop.

V_{MIN} The minimum steady flight speed is the stabilized, calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second, until the longitudinal pilot control is on its stop with the high incidence protection function operating.

V_{MIN1g} V_{MIN} corrected to 1g conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{MIN}.

b. *Capability and Reliability of the High Incidence Protection Function.*

(1) It must not be possible to encounter a stall during pilot induced maneuvers, and handling characteristics must be acceptable, as required by paragraphs e and f below, titled High Incidence Handling Demonstrations and High Incidence Handling Characteristics respectively.

(2) The airplane must be protected against stalling due to the effects of environmental conditions such as windshears and gusts at low speeds, as required by paragraph g, Atmospheric Disturbances, below.

(3) The ability of the high incidence protection function to accommodate any reduction in stalling incidence resulting from residual ice must be verified.

(4) The reliability of the function and the effects of failures must be acceptable, in accordance with § 25.1309 and Advisory Circular 25.1309–1A, System Design and Analysis.

(5) The high incidence protection function must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engines operating takeoff plus a suitable margin to allow for satisfactory speed control.

c. *Minimum Steady Flight Speed and Reference Stall Speed.*

In lieu of the requirements of § 25.103, the following special conditions apply:

(1) V_{MIN} The minimum steady flight speed, for the airplane configuration under consideration and with the high incidence protection function operating, is the final stabilized calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal pilot control is on its stop.

(2) The minimum steady flight speed, V_{MIN}, must be determined with:

(a) The high incidence protection function operating normally.

(b) Idle thrust.

(c) All combinations of flap settings and landing gear positions.

(d) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(e) The most unfavorable center of gravity allowable, and

(f) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(3) V_{MIN1g} is V_{MIN} corrected to 1g conditions. V_{MIN1g} is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{MIN}. V_{MIN1g} is defined as follows:

$$V\ min\ 1\ g = \frac{V\ min}{\sqrt{n_{zw}}}$$

Where:

n_{zw} = load factor normal to the flight path at V_{MIN}

(4) The Reference Stall Speed, V_{SR}, is a calibrated airspeed selected by the applicant. V_{SR} may not be less than the 1g stall speed. V_{SR} is expressed as:

$$V_{SR} \geq Vs1g = \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

Where:

V_{CLMAX} = Calibrated airspeed obtained when the load factor-corrected lift coefficient

$$\left(\frac{n_{zw}W}{qS}\right)$$

is first a maximum during the maneuver prescribed in paragraph (5)(h) of this special condition.

n_{zw} = Load factor normal to the flight path at V_{CLMAX}

W = Airplane gross weight

S = Aerodynamic reference wing area, and

q = Dynamic pressure.

(5) V_{CLMAX} must be determined with the following conditions:

(a) Engines idling or—if that resultant thrust causes an appreciable decrease in stall speed-not more than zero thrust at the stall speed

(b) The airplane in other respects, such as flaps and landing gear, in the condition existing in the test or performance standard in which V_{SR} is being used.

(c) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(d) The center of gravity position that results in the highest value of reference stall speed.

(e) The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}.

(f) [Reserved]

(g) The high incidence protection function adjusted to a high enough incidence to allow full development of the 1g stall.

(h) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

(6) The flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense at FWD and AFT center of gravity in straight

and turning flight at IDLE power. Although for a normal production EFCS and steady full aft stick this angle of attack for C_{LMAX} cannot be achieved, the angle of attack can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

(7) The reference stall speed, V_{SR}, is a calibrated airspeed defined by the applicant. If V_{SR} is chosen equal to V_{MIN1g}, an equivalent safety finding to the intent of § 25.103 may be considered to have been met. The applicant may choose V_{SR} to be less than V_{MIN1g} but not less than VS1g if compensating factors are provided to ensure safe characteristics.

d. *Stall Warning.*

(1) *Normal Operation* If the conditions of paragraph b, Capability and Reliability of the High Incidence Protection Function, of this special conditions are satisfied, a level of safety equivalent to that intended by § 25.207, Stall Warning, must be considered to have been met without provision of an additional, unique warning device.

(2) *Failure Cases* Following failures of the high incidence protection function not shown to be extremely improbable, if the function no longer satisfies paragraph b, Capability and Reliability of the High Incidence Protection Function, paragraphs b(1), (2), and (3) of this special condition, stall warning must be provided in accordance with § 25.207. The stall warning should prevent inadvertent stall under the following conditions:

(a) Power off straight stall approaches to a speed 5 percent below the warning onset.

(b) Turning flight stall approaches with at least 1.5g load factor normal to the flight path at entry rate of at least 2 knots per second when recovery is initiated not less than one second after warning onset.

e. *High Incidence Handling Demonstrations.*

In lieu of the requirements of § 25.201, the following special conditions apply:

Maneuvers to the limit of the longitudinal control in the nose up direction must be demonstrated in straight flight and in 30 degree banked turns under the following conditions:

(1) The high incidence protection function operating normally.

(2) Initial power condition of:

(a) Power off.

(b) The power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the reference stall speed with the flaps in the approach position, the landing gear retracted, and the maximum landing weight. The flap position to be used to determine this power setting is that position in which the stall speed, V_{SR1}, does not exceed 110% of the stall speed, V_{SR0}, with the flaps in the most extended landing position.

(3) [Reserved]

(4) Flaps, landing gear and deceleration devices in any likely combination of positions.

(5) Representative weights within the range for which certification is requested, and

(6) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

f. *High Incidence Handling Characteristics.*

In lieu of the requirements of § 25.203, the following special conditions apply:

(1) In demonstrating the handling characteristics specified in paragraphs (2), (3), (4), and (5) below, the following procedures must be used:

(a) Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed one knot per second until the control reaches the stop.

(b) The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques.

(c) The requirements for turning flight maneuver demonstrations must also be met with accelerated rates of entry to the incidence limit, up to the maximum rate achievable.

(2) Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30 degree banked turns, the airplane's characteristics must be as follows:

(a) There must not be any abnormal airplane nose-up pitching.

(b) There must not be any uncommanded nose-down pitching that would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at alpha limit as the longitudinal control reaches the stop would be acceptable. Any reduction of pitch attitude associated with stabilizing the incidence at the alpha limit should be achieved smoothly and at a low pitch rate, such that it is not likely to be mistaken for natural stall identification.

(c) There must not be any uncommanded lateral or directional motion, and the pilot must retain good lateral and directional control by conventional use of the cockpit controllers throughout the maneuver.

(d) The airplane must not exhibit buffeting of a magnitude and severity that would act as a deterrent to completing the maneuver.

(3) In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized alpha-limit. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal controller on the stop for a period of time appropriate to the maneuvers.

(4) It must always be possible to reduce incidence by conventional use of the controller.

(5) The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds, such as V_2 and V_{REF}, up to alpha-limit must not be unduly damped or significantly slower than can be achieved on conventionally controlled transport airplanes.

g. *Atmospheric Disturbances.*

Operation of the high incidence protection function must not adversely affect aircraft control during expected levels of atmospheric disturbances or impede the application of recovery procedures in case of windshear. Simulator tests and analysis may be used to evaluate such conditions but must be validated by limited flight testing to confirm handling qualities at critical loading conditions.

h. *[Reserved].*

i. *Proof of Compliance.*

In addition to the requirements of § 25.21, the following special conditions apply:

The flying qualities must be evaluated at the most unfavorable center of gravity position.

j. *Longitudinal Control:*

(1) In lieu of the requirements of § 25.145(a) and (a)(1), the following special conditions apply:

It must be possible—at any point between the trim speed for straight flight and V_{min}—to pitch the nose downward, so that the acceleration to this selected trim speed is prompt, with:

The airplane trimmed for straight flight at the speed achievable by the automatic trim system and at the most unfavorable center of gravity;

(2) In lieu of the requirements of § 25.145(b)(6), the following special conditions apply:

With power off, flaps extended and the airplane trimmed at 1.3 V_{SR1}, obtain and maintain airspeeds between V_{min} and either 1.6 V_{SR1} or V_{FE}, whichever is lower.

k. *Airspeed Indicating System.*

(1) In lieu of the requirements of § 25.1323(c)(1), the following special conditions apply:

V_{MO} to V_{min} with the flaps retracted.

(2) In lieu of the requirements of § 25.1323(c)(2), the following special conditions apply:

V_{min} to V_{FE} with flaps in the landing position.

7. Flight Envelope Protection: Normal Load Factor (g) Limiting

In addition to the requirements of § 25.143(a)—and in the absence of other limiting factors—the following special conditions apply:

a. The positive limiting load factor must not be less than:

(1) 2.5g for the Electronic Flight Control System (EFCS) normal state.

(2) 2.0g for the EFCS normal state with the high lift devices extended.

b. The negative limiting load factor must be equal to or more negative than:

(1) Minus 1.0g for the EFCS normal state.

(2) 0.0g for the EFCS normal state with high lift devices extended.

Note: This special condition does not impose an upper bound for the normal load factor limit, nor does it require that the limit exist. If the limit is set at a value beyond the structural design limit maneuvering load factor ''n,'' indicated in §§ 25.333(b) and 25.337(b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

8. Flight Envelope Protection: Pitch, Roll, and High Speed Limiting Functions

In addition to § 25.143, the following special conditions apply:

a. Operation of the high speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to the overspeed warning.

b. The pitch limiting function must not impede airplane maneuvering, including an all-engines operating takeoff, for pitch angles up to the maximum required for normal operations plus a suitable margin in the pitch axis to allow for satisfactory speed control.

c. The high speed limiting function must not impede normal attainment of speeds up to V_{MO}/M_{MO} during all routine and descent procedure flight conditions.

d. The pitch and roll limiting functions must not restrict nor prevent attaining bank angles up to 65 degrees and pitch attitudes necessary for emergency maneuvering. Positive spiral stability, which is introduced above 35 degrees bank angle, must not require excessive pilot strength on the side stick controller to achieve bank angles up to 65 degrees. Stick force at bank angles greater than 35 degrees must not be so light that over-control would lead to pilot-induced oscillations.

Issued in Renton, Washington, on February 15, 2007.

Stephen Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3213 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27338; Directorate Identifier 2006–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 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 all McDonnell Douglas Model 717–200 airplanes. The existing AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). This proposed AD would require revising the ALS of the Instructions for Continued Airworthiness to incorporate reduced initial inspection and repeat inspection intervals for certain PSEs. This proposed AD results from a revised damage tolerance analysis. We are proposing this AD to detect and correct fatigue cracking of certain PSEs, which could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by April 12, 2007.

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 the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: David Rathfelder, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5229; 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 ''FAA–2007–27338; Directorate Identifier 2006–NM–148–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 August 11, 2003, we issued AD 2003–17–01, amendment 39–13274 (68 FR 49686, August 19, 2003), for all McDonnell Douglas Model 717–200 airplanes. That AD requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). That AD resulted from a revised damage tolerance analysis. We issued that AD to detect and correct fatigue cracking of certain PSEs, which could adversely affect the structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2003–17–01, Boeing has made a further damage tolerance analysis of certain PSEs on Model 717–200 airplanes. The analysis was repeated to divide one larger PSE into several smaller PSEs and to include new inspection procedures. The damage tolerance analysis resulted in a reduction to the inspection initial and repeat intervals of some PSEs and an increase to intervals for other PSEs.

The actions specified by the proposed AD are intended to detect fatigue cracking of certain PSEs. Fatigue cracking, if not detected and corrected, could adversely affect the structural integrity of the airplane.

Relevant Service Information

We have reviewed Boeing 717–200 Airworthiness Limitations Instructions (ALI), Report MDC–96K9063, Revision 5, dated February 2006. Among other things, Revision 5 of the ALI revises intervals for initial and repeat inspections for fatigue cracking of certain PSEs. Additionally, Revision 5 updates certain portions of the non-destructive inspection (NDI) techniques and procedures, and corrects some typographical errors that appeared in an earlier revision. Accomplishment of the actions specified in the service information is intended to adequately address the identified 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 2003–17–01. This proposed AD would retain the requirements of AD 2003–17–01. This proposed AD would also require operators to incorporate the Boeing 717–200 ALI, Report MDC–96K9063, Revision 5, dated February 2006, into the applicable maintenance and inspection program.

Change to Existing AD

This proposed AD would retain the requirements of AD 2003–17–01. Since AD 2003–17–01 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, paragraphs (a) and (b) of AD 2003–17–01 have been re-identified as paragraphs (f) and (g) of this proposed AD.

Costs of Compliance

The FAA estimates that 108 airplanes of U.S. registry are affected by AD 2003–17–01, that it takes approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $80 per work hour. Based on these figures, the cost impact on U.S. operators of the actions required by AD 2003–17–01 and retained in this proposed AD is estimated to be $8,640, or $80 per airplane.

There are about 155 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 121 airplanes of U.S. registry. The new proposed maintenance and inspection program revision would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the new proposed AD to U.S. operators is $9,680, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 39–13274 (68 FR 49686, August 19, 2003) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–27338; Directorate Identifier 2006–NM–148–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 12, 2007.

Affected ADs

(b) This AD supersedes AD 2003–17–01.

Applicability

(c) This AD applies to all McDonnell Douglas Model 717–200 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to incorporate new inspections for fatigue cracking of principal structural elements (PSEs). Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to incorporate the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Unsafe Condition

(d) This AD results from a revised damage tolerance analysis. We are issuing this AD to detect and correct fatigue cracking of certain PSEs, which could adversely affect the structural integrity of the airplane.

Compliance

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

Restatement of Requirements of AD 2003–17–01

Revising Airworthiness Limitations Section

(f) Within 180 days after September 23, 2003 (the effective date of AD 2003–17–01), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), in accordance with Boeing Report MDC–96K9063, Revision 3, dated August 2002.

(g) Except as provided by paragraph (j) of this AD: After the actions specified in paragraph (f) of this AD have been done, no alternative inspection intervals or replacement times may be approved for the PSEs and safe-life limited parts specified in Boeing Report Number MDC–96K9063, Revision 3, dated August 2002.

New Requirements of This AD

Revising Airworthiness Limitations Section Using Revision 5

(h) Within 180 days after the effective date of this AD: Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, ALI, in accordance with Boeing 717–200 ALI, Report MDC–96K9063, Revision 5, dated February 2006.

(i) Except as provided by paragraph (j) of this AD: After the actions specified in paragraph (h) of this AD have been done, no alternative inspection intervals or replacement times may be approved for the PSEs and safe-life limited parts specified in Boeing 717–200 ALI, Report MDC–96K9063, Revision 5, dated February 2006.

Alternative Methods of Compliance (AMOCs)

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

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

(3) Before using any AMOC approved in accordance with § 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 February 16, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3170 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27340; Directorate Identifier 2006–NM–271–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes, Model DC–10–40 and DC–10–40F Airplanes, and Model MD–10–30F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–30F airplanes. This proposed AD would require installing bracket assemblies and jumper wires in the center main wheel well to improve the bonding path between the structure (wall) of the lower auxiliary fuel tank and its internal fuel pumps; measuring the electrical resistance between the fuel pump housings and the fuel tank structure; and doing corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 12, 2007.

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 the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; 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–2007–27340; Directorate Identifier 2006–NM–271–

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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that the electrical bond may not be adequate between the internal fuel pumps of the lower auxiliary fuel tank and the fuel tank structure (wall), on certain McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–30F airplanes. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

Operators should note that the same unsafe condition exists in all McDonnell Douglas Model MD–11 and MD–11F airplanes and that we may issue a separate rulemaking to address those airplanes.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC10–28–245, dated September 19, 2006. The service bulletin describes procedures for installing bracket assemblies and jumper wires in the center main wheel well to improve the bonding path between the lower auxiliary fuel tank and its internal fuel pumps; measuring the electrical resistance between the fuel pump housings and the fuel tank structure (wall); and doing corrective actions if necessary. Corrective actions, if any resistance measurement exceeds 2.5 milliohms, include reworking the electrical bonding between the fuel pump housings and the fuel tank structure. 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 exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 242 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 178 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Install bracket assemblies and jumper wires	4	$1,928	$2,248	$400,144
Do electrical resistance measurement	1	None required	80	14,240

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 adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–27340; Directorate Identifier 2006–NM–271–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–30F airplanes; certificated in any category; as identified in Boeing Service Bulletin DC10–28–245, dated September 19, 2006.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure (wall) of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Brackets and Jumpers, and Resistance Measurement

(f) Within 60 months after the effective date of this AD, do the actions described in paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–245, dated September 19, 2006.

(1) Install bracket assemblies and jumper wires between the structure of the lower auxiliary fuel tank and its internal fuel pumps.

(2) Do an electrical resistance measurement between the fuel pump housings and structure of the lower auxiliary fuel tank.

Corrective Action

(g) If any resistance measurement done in accordance with paragraph (f)(2) of this AD is greater than 2.5 milliohms on either fuel pump housing: Before further flight, rework the electrical bonding between the fuel pump housings and the structure of the lower auxiliary fuel tank as needed to achieve a resistance measurement of 2.5 milliohms or less on both fuel pump housings, as described in Boeing Service Bulletin DC10–28–245, dated September 19, 2006.

Alternative Methods of Compliance (AMOCs)

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

(2) 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 February 16, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3171 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27339; Directorate Identifier 2006–NM–280–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and DC–10–10F Airplanes, Model DC–10–15 Airplanes, Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes, Model DC–10–40 and DC–10–40F Airplanes, Model MD–10–10F and MD–10–30F Airplanes, and Model MD–11 and MD–11F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain transport category airplanes identified above. This proposed AD would require modifying the fuel boost pumps. This proposed AD results from a fuel boost pump found with blown thermal fuses and a fractured thrust washer. We are proposing this AD to prevent failure of the fuel boost pumps, which could lead to the potential of ignition sources inside fuel tanks. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 12, 2007.

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 the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; 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 ''FAA–2007–27339; Directorate Identifier 2006–NM–280–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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

We have received a report indicating that an operator found a fuel boost pump with blown thermal fuses and a fractured thrust washer. Investigation revealed that the fractured Stellite thrust washer led to arcing damage to the rotor assembly shaft and stator end windings. Stellite thrust washers are used in the rotor assembly of fuel boost pumps, part numbers (P/Ns) 60–847–1A, –2, and –3. Failure of the fuel boost pumps, if not corrected, could lead to the potential of ignition sources inside fuel tanks. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We have reviewed the following service bulletins:

- Boeing Alert Service Bulletin DC10–28A254, dated September 8, 2006, for McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes, Model DC–10–15 airplanes, Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–10F and MD–10–30F airplanes.
- Boeing Alert Service Bulletin MD11–28A134, dated September 8, 2006, for McDonnell Douglas Model MD–11 and MD–11F airplanes.

Boeing Alert Service Bulletin DC10–28A254 describes procedures for modifying fuel boost pumps, P/Ns 60–847–1A, –2, and –3. The modification involves replacing the pump assembly connector, washers, screws, and other hardware with new parts, upgrading the rotor assembly, inspecting the stator assembly wire leads, and rerouting the stator-to-connector wire leads. Boeing Alert Service Bulletin MD11–28A134 describes procedures for modifying fuel boost pumps, P/Ns 60–847–2 and –3. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The Boeing service bulletins refer to Crane Hydro-Aire Service Bulletin 60–847–28–3, dated May 1, 2006, as an additional source of service information for modifying the fuel boost pumps, P/Ns 60–847–1A, –2, and –3. (The modification converts these parts to P/N 60–847–4.)

Crane Hydro-Aire Service Bulletin 60–847–28–3 specifies prior accomplishment of Crane Hydro-Aire Service Bulletin 60–847–1A–28–6, dated February 15, 1973, for fuel boost pump P/N 60–847–1A. Crane Hydro-Aire Service Bulletin 60–847–28–3 also specifies prior accomplishment of Crane Hydro-Aire Service Bulletin 60–847–3–28–13, dated March 17, 1975, for fuel boost pump P/N 60–847–2.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 512 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 360 airplanes of U.S. registry. The proposed modification would take about 3 work hours per fuel boost pump, at an average labor rate of $80 per work hour. Required parts would cost about $640 per fuel boost pump. Depending on the airplane configuration, there are between 10 and 19 fuel boost pumps per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $3,168,000 and $6,019,200, or between $8,800 and $16,720 per airplane.

Authority for This Rulemaking

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

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

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this 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 adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–27339; Directorate Identifier 2006–NM–280–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes, Model DC–10–15 airplanes, Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, and Model MD–10–10F and MD–10–30F airplanes; as identified in Boeing Alert Service Bulletin DC10–28A254, dated September 8, 2006.

(2) McDonnell Douglas Model MD–11 and MD–11F airplanes, as identified in Boeing Alert Service Bulletin MD11–28A134, dated September 8, 2006.

Unsafe Condition

(d) This AD results from a fuel boost pump found with blown thermal fuses and a fractured thrust washer. We are issuing this AD to prevent failure of the fuel boost pumps, which could lead to the potential of ignition sources inside fuel tanks. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Service Bulletin Reference Paragraph

(f) The term ''service bulletin,'' as used in this AD, means the following service bulletins, as applicable:

(1) For the airplanes identified in paragraph (c)(1) of this AD, Boeing Alert Service Bulletin DC10–28A254, dated September 8, 2006.

(2) For the airplanes identified in paragraph (c)(2) of this AD, Boeing Alert Service Bulletin MD11–28A134, dated September 8, 2006.

Note 1: Boeing Alert Service Bulletin DC10–28A254, dated September 8, 2006; and Boeing Alert Service Bulletin MD11–28A134, dated September 8, 2006; refer to Crane Hydro-Aire Service Bulletin 60–847–28–3, dated May 1, 2006, as an additional source of service information for accomplishing the modification in paragraph (g) of this AD.

Modification

(g) At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD, modify the fuel boost pumps having part numbers 60–847–1A, –2, and –3, in accordance with the Accomplishment Instructions of the applicable service bulletin.

(1) For fuel boost pumps identified as Configuration 1 or 2 in Table 1 of paragraph 1.E. of the applicable service bulletin, do the modification within 120 months after the effective date of this AD.

(2) For fuel boost pumps identified as Configuration 3 in Table 1 of paragraph 1.E. of the applicable service bulletin, do the modification within 72 months after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(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 February 16, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3166 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27334; Directorate Identifier 2006–NM–279–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–33, –42, and –43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and –55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–60F Series Airplanes; Model DC–8–72 Airplanes; and Model DC–8–70F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas airplanes described previously. This proposed AD would require installing bonding jumpers to the airplane wing structure from the fuel system in-line electrical solenoid valves along the left and right wing front spar. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent point-of-contact arcing or filament heating damage in the fuel lines that could create a potential ignition source, which, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 12, 2007.

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 the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; 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 ''FAA–2007–27334; Directorate Identifier 2006–NM–279–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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that fuel system in-line solenoid valve installations located in fuel vapor zones along the front spar of the left and right wings might not have adequate ground paths to dissipate the overcurrent from a lightning-induced high voltage transient. This condition, if not corrected, could result in point-of-contact arcing or filament heating damage in the fuel lines that could create a potential ignition source, which, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC8–28–091, dated November 7, 2006. The service bulletin describes procedures for installing bonding jumpers to the airplane wing structure from the fuel system in-line electrical solenoid valves along the left and right wing front spar. 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 exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 216 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 145 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per work hour. The total fleet

cost is estimated to be between $456,460 and $1,018,770.

ESTIMATED COSTS

Airplane group	Work hours	Parts	Cost per airplane
1	8	$2,508	$3,148
2	9	4,237	4,957
3	10	6,226	7,026
4	8	4,473	5,113
5	6	3,674	4,154

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 adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–27334; Directorate Identifier 2006–NM–279–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–8–33, –42, and –43 airplanes; Model DC–8–51, –52, –53, and –55 airplanes; Model DC–8F–54 and –55 airplanes; Model DC–8–61, –62, and –63 airplanes; Model DC–8–61F, –62F, and –63F airplanes; Model DC–8–72 airplanes; and Model DC–8–71F, –72F, and –73F airplanes; certificated in any category; as identified in Boeing Service Bulletin DC8–28–091, dated November 7, 2006.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent point-of-contact arcing or filament heating damage in the fuel lines that could create a potential ignition source, which, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Bonding Jumpers

(f) Within 60 months after the effective date of this AD, install bonding jumpers to the airplane wing structure from the fuel system in-line electrical solenoid valves along the left and right wing front spar, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8–28–091, dated November 7, 2006.

Alternative Methods of Compliance (AMOCs)

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

(2) 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 February 16, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3165 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27341; Directorate Identifier 2006–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposed AD would require installing bracket assemblies and jumper wires in the center main wheel well to improve the bonding path between the structure (wall) of the lower auxiliary fuel tank and its internal fuel pumps; measuring the electrical resistance between the fuel pump housings and the fuel tank structure; and doing corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 12, 2007.

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 the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; 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–2007–27341; Directorate Identifier 2006–NM–272–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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that the electrical bond may not be adequate between the internal fuel pumps of the lower auxiliary fuel tank and the fuel tank structure (wall), on Model MD–11 and MD–11F airplanes. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Related Rulemaking

Operators should note that the same unsafe condition exists in certain McDonnell Douglas Model DC–10 airplanes and that we may issue a separate rulemaking to address those airplanes.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD11–28–127, dated September 19, 2006. The service bulletin describes procedures for installing bracket assemblies and jumper wires between the lower auxiliary fuel tank and its internal fuel pumps; for doing an electrical resistance measurement between the fuel pump housings and the auxiliary fuel tank wall; and for doing corrective actions if necessary. Corrective actions, if any resistance measurement exceeds 2.5 milliohms, include reworking the electrical bonding between the fuel pump housings and the fuel tank wall. 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 exist or

develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 195 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 107 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Install bracket assemblies and jumper wires	4	$1,928	$2,248	$240,536
Do electrical resistance measurement	1	None required	80	8,560

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 adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–27341; Directorate Identifier 2006–NM–272–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–11 and MD–11F airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct an inadequate bond between the internal fuel pump housings and the structure (wall) of the lower auxiliary fuel tank. This condition, if not corrected, could fail to meet fault current requirements and result in a potential ignition source that, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Brackets and Jumpers, and Resistance Measurement

(f) Within 60 months after the effective date of this AD, do the actions described in paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–127, dated September 19, 2006.

(1) Install bracket assemblies and jumper wires between the structure of the lower auxiliary fuel tank and its internal fuel pumps.

(2) Do an electrical resistance measurement between the fuel pump housings and the lower auxiliary fuel tank wall.

Corrective Action

(g) If any resistance measurement done in accordance with paragraph (f)(2) of this AD is greater than 2.5 milliohms on either fuel pump housing: Before further flight, rework the electrical bonding between the fuel pump housings and the lower auxiliary fuel tank wall as needed to achieve a resistance measurement of 2.5 milliohms or less on both fuel pump housings, as described in Boeing Service Bulletin MD11–28–127, dated September 19, 2006.

Alternative Methods of Compliance (AMOCs)

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

(2) 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 February 16, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3169 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27262; Airspace Docket No. 07–ASO–1]

Proposed Amendment of Class E Airspace; Middlesboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Middlesboro, KY. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) A has been developed for Middlesboro-Bell County Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before March 28, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–00001. You must identify the docket number FAA–2007–27262/ Airspace Docket No. 07–ASO–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27262/Airspace Docket No. 07–ASO–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Middlesboro, KY. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 16, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565; 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 16, 2006, and effective September 16, 2006, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Middlesboro, KY [REVISED]

Middlesboro—Bell County Airport, KY
(Lat. 36°36′38″ N, long. 83°44′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Middlesboro—Bell County.

* * * * *

Issued in College Park, Georgia on February 13, 2007.

Mark D. Ward,

Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–857 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 0612242560–7024–01]

RIN 0694–AD93

Country Group C: Destinations of Diversion Concern

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Commerce's Bureau of Industry and Security (BIS) is considering amendments to the Export Administration Regulations (EAR) to further the national security interests of the United States by designating Country Group C for countries that are ''Destinations of Diversion Concern.'' This amendment would establish license requirements for exports and reexports to countries that represent a concern for the diversion of items subject to the EAR. BIS by this notice requests comments on Country Group C.

DATES: Comments are due no later than close of business March 12, 2007.

ADDRESSES: Comments should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AD93 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Telephone (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce seeks to address the threat to national security caused by the illicit transshipment, reexport, and diversion in international trade of items subject to the EAR. Through government-to-government and government-to-industry outreach, the Department of Commerce encourages transshipment countries to strengthen their international export control practices.

This effort includes both government-to-government cooperation and U.S. Government cooperation and information-sharing with the private sector. To strengthen government-to-government cooperation, the Department of Commerce has worked with its counterpart agencies to: (1) Develop or strengthen export control regimes, (2) promote information and data exchanges, and (3) strengthen cooperation and facilitate enforcement. Specific initiatives to develop export control capabilities have included technical assistance in the areas of legal framework and licensing procedures and practices, enforcement training, and industry outreach. To strengthen cooperation and facilitate enforcement, the Department of Commerce has posted export control attachés to serve as liaisons in many of these areas, and has sought agreements and other government-to-government cooperation in certain destinations.

The Department of Commerce has also concentrated on outreach to key companies involved in forwarding, processing, and transporting goods through transshipment points, *i.e.*, freight forwarders, integrators, air cargo carriers, and shipping lines. The Department of Commerce has sought to enhance cooperation with these private sector entities via informal meetings, the establishment of communication channels to facilitate information sharing, the establishment and sharing of ''best practices,'' and by working with the foreign trade zone board to address transshipment issues.

The diversion of items subject to the EAR could augment the capabilities of terrorists and state sponsors of terrorism, and significantly undermine international counterproliferation efforts. The illegal diversion of such items could also compromise the effectiveness of U.S. export control laws. In recent years, diversions have contributed to a number of major cases involving the violation of U.S. export control laws for dual-use goods.

Request for Comment

Consideration of designating Country Group C to identify ''Destinations of Diversion Concern'' is part of the Department of Commerce's effort to strengthen the trade compliance and export control systems of countries that are transshipment hubs. By working to strengthen those systems, the Department of Commerce seeks to enhance international security and confidence in international trade flows. Country Group C would identify those countries of diversion concern, based on certain criteria including, but not limited to:

- Transit and transshipment volume;
- Inadequate export/reexport controls;
- Demonstrated inability to control diversion activities in this destination;
- Government not directly involved in diversion activities; and
- Government unwilling or unable to cooperate with the U.S. in interdiction efforts.

As a result of being placed into Country Group C, the licensing policy would likely change for items going to any country designated as a ''Destination of Diversion Concern.'' Such changes could include changes in License Exception eligibility (Part 740 of the EAR), License Requirements and Licensing Policy (Part 742 of the EAR), and End-User and End-Use Based Controls (Part 744 of the EAR). The result of these changes could mean that more license applications might be required; more stringent license review policies might be implemented, which could result in less approvals or more conditions on licenses; authorizations may be delayed because of increased end-user checks; or authorizations may decrease because of diversion risks for such countries.

Rulemaking Requirements

This advance notice of proposed rulemaking rule has been determined to be significant for purposes of E.O. 12866.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–3252 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM07–9–000]

Assessment of Information Requirements for FERC Financial Forms

Issued February 15, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a notice of inquiry into the need for changes or revisions to the Commission's reporting requirements for FERC Forms Nos. 1, 1–F, 2, 2–A, 3–Q, 6 and 6–Q (Financial Forms). This notice of inquiry follows informal meetings held by Office of Enforcement (OE) staff with both filers and users of FERC Forms Nos. 1 and 2 to reexamine the information in the forms and determine whether these forms should be modified to improve their usefulness. The notice of inquiry invites all interested persons to participate in the inquiry and to submit answers to several specific questions.

DATES: Comments on this Notice of Inquiry are due on March 28, 2007. Reply comments are due April 27, 2007.

ADDRESSES: You may submit comments identified by Docket No. RM07–9–000 by one of the following methods:

- *Agency Web Site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Jane Stelck, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 200426, *jane.stelck@ferc.gov,* (202) 502–6648.

Michelle Veloso, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *michelle.veloso@ferc.gov,* (202) 502–8363.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is initiating an inquiry into the need for changes or additions to the financial information reported in quarterly and annual report forms, FERC Form Nos. 1, 1–F, 2, 2–A, 3–Q, 6 and 6–Q (Financial Forms). Specifically, the Commission seeks comments on whether the Commission's annual and quarterly financial forms provide sufficient information to the public to permit an evaluation of the filers' jurisdictional rates, and whether these forms should otherwise be modified to improve their usefulness.

II. Background

2. The Federal Power Act (FPA), the Natural Gas Act (NGA) and the Interstate Commerce Act (ICA) authorize the Commission to prescribe annual or other periodic reports to assist the Commission in the administration of its jurisdictional responsibilities.[1] FERC Form No. 1, ''Annual Report of Major Electric Utilities, Licensees and Others'' (Form 1), and FERC Form No. 1–F, ''Annual Report for Nonmajor Public Utilities and Licensees'' (Form 1–F), collect annual financial information as prescribed in §§ 141.1 and 141.2 of the Commission's regulations.[2] FERC Form No. 2, ''Annual Report for Major Natural Gas Companies'' (Form 2), and FERC Form No. 2–A, ''Annual Report for Nonmajor Natural Gas Companies'' (Form 2–A), collect annual financial information from natural gas companies subject to the Commission's jurisdiction, as prescribed in §§ 260.1 and 260.2 of the regulations.[3] FERC Form No. 6, ''Annual Report of Oil Pipeline Companies'' (Form 6), collects annual financial information from oil pipeline companies subject to the Commission's jurisdiction, as prescribed in §§ 357.2 and 357.4 of the regulations.[4] In 2004, the Commission's regulations were revised to require the filing entities to submit quarterly financial reports to supplement the annual filings: FERC Form No. 3–Q by electric utilities, licensees and natural gas companies; and FERC Form No. 6–Q by oil pipeline companies.[5]

3. The Financial Forms provide information that is essential to the Commission's oversight authority, namely, financial data covering a company's past performance. The financial statements are prepared in accordance with the Commission's Uniform Systems of Accounts and related regulations and provide data that enables the Commission to develop and monitor cost-based rates, analyze costs of different services and classes of assets, and compare costs across lines of business. In addition, the Financial Forms are relied upon by electric utility, interstate natural gas pipeline and oil pipeline customers, state commissions, and trade associations to develop and monitor rates. When the Commission revised its rules to require quarterly financial reporting, it concluded, based on comments received, that ''the financial information filed with the Commission represents, in most cases, the only source of financial data presented in a format and detail suitable for the Commission to exercise its duties and responsibilities under the Federal Power, Natural Gas, and Interstate Commerce Acts.''[6]

4. In the spring of 2006, the Office of Enforcement (OE) assumed responsibility for all financial forms filed with the Commission, which routinely reviews and updates the forms' requirements. Accordingly, in September and October of 2006, OE staff met informally with both filers and users of Forms 1 and 2 to reexamine the breadth of data collected by the forms and to determine the need for clarifications, corrections, deletions or additional information.[7] In particular with respect to Form 2, the meetings were also prompted because pleadings filed recently by certain market participants had questioned the adequacy of the type and amount of data reported in the forms for purposes of challenging rates on file for natural gas companies.[8]

[1] *See* sections 4, 304 and 309 of the Federal Power Act, 16 U.S.C. 797, 825c and 825h (2000); and sections 10(a), 16 of the Natural Gas Act, 15 U.S.C. 717i(a) and 717o (2000); and 49 App. U.S.C. 1–85 (2000).

[2] 18 CFR 141.1, 141.2.

[3] 18 CFR. 260.1, 260.2.

[4] 18 CFR 357.2, 357.4.

[5] *Quarterly Financial Reporting and Revisions to the Annual Reports,* Order No. 646, 69 FR 9030 (Feb. 26, 2004), FERC Stats. & Regs. ¶ 31,158 (2004), as amended by Order No. 646–A, 69 FR 32440 (June 10, 2004), FERC Stats. & Regs. ¶ 31,163 (2004). See 18 CFR 141.400, 260.300, and 357.4.

[6] Order No. 646 at P 16.

[7] References to Forms 1 and 2, to the extent applicable, also refer to Forms 1–F, 2–A, 3–Q, 6 and 6–Q.

[8] *See, e.g., Public Service Commission of New York, Pennsylvania Public Utility Commission and Pennsylvania Office of Consumer Advocate* v. *National Fuel Gas Supply Corp.,* 115 FERC ¶ 61,299 (2006) (*National Fuel*) (setting for hearing a complaint filed by state commissions against National Fuel Gas Supply Corp. alleging that the company's rates are unjust and unreasonable, based on an analysis of Form 2 data). *See also Panhandle Complainants* v. *Southwest Gas Storage Company,* 117 FERC ¶ 61,318 (2006) (*Panhandle*) (setting for hearing a complaint filed by customers of Panhandle Eastern Pipeline Company (PEPL), in which complainants relied on Form 2–A data for support).

5. During this two-month outreach period, OE staff met with representatives of natural gas and electric utility companies, state commissions, trade associations, financial entities, energy data publishers, federal agencies, and other Commission staff. In addition to attending the informal meetings, participants were invited to submit written comments and recommendations. At each session, staff sought the participants' views on several issues, including: how Forms 1 and 2 are used; which information is most helpful; whether and what additional information might be sought; and how burdensome to filers might be changes made or requirements added to either Form 1 or 2.[9]

III. Comments on Form 1

6. Representatives of public utilities who file Form 1 advocated streamlining the form, *i.e.*, limiting the information collected to only what is necessary for the Commission to perform its regulatory function and avoiding the collection of unnecessary additional information. Many Form 1 filers expressed concern that these extensive reporting requirements put them at a competitive disadvantage because they apply only to major public utilities and hydropower licensees, and not to state and municipal public utilities, rural cooperatives, independent power producers, exempt wholesale generators and power marketers.

7. Users of Form 1 data emphasized its importance in monitoring cost-based rates to ensure that rates are just and reasonable, and in determining the potential need for a section 206 complaint. More generally, users complained that the Form 1 filings are often incomplete or inconsistent and there is a need for greater quality control and follow-up by Commission staff. Several users focused on the need for greater clarity in the Form 1 instructions and a need for upgrades to the software to provide for, among other things, more standardization of data queries.

8. Specific suggestions for additional information items to be collected in Form 1 submitted by the American Public Power Association include the following: (1) additional cost data needed to complete formula rate calculations, *e.g.*, a summary schedule of information provided on transmission line statistics for lines 132 kV or greater; (2) the standard rate divisor as specified in Order No. 888;[10] (3) expansion of existing reporting of individual line and substation facilities to identify which facilities have been placed under operation or control of another entity; and, (4) reporting revenue distributions from regional transmission organizations (RTOs) or independent system operators (ISOs) with a breakdown of costs and revenues.

IV. Comments on Form 2

9. Representatives of the interstate natural gas pipeline companies, filers of Form 2, complained that the filing requirements, including the filing of quarterly information, are burdensome and collect unnecessary data. These filers also expressed their opinion that Form 2 is an accounting document that does not include projections and, therefore, should not be used as a substitute for a cost and revenue study or be used to gauge earnings.

10. The users of Form 2 called for more, not less data, and identified specific areas and accounts they found lacking in detail. According to these Form 2 users, the lack of detail affects the reliability of an accurate assessment of pipeline rates. Users of the data emphasized the significance of the information collected in Form 2 as the primary source for evaluating cost-based rates. They added that since interstate natural gas pipeline companies are no longer required to file a periodic restatement of rates, the importance of the information in Form 2 is particularly significant and constitutes the only resource available to shippers seeking pipeline rate changes by filing a complaint.[11]

11. Specific changes or additional details sought by the users of Form 2 include: (1) A breakdown of operating revenues; (2) unbundling of certain accounts; (3) additional detail on cost of service items, billing determinants, and maximum rate contracts; (4) detail on pensions and Post Retirement Benefits Other Than Pension (OPEBs); (5) more detail on employee expenses, employee benefits and executive compensation; and (6) more affiliate transaction schedules. Other data and changes requested include: (1) Separation of cost-of-service components from non-cost-of-service components; (2) requiring a filer to identify items that it considers rate-base components for ratemaking purposes; (3) information on construction costs and capitalized costs; and (4) additional information on deferred taxes and capital structure.

12. The Industry Coalition[12] (Coalition) submitted written comments suggesting specific changes to Form 2, information they identified as necessary to perform an evaluation of pipeline rates. The Coalition's specific suggestions include the following: (1) Identify which components of deferred taxes are included in rate base for cost-of-service purposes; (2) provide additional information on the entity whose capital structure is reported on page 218a of the form; (3) provide detail on gas purchases and sales; (4) provide detail on miscellaneous gas revenues; (5) provide a calculation of the pipeline's effective overall state income tax rate; (6) provide detail for miscellaneous assets; (7) provide detail concerning the total parent company overhead costs and the amount assigned or allocated to the pipeline; (8) provide aggregate information on volumes and revenues associated with discounted services and negotiated rate services; (9) identify costs and revenues associated with at-risk facilities; and (10) provide a calculation of the pipeline's earned annual return on equity.

13. In addition, many participants commented on the need to limit delays in filing, and the incompleteness of some information that is filed. The Commission shares the concern regarding timely filings. The Commission expects that all Financial Forms will be filed in a timely manner and will provide all of the requested information.[13]

14. The comments and information received as a result of the outreach meetings reinforce the significance of this data to the Commission, and to the public who depend almost solely on the data reported when they elect to file a complaint under section 5 of the NGA or section 206 of the FPA. The forms represent more than simply accounting documents; the information provided is essential to the public's right to

[9] The staff outreach did not extend to Form 6 or 6–Q. The Commission believes, however, that extension of this inquiry to the oil pipeline financial forms makes sense as many of the concerns raised with respect to the other forms could apply to the oil pipeline forms as well.

[10] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS* v. *FERC*), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[11] *See supra* note 8.

[12] The Industry Coalition comprised the following entities: Natural Gas Supply Association, American Public Gas Association, Independent Petroleum Association of America, and The Process Gas Consumers Group.

[13] Concurrently with the issuance of this Notice of Inquiry, the Commission is issuing a show cause order to financial forms filers who have been delinquent in making their filings.

examine, monitor, and assess utility and pipeline rates to ensure that they do not pay excessive or unduly discriminatory rates.

15. In light of the comments received, both orally and written, during OE's review of Forms 1 and 2, and in light of the complaints set for hearing in *National Fuel* and *Panhandle* and the importance of the questions they raise, the Commission believes it is appropriate to solicit comments on these matters. Although the informal meetings held as a result of OE's outreach efforts focused on Forms 1 and 2, this Notice of Inquiry (NOI) solicits comments on the need for changes to any and all of the Financial Forms filed with the Commission, *i.e.*, Form 6 and quarterly submissions, Forms 3-Q and 6-Q. The Commission is aware that not all participants in the informal review had an opportunity to submit written comments or to respond to comments submitted by other parties. This NOI gives those entities, and all other interested persons, the opportunity to comment formally with the Commission on any of the issues raised herein. The list is not exhaustive. Those responding to this NOI should feel free to raise any other questions or to make any comments which will aid the Commission in assessing its Financial Forms. After receipt of comments in response to this NOI, the Commission will determine whether it is appropriate to propose changes to the financial forms in the context of a formal rulemaking.

V. Questions

16. The Commission asks that interested persons respond to the following general questions.

(1) Do the annual and quarterly Financial Forms provide sufficient data for the public to permit an evaluation of the filers' jurisdictional rates?

(2) If not, what additional data is needed to conduct such an evaluation? Please specify the form (or forms) to which your suggestions pertain.

(3) Do the financial reports provide sufficient data to the public to determine revenues attributable to the sale of excess fuel retention? If not, what additional data is needed to conduct such an evaluation?

(4) Is the information included in the financial reports sufficient to audit formulaic rates?

(5) Should the Commission require reporting of information on demand response initiatives (interruptible, load control, etc.), including demand and peak demand impacts, associated costs and savings, and the number of advanced meters installed?

(6) Please explain how this additional data will be useful to users of the Financial Forms.

(7) How burdensome would any requirement for additional information be to filers of Financial Forms?

(8) Are there specific reporting requirements that are no longer necessary or unduly burdensome that should be deleted?

(9) What technical revisions, if any, need to be made to the Financial Forms? For example, identify any suggested changes in instructions, desirable software upgrades, and whether there are errors embedded in the forms which need to be corrected.

(10) Should the Commission require electric utilities, licensees and interstate natural gas and oil pipeline companies to provide notification when their total sales or transactions fall below the minimum thresholds established in the Commission's regulations such that they are no longer subject to these filing requirements?

(11) Should the Commission require a showing of good cause before granting an extension of time in which to file the required forms?

(12) Are these concerns of sufficient importance to warrant a rulemaking and, if so, what rules should the Commission promulgate? Commenters are encouraged to be as specific as possible.

VI. Comment Procedures

16. The Commission invites interested persons to submit comments on these matters and any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 28, 2007 and reply comments are due April 27, 2007. Comments and reply comments must refer to Docket No. RM07–9–000 and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

17. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing.

18. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: The Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this NOPR are not required to serve copies of their comments on other commenters.

VII. Document Availability

20. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*.) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

21. From the Commission's Home Page on the Internet, this information is available in its eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

22. User assistance is available for eLibrary and FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at *public.reference@ferc.gov*.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3233 Filed 2–23–07; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–003]

Standards for Business Practices and Communication Protocols for Public Utilities

Issued February 20, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to incorporate by reference in its regulations revisions to the Coordinate Interchange business practice standards (WEQ–004) adopted by the Wholesale Electric Quadrant

(WEQ) of the North American Energy Standards Board (NAESB). These standards identify the processes and communications necessary to coordinate energy transfers that cross boundaries between entities responsible for balancing load and generation. Through this rulemaking, the Commission seeks to ensure that the Coordinate Interchange business practices standards that the Commission incorporates by reference in its regulations function compatibly with the North American Electric Reliability Council's proposed Version 1 and 2 INT reliability standards, currently under review in Docket No. RM06–16–000, in the event that the Commission approves such standards.

DATES: Comments on the proposed rule are due March 28, 2007.

ADDRESSES: You may submit comments identified by Docket No. RM05–5–003, by one of the following methods:

- *Agency Web Site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Patricia Schaub (technical issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6816.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations under the Federal Power Act [1] to incorporate by reference a revised version of the Coordinate Interchange Standards (designated as WEQ–004) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) on June 22, 2006, and filed with the Commission on November 16, 2006. These revised standards would replace the Coordinate Interchange business practice standards that the Commission previously incorporated by reference into its regulations in a prior rulemaking.[2] The WEQ's Coordinate Interchange standards identify the processes and communications necessary to coordinate energy transfers crossing boundaries between entities responsible for balancing load and generation (Interchange).

2. The revised Coordinate Interchange business practice standards that the Commission proposes to incorporate by reference in this notice of proposed rulemaking (NOPR) are intended to complement revisions to the Interchange Scheduling and Coordination group of INT reliability standards, dealing with the interchange of energy (INT reliability standards), that the North American Electric Reliability Council (NERC) has proposed and that are currently under consideration in the rulemaking proceeding in Docket No. RM06–16–000.[3] In this NOPR, the Commission proposes to amend part 38 of its regulations to incorporate by reference the WEQ's revisions to the Coordinate Interchange business practice standards to ensure that they remain consistent with the applicable NERC INT reliability standards. Thus, the Commission proposes that the effective date of the revised WEQ Coordinate Interchange standards be no earlier than the effective date of the corresponding NERC INT reliability standards.

Background

3. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development and promotion of business practice standards that promote a seamless marketplace for wholesale and retail natural gas and electricity. Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.

4. NAESB's standards include business practices that streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries—wholesale gas, wholesale electric, retail gas, and retail electric. All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.

5. NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments.

6. In Order No. 676, the Commission not only adopted business practice standards and communication protocols for the wholesale electric industry, it also established a formal ongoing process for reviewing and upgrading the Commission's Open Access Same-Time Information Systems (OASIS) standards and other wholesale electric industry business practice standards. In addition, the Commission incorporated by reference NAESB standards designed to coordinate business practices with reliability standards approved by the Commission under section 215 of the Federal Power Act (FPA).

7. On April 4, 2006, as modified on August 28, 2006, NERC filed 107 proposed reliability standards with the Commission for approval under section 215 of the FPA, including Version 1 INT reliability standards. On October 20, 2006, in Docket No. RM06–16–000, the Commission issued a notice of proposed rulemaking (*i.e.*, the Reliability NOPR) proposing to approve 83 of NERC's 107 proposed reliability standards, including its INT reliability standards.[4] The Reliability NOPR also explained that NERC would be submitting revised versions of some of these standards in November of 2006. On November 15, 2006, NERC filed revised proposed reliability standards including revised INT reliability standards INT–001–2 (Interchange Information) and INT–003–2 (Interchange Transaction Information). Final action on the Reliability NOPR is currently pending. In addition, as the Commission noted in the Reliability NOPR, NERC removed certain standards from its proposed reliability standards because they actually were business practice standards that would be addressed by NAESB.[5]

8. The WEQ revised its Coordinate Interchange standards to support NERC's Version 1 INT reliability standards. On June 22, 2006, the WEQ

[1] 16 U.S.C. 791a, *et seq.*

[2] *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, 71 FR 26199 (May 4, 2006), FERC Stats. & Regs., Regulations Preambles ¶ 31,216 (Apr. 25, 2006), *reh'g denied*, Order No. 676–A, 116 FERC ¶ 61,255 (2006).

[3] *See Mandatory Reliability Standards for the Bulk-Power System*, 71 FR 64770 (Nov. 3, 2006), FERC Stats. & Regs. ¶ 32,608 at P 427–496 (Oct. 20, 2006) (Reliability NOPR).

[4] *See* Reliability NOPR at P 427–496.

[5] Reliability NOPR at P 439 and P 452.

membership ratified the revisions to the Coordinate Interchange standards. On November 16, 2006, NAESB filed the revised Coordinate Interchange standards with the Commission for appropriate action. On February 5, 2007, NAESB filed a report in this docket that describes how their proposed Coordinate Interchange business practice standards map to NERC's INT reliability standards.

9. The revised Coordinate Interchange business practice standards (WEQ–004) facilitate the transfer of electric energy between entities responsible for balancing load and generation (Balancing Authorities). The term ''Interchange'' in this context refers to energy transfers across boundaries between Balancing Authorities. The Coordinate Interchange business practice standards identify the processes needed to facilitate interchange transactions, and specify the arrangements and data to be communicated to the entity responsible for authorizing implementation of interchange transactions (Interchange Authority).

10. The WEQ adopted revisions to its Coordinate Interchange business practice standards for three main reasons: (1) To incorporate business practice standards that had previously been included by NERC in its proposed reliability standards; (2) to modify the definitions and standards to better integrate with NERC's corresponding reliability standards; and (3) to eliminate an appendix and update standards to reflect current operating conditions in the Eastern and Western Interconnections, and within the Electric Reliability Council of Texas (ERCOT).

Standards Previously Included by NERC in Its Reliability Standards

11. The Reliability NOPR noted that NERC deleted certain requirements previously included in its proposed reliability standards with the expectation that NAESB would include them in its business practice standards. The deleted NERC standards include Requirements R1.1, R3, R4, and R5 of INT–001–0, which relate to the timing and content of e-tags, and Requirement R1.1.3 of INT–003–0, which addresses ramp starting time and duration.

12. The revised Coordinate Interchange business practice standards the WEQ adopted to replace the deleted NERC standards include:

- WEQ Standards 004–1, and 004–3.1 replace NERC INT–001–0 Requirement R1.1. The revised WEQ standards address how requests for Interchange should be made and who is responsible for submitting such requests.
- WEQ Standards 004–3, 004–5, 004–8.1, and 004–8.2 replace NERC's INT–001–0 Requirement R3. These standards establish the timing requirements for submitting requests for Interchange. The WEQ's timing table (Appendix D referenced in WEQ Standard 004–8.1) has been revised to better match up with the timing table in NERC's INT–005–1.
- WEQ Standard 004–5 replaces NERC's INT–001–0 Requirement R4. This standard addresses the data that should be included in a request for Interchange and who is responsible for ensuring that these data are included in the request for Interchange.
- WEQ Standard 004–12 replaces NERC's INT–001–0 Requirement R5. This standard requires that parties involved in an Interchange must have personnel and facilities on site and immediately available to receive notification of changes to the Interchange.
- WEQ Standards 004–17, 004–17.1, and 004–17.2 replace NERC's INT–003–0 Requirement R1.1.3. These standards establish the default ramp rates that apply to an Interchange unless otherwise agreed to by the parties involved.

Changes To Better Conform With NERC's Proposed INT Reliability Standards

13. The WEQ also modified the Coordinate Interchange definitions and business practice standards to better coordinate with NERC's INT reliability standards. This follows the Commission's directive in Order No. 676 that, ''[i]n future versions of the standards, NAESB should use the NERC definitions relating to reliability.'' [6] The modifications include:

- New and revised definitions, such as changing Reliability Authority to Reliability Coordinator.
- Changes to definitions resulting from WEQ's efforts to match the language used in NERC's ''Glossary of Terms Used in Reliability Standards'' (Glossary) where appropriate. For example, the WEQ added a definition for ''Arranged Interchange'' using the same language as NERC.
- Changes to definitions, such as the ''Request for Interchange'' definition, where the words are not identical, but are compatible with NERC's, facilitating coordination with the NERC INT reliability standards but reflecting the different responsibilities of the two organizations.
- Changes to definitions, where NERC does not have a corresponding definition in its Glossary, but the WEQ modified its definitions, such as the ''Approval Entity'' definition, to reflect the definition changes previously discussed.
- Changes to delete definitions no longer needed in the Coordinate Interchange business practice standards or that had been replaced by other definitions. Deleted definitions include: Checkout Process; Interchange Transaction; Interchange Transaction Tag; Interconnection; Market Operator; Scheduling Agent; and Transmission Service Provider.
- Changes to the Coordinate Interchange business practice standards made to better coordinate with NERC's INT reliability standards. The standards were modified to: (1) Incorporate the revised definitions; (2) provide greater detail, as in WEQ Standard 004–3; (3) add new standards to clarify and better coordinate with NERC, such as in WEQ Standard 004–2.2; and (4) delete standards that are no longer appropriate, such as WEQ Standard 004–1.2.

Changes To Reflect Current Business Practices of the Eastern and Western Interconnections and ERCOT

14. The Coordinate Interchange business practices standards were also modified to reflect the current business practices of the Eastern and Western Interconnections and ERCOT. Language previously included in Appendix A was moved to Coordinate Interchange business practice standards 004–3, 004–3.1, and 004–8.2.

Discussion

15. In this NOPR, we propose to incorporate by reference the WEQ's revised Coordinate Interchange standards in part 38 of the Commission's regulations to coordinate with the consideration already under way in Docket No. RM06–16–000 of the complementary NERC INT reliability standards.[7] Adoption of revised business practice standards is intended to be coordinated with the adoption of the complementary reliability standards to ensure that public utilities comply with a consistent set of standards. To ensure that the NAESB and NERC standards remain consistent, we propose that the effective date of these standards be no earlier than the effective date of the NERC standards if, and

[6] Order No. 676 at P 40.

[7] The revised WEQ business practice standards we are proposing to incorporate by reference in this NOPR are the standards for Coordinate Interchange (WEQ–004, June 22, 2006) including Purpose, Applicability, and Standards 004–0 through 004–17.2 and 004–A through 004–D.

when, they are approved by the Commission.

16. We are pleased that NAESB and NERC have been able to work together to separate out business and reliability decisions and to generally coordinate their adoption of standards. In the Reliability NOPR, the Commission urged NERC and NAESB to coordinate their filing of standards. We stated:

> In the future, to ensure that there is not a gap in Reliability Standards or business practices, the Commission expects filings from NERC and NAESB to be coordinated to allow for the seamless transfer of Requirements from Reliability Standards to Business Practices.[8]

In this instance, although the adoption of the standards was coordinated, the filing of notification to the Commission was not as coordinated as we would like it to be. In the future, we expect that NAESB and NERC will coordinate their submittals of any subsequent revisions to their respective interrelated standards and that each filing will reference its counterparts, to help assure coordinated implementation of future standards. We appreciate the supplemental information NAESB filed on February 5, 2007, and request that NERC and NAESB include in their filings the details showing how their respective standards relate to each other.

17. NAESB's standards correspond to NERC's Version 1 INT reliability standards. On November 15, 2006, NERC filed updated INT reliability standards (NERC's Version 2 INT reliability standards) with the Commission in Docket No. RM06–16–000. Review of the changes made to the Version 2 standards does not indicate that the WEQ would need to make any additional modifications to its Coordinate Interchange standards. We invite comments on whether NERC's Version 2 INT reliability standards necessitate any additional standards beyond those included in the WEQ's Coordinate Interchange business practice standards.

18. The Commission is not proposing in this rulemaking that public utilities make tariff filings to include the revised Coordinate Interchange standards in their tariffs. Instead, we propose that, when the WEQ next updates its wholesale electric standards, if the Commission decides to incorporate this next standard version into its regulations, public utilities will then be required to include these standards in their tariffs.

Notice of Use of Voluntary Consensus Standards

19. The NAESB WEQ approved the revised Coordinate Interchange standards under NAESB's consensus procedures.[9] As the Commission found in Order No. 676, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.[10]

20. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference a voluntary consensus standard developed by the WEQ.

Information Collection Statement

21. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate is based on the projected costs for the industry to implement revisions to the WEQ's Coordinate Interchange standards (WEQ–004).

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–717	220	1	8	1760
Totals				1760

Total Annual Hours for Collection

(Reporting and Recordkeeping, (if appropriate)) = 1760.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:[11]

	FERC–717
Annualized Capital/Startup Costs	$264,000
Annualized Costs (Operations & Maintenance)	N/A

[8] Reliability NOPR at P 439.

[9] Under this process, to be approved a standard must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent from each of the five industry segments—transmission, generation, marketer/brokers, distribution/load serving entities, and end users. For final approval, 67 percent of the WEQ's general membership must ratify the standards.

[10] Pub L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[11] The total annualized costs for the information collection is $264,000. This number is reached by multiplying the total hours to prepare responses (1760 hours) by an hourly wage estimate of $150 (a composite estimate that includes legal, technical and support staff rates, $90 + $35 + $25). $264,000 = $150 × 1760.

	FERC–717
Total Annualized Costs	264,000

22. OMB regulations [12] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) (formerly Open Access Same Time Information System).

Action: Proposed collection.

OMB Control No.: 1902–0173.

Respondents: Business or other for profit, (Public Utilities—Not applicable to small businesses).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This proposed rule, if implemented would upgrade the Commission's business practice and communication protocols (methods by which computers coordinate their communications) governing Coordinate Interchange transactions to complement revisions to the NERC INT reliability standards under consideration in the rulemaking proceeding in Docket No. RM06–16–000. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid. The standards being adopted define procedures for market participants to request the implementation of Interchange Transactions or agreements to transfer energy from a seller to a buyer that crosses one or more Balancing Authority boundaries.

23. The information collection requirements of this proposed rule are based on the transition from transactions being made under the Commission's existing business practice standard governing Coordinate Interchange transactions to conducting such transactions under the proposed revision to the Coordinate Interchange standards (WEQ–004). Our preliminary view, subject to our review of any comments that are filed on this NOPR proposal, is that the Commission's incorporation by reference of these revised standards will keep these WEQ business practice standards consistent with the NERC INT reliability standards.

24. *Internal Review:* The Commission has reviewed the revised business practice standards and has made a preliminary determination that the proposed revisions are necessary to maintain consistency between the business practice standards and reliability standards on this subject. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

25. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415 / Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov.*

26. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285].

Environmental Analysis

27. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[13] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[14] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[15] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

Regulatory Flexibility Act Certification

28. The Regulatory Flexibility Act of 1980 (RFA) [16] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on public utilities, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

29. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small business and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: tiering or establishment of different compliance or reporting requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. As the Commission originally stated in Order No. 889, the OASIS regulations now known as Standards for Business Practices and Communication Protocols for Public Utilities, apply only to public utilities that own, operate, or control transmission facilities subject to the Commission's jurisdiction and should a small entity be subject to the Commission's jurisdiction, it may file for waiver of the requirements. This is consistent with the exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,[17] the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

Comment Procedures

30. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 28, 2007. Comments must refer to Docket No. RM05–5–003, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

31. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts

[12] 5 CFR 1320.11.

[13] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[14] 18 CFR 380.4.

[15] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[16] 5 U.S.C. 601–612.

[17] 5 U.S.C. 605(b).

most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

32. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

33. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

34. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.[18]

35. User assistance is available for eLibrary and the FERC's Web site during our normal business hours. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

List of Subjects in 18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, part 38 of the *Code of Federal Regulations*, as follows:

[18] NAESB's November 16, 2006 submittal is also available for viewing in eLibrary. The link to this file is as follows: *http://elibrary.ferc.gov/idmws/nvcommon/NVViewer.asp?Doc=11182760:0.*

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

1. The authority citation for part 38 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 38.2, paragraph (a)(4) is revised to read as follows:

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) * * *

(4) Coordinate Interchange (WEQ–004, June 22, 2006);

* * * * *

[FR Doc. E7–3232 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–009]

RIN 1625–AA08

Special Local Regulations for Marine Events; Martin Lagoon, Middle River, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the ''Baltimore County Community Waterfront Festival'', an event to be held May 12, 2007 at Martin Lagoon, Middle River, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Middle River waterfront to accommodate watercraft static displays, fire-rescue demonstrations and a fireworks display.

DATES: Comments and related material must reach the Coast Guard on or before March 28, 2007.

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 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 391–8149, 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: D. M. 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 (CGD05–07–009), 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 8 ½ 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 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 May 12, 2007, Baltimore County plans to sponsor the ''Baltimore County Community Waterfront Festival''. Various watercraft static displays and fire-rescue demonstrations would be staged within Martin Lagoon. The fireworks display would be launched from Wilson Point Park but the hazardous fallout area will extend over Martin Lagoon. A fleet of spectator vessels is expected to gather near the event site to view the fireworks display. Due to the need for vessel control during the proposed event, 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 Martin Lagoon at Middle River, Maryland. The regulated area includes all waters of Martin Lagoon that are north of a line drawn from latitude 39°19′34″ N, 076°25′41″ W, thence to a position located at 39°19′33″ N, 076°25′33″ W. The temporary special local regulations will be in effect from 9 a.m. to 11 p.m. on May 13, 2006. If the marine event is postponed due to weather, then the temporary special local regulations will be enforced during the same time period on May 13, 2007. The effect will be to restrict general navigation in the regulated area during the marine event and fireworks display. 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. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These proposed regulations are needed to control vessel traffic during the event to enhance the safety of 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 regulation restricts vessel traffic from transiting Martin Lagoon 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 will 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 Martin Lagoon 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 9 a.m. to 11 p.m. on May 13, 2006. 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 the proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 will 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 will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This 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 does not create an environmental risk to health or risk to safety that may 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this 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 and Department of Homeland Security Management Directive 5100.1, 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 event permit are specifically excluded from further analysis and documentation under those sections.

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 § 100.35–T05–009 to read as follows:

§ 100.35–T05–009 Martin Lagoon, Middle River, Maryland.

(a) Regulated area. The regulated area includes all waters of Martin Lagoon that are north of a line drawn from latitude 39°19′34″ N, 076°25′41″ W, thence to a position located at 39°19′33″ N, 076°25′33″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions:* As used in this section (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 Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore 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 shall:

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

(ii) Proceed as directed by any official patrol.

(d) Enforcement period. This section will be enforced from 9 a.m. to 11 p.m. on May 12, 2007. If the marine event is postponed due to weather, then the temporary special local regulations will be enforced during the same time period on May 13, 2007.

Dated: February 14, 2007.

Larry L. Hereth,

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

[FR Doc. E7–3211 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

Department of the Navy, Chesapeake Bay, in Vicinity of Bloodsworth Island, MD

AGENCY: Department of the Army, United States Army Corps of Engineers, DOD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend the regulations in 33 CFR 334.190 which establishes a danger zone, in waters of the United States in the vicinity of Bloodsworth Island, Maryland. The proposed amendment will reflect the current operational and safety procedures at the Bloodsworth Island Range and highlight a change in the enforcement authority from the Commander, Naval Base Norfolk, Virginia to the Commander, Naval Air Station Patuxent River, Maryland. The regulations are necessary to safeguard United States Navy vessels and United States Government facilities/installations from sabotage and other subversive acts, accidents, or incidents of a similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result from use of the areas by the United States Navy.

DATES: Written comments must be submitted on or before March 28, 2007.

ADDRESSES: You may submit comments, identified by docket number COE–2006–0040, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2006–0040, in the subject line of the message.

Fax: 202–761–0140.

Mail: U.S. Army Corps of Engineers, Attn: CECW–OR/MVD (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2006–0040. All comments received will be included in the public docket without change and may be made available on-line fnl;at *http://www.regulations.gov,* including

any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Mr. Steve Elinsky, Corps of Engineers, Baltimore District, Regulatory Branch, at 410–962–4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 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 proposes to amend the danger zone regulations at 33 CFR 334.190 to reflect current operational and safety procedures at the Bloodsworth Island Range and highlight a change in the enforcement authority from the Commander, Naval Base Norfolk, Virginia to the Commander, Naval Air Station Patuxent River, Maryland. The proposed amendment will also provide more detailed times, dates, and extents of restrictions.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the economic impact of the amendment of this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.190 would be revised to read as follows:

§ 334.190, Chesapeake Bay, in vicinity of Bloodsworth Island, MD; shore bombardment, air bombing, air strafing, and rocket firing area, U.S. Navy.

(a) *The areas*—(1) *Prohibited area.* All waters within a circle 0.5 miles in radius with its center at latitude 38°10′00″, longitude 76°06′00″; Bloodsworth Island, Pone Island, Northeast Island, and Adams Island.

(2) *The danger zone.* All waters of Chesapeake Bay and Tangier Sound within an area bounded as follows: Beginning at latitude 38°08′15″, longitude 76°10′00″ thence to latitude 38°12′00″, longitude 76°10′00″; thence to latitude 38°12′00″, longitude 76°07′00″; thence to latitude 38°13′00″, longitude 76°06′00″; thence to latitude 38°13′00″, longitude 76°04′00″; thence to latitude 38°12′00″, longitude 76°02′00″; thence to latitude 38°12′00″, longitude 76°00′00″; thence to latitude 38°08′15″, longitude 76°00′00″; thence to the point of beginning, excluding the prohibited area described in paragraph (a)(1) of this section.

(b) *The regulations.* (1) No person, vessel or other craft shall approach closer than 75 yards to the beaches, shoreline, or piers of Bloodsworth, Pone Island, Northeast Island, Adams Island, or any Patuxent River Naval Air Station property at any time unless authorized to do so by the enforcing agency. No person, vessel or other craft shall approach rafts, barges, or platforms closer than 100 yards.

(2) No person, vessel, or other craft shall enter or remain in the danger zone when notified by the enforcing authority to keep clear. Any watercraft under way or at anchor, upon being so warned, shall immediately vacate the area and shall remain outside the area until conclusion of potentially hazardous test or training events.

(3) The area will be in use intermittently throughout the year.

(4) Prior to the commencement of any potentially hazardous test or training

event that requires clearing of non participant boats from the danger zone, surface or air search of the entire area will be made for the purpose of locating and warning all craft and persons not connected with the test or training event, and a patrol will be maintained throughout the duration of the event.

(5) All persons, vessels, or other craft shall clear the area when warned by patrol vessels.

(6) Patrol vessels will provide warning that a potentially hazardous test or training event is in progress or is about to commence; when so warned, fishing or oystering vessels or other craft not directly connected with the event shall not navigate within the danger zone. Deep-draft vessels proceeding in established navigation channels normally will be permitted to traverse the area upon coordination with range patrol vessels. The patrol vessels will ensure safe separation between all non-participant vessels and potentially hazardous operations.

(7) When potentially hazardous testing or training is not in progress or is not about to commence, oystering and fishing boats and other craft may operate within the danger zone.

(8) All potentially hazardous test or training events will be performed in such a way as to contain the hazard footprint to the established danger zone described in paragraph (a) of this section. Naval authorities will not be responsible for damage to nets, traps, buoys, pots, fish pounds, stakes, or other equipment that may be located within the danger zone.

(9) Nothing in this regulation shall be intended to prevent the lawful use of approved waterfowl hunting blinds along the shorelines of Bloodsworth Island range complex, provided that all necessary licenses and permits have been obtained from the Maryland Department of Natural Resources and the completed copy of the permit has been submitted to the Conservation Division Director at NAS Patuxent River. Waterfowl hunters must observe all warnings and range clearances, as note herein.

(10) The regulations in this section shall be enforced by the Commander, Naval Air Station Patuxent River, Maryland, and such agencies as he/she may designate.

Dated: February 14, 2007.

Lawrence A. Lang,

Acting Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–2875 Filed 2–23–07; 8:45 am]

BILLING CODE 3710–92–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

[FDMS Docket # NARA–07–0001]

RIN 3095–AB49

NARA Reproduction Fees

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is revising its fees for reproduction of records and other materials in the custody of the Archivist of the United States. This proposed rule covers reproduction of Federal records created by other agencies that are in the National Archives of the United States, donated historical materials, Presidential records, Nixon Presidential historical materials, and records filed with the Office of the Federal Register. The fees are being changed to reflect current costs of providing the reproductions. This proposed rule will affect the public and Federal agencies.

DATES: Comments are due by April 27, 2007.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: Submit comments by facsimile transmission to 301–837–0319.

Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1850 or fax at 301–837–0319. Requests for copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at 301–837–1694 or fax at 301–837–3213.

SUPPLEMENTARY INFORMATION:

General Background

NARA does not receive appropriated funds to provide copies of our records to the public. The fees for reproduction of records in 36 CFR part 1258 are set under the Archivist's authority in 44 U.S.C. 2116(c). That statute requires that, to the extent possible, NARA recover the actual cost of making copies of records and other materials transferred to the custody of the Archivist of the United States. NARA conducts periodic reviews of the fees to ensure that the costs of providing this service to the public are properly recovered. NARA's current fees were established in October 2000 based on a 1999 cost study. As a result of a cost study conducted in 2006, fees for copying records must increase to recover NARA's costs. This is the first proposed fee increase in almost seven years.

The cost components included in the NARA-made reproduction fees are staff salaries, equipment and materials (e.g., toner, paper) for making reproductions, shipping costs, and oversight and administration of the fee collection. Fixed-fee reproduction cost components include contractor costs for making and delivering the reproductions, staff salaries for supervision of the copying operation, equipment and materials, and oversight and administration of the fee collection. The cost components included in the self-service copies made by customers at NARA facilities are staff salaries for supervision of the copying operation, equipment and materials, and oversight and administration of the fee collection.

The costs for providing reproductions of the unique historical materials in NARA's custody reflect the special handling required to help preserve records for future research. Original archival materials cannot be copied using automatic document feeder equipment. Each page must be hand-placed on a copier, one at a time. Preservation requirements add time and cost to the price of copying NARA's irreplaceable documents.

What Changes Is NARA Making in This Proposed Rule?

NARA is updating fixed-fee order fees in § 1258.4, the minimum mail order fee in § 1258.10, and fees for self-service and common NARA-made reproductions in § 1258.12. Because the fee schedule applies to our nation-wide facilities, we have removed certain fees for services that are not available in the majority of our facilities. In the Rules section of today's **Federal Register**, NARA has published an interim final rule removing from NARA's fee schedule reproductions of other Federal agencies' records stored in NARA's Federal records centers.

Fixed fee orders. Fixed fee reproductions consist of records from high-demand bodies of genealogical records that NARA reproduces for a fixed fee, rather than a fee per page

copied to expedite handling. The fees for all of these orders must increase to reflect the higher costs of providing the copies. In Fiscal Year 2006, NARA's costs for the fixed-fee services were more than double the revenue received for them.

The most notable change in the fixed-fee services is the increase for full military pension files more than 75 years old (NATF Form 85). Our recent study showed that many of the full pension files for the Civil War period (1860–1869 for purposes of this proposed rule) have page counts up to 200 pages or more. When the current fee of $37.00 went into effect in 2000, NARA estimated a smaller average page count for each file (about 40 to 50 pages) and believed that the fee would cover the majority of the costs. However, we found that we underestimated the number of documents in the Civil War pension files being copied, which resulted in incorrect projections of actual production costs Moreover, the Civil War pension files are the majority of the full pension file requests NARA receives. In FY 2006, NARA completed 7,700 orders for full Civil War pension files and 1,500 non-Civil War pension files.

To account for the average page-count differences between Civil War pension files and pension files of other wars, we propose to create a separate fee for full Civil War pension files. We also propose to retain the service for the pension documents packet (also on NATF Form 85), which many customers have found to meet their information needs. The pension documents packet consists of selected records containing military service and genealogical information most likely of interest to genealogical researchers. In FY 2006, NARA received 2,677 requests for the pension documents packet; almost all of those requests were for Civil War pension files.

Self-service and NARA-made reproductions. Proposed fees for self-service and NARA-made copies of most other records are in the following table:

Service	Proposed fee
Paper-to-paper copy made by the customer on a NARA self-service copier in the Washington, DC, area	$0.25
Paper-to-paper copy made by the customer on a NARA self-service copier outside the Washington, DC, area (regional archives and Presidential libraries)	0.20
Paper-to-paper copy made by NARA	0.75
Microfilm-to-paper copy made by the customer on a NARA self-service copier	0.50

We also propose to increase the fee for certifications and the minimum mail order fee. NARA certifies copies of materials in our holdings on request by affixing a certificate with a ribbon and seal attesting that the copy is a true copy of a document in our custody. Our current fee for certifications is $6.00 and we propose to increase that fee to $15.00 per certification. The fee has not been based on a price per page, but on a per record basis. Because the certification fee is based on tasks performed for a record regardless of the number of pages, we have maintained a fixed fee for that service per record.

We propose to raise our minimum fee for mail-order reproductions from $10.00 to $15.00 because the current fee is inadequate to cover NARA's costs. As with certifications, NARA performs the same functions to copy a few pages of records as to copy dozens of pages for a reproduction order. We maintain the minimum mail order fee to recover the costs of administering small copying requests. The dollar amount is based upon the cost to NARA to provide minimum mail orders divided by the anticipated number of orders that will fall below the dollar threshold. The costs include making the copies, supplies, shipping, and administration. For the recent fee study, this calculation resulted in a price of $15.00 per minimum mail order. NARA will continue to evaluate this fee in future studies.

Reproduction services no longer listed in § 1258.12. We have removed fees for selected reproduction services. However, these services will continue to be available as unlisted processes in accordance with the existing § 1258.12(f). Some of the fees we formerly listed in our regulations have been for reproduction services not available at all our locations, which confused customers. These include self-service video copying and self-service Polaroid prints. In addition, we have decided not to publish a fee for NARA-made paper-to-microfilm copies because demand for them is diminishing and NARA is unable to offer this service on a routine basis. We will compute the fee for this service in accordance with § 1258.12(f) when a customer requests the service or when, because of the condition of the records, NARA must recommend it as a copying option instead of electrostatic (paper) copying.

Paperwork Reduction Act

NATF Forms 81 through 86 in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act and bear approval number 3095–0027 on the face of the forms. NATF Form 85, under this proposal, requires modification to separate Civil War pension file requests from those of other wars. Other forms are being modified only to update the stated fee.

Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 18,000 per year for the NATF 85) and the need to obtain specific information from the researcher to search for the records sought. Researchers may use Order Online! (*http://www.archives.gov/research/order/orderonline.html*) to complete the forms and order the copies. For those who do not have Internet access, we also make the forms available on carbonless paper as a multi-part form. The paper form allows the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form allows researchers to provide credit card information to authorize billing and expedited mailing of the copies.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individual researchers. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1258

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1258 of title 36, Code of Federal Regulations, as follows:

PART 1258—FEES

1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c) and 2307.

2. Amend § 1258.4 by revising paragraph (d) to read as follows:

§ 1258.4 What reproductions are not covered by the NARA fee schedule?

* * * * *

(d) Reproduction of the following types of records using the specified order form:

Type of record	Order form	Fee
(1) Passenger arrival lists	NATF Form 81	$25.00
(2) Federal Census requests	NATF Form 82	25.00
(3) Eastern Cherokee applications to the Court of Claims	NATF Form 83	25.00
(4) Land entry records	NATF Form 84	40.00
(5) Full pension file more than 75 years old (Civil War period)	NATF Form 85	125.00
(6) Full pension file more than 75 years old (non-Civil War)	NATF Form 85	60.00
(7) Pension documents packet (selected records)	NATF Form 85	25.00
(8) Bounty land warrant application files	NATF Form 85	25.00
(9) Military service files more than 75 years old	NATF Form 86	25.00

* * * * *

3. Amend § 1258.10 by revising paragraph (a) to read as follows:

§ 1258.10 What is NARA's mail order policy?

(a) There is a minimum fee of $15.00 per order for reproductions that are sent by mail to the customer.

* * * * *

4. Revise § 1258.12 to read as follows:

§ 1258.12 NARA reproduction fee schedule.

(a) Certification: $15.00.

(b) Electrostatic copying (in order to preserve certain records that are in poor physical condition, NARA may restrict customers to photographic or other kinds of copies instead of electrostatic copies):

Service	Fee
Paper-to-paper copy made by the customer on a NARA self-service copier in the Washington, DC, area	$0.25
Paper-to-paper copy made by the customer on a NARA self-service copier outside the Washington, DC, area (regional archives and Presidential libraries)	0.20
Paper-to-paper copy made by NARA	0.75
Microfilm-to-paper copy made by the customer on a NARA self-service copier	0.50

(c) Unlisted processes: For reproductions not covered by this fee schedule, see also § 1258.4. Fees for other reproduction processes are computed upon request.

5. Revise § 1258.16 to read as follows:

§ 1258.16 Effective date.

The fees in this part are effective on [effective date of the final rule.] If your order was received by NARA before this effective date, we will charge the fees in effect at the time the order was received.

Dated: February 20, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–3160 Filed 2–23–07; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07-OAR–2007–0015; FRL–8281–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) submission by the State of Iowa which revises the air quality rules to include portions of the Federal New Source Review (NSR) regulations promulgated by EPA in December 2002. These revisions do not include the portion of the rules for nonattainment areas as there are currently no nonattainment areas in the State of Iowa; therefore, those portions of the State rules remain in effect. The definitions and applicability portions of the Prevention of Significant Deterioration (PSD) program were written into the State rules while the remaining portions of the PSD program were adopted by reference. All references to clean units and pollution control projects are not adopted by reference. Iowa has also not adopted portions of the Federal rule relating to exceptions from recordkeeping requirements.

DATES: Comments on this proposed action must be received in writing by March 28, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0015 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: hamilton.heather@epa.gov.*

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0015. 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.

Docket: All documents in the electronic 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 Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a State regulation mean to me?
What is the background for this action?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA proposing?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

What does Federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is the background for this action?

The 2002 NSR Reform rules are part of EPA's implementation of parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the Prevention of Significant Deterioration (PSD) program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS), also known as ''attainment areas'' and in areas for which there is insufficient information to determine whether the area meets the NAAQS, also known as ''unclassifiable'' areas.

Part D of Title I of the CAA, 42 U.S.C. 7501–7515, is the nonattainment New Source Review (NNSR) program, which applies in areas that are not in attainment of the NAAQS, also known as ''nonattainment areas.'' Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24 and part 51, appendix S. The SIP submittal from the State of Iowa does not include the portion of the rules relating to NSR reform provisions for nonattainment areas as the State of Iowa currently has no areas designated nonattainment.

The 2002 NSR Reform rules made changes to five areas of the NSR programs. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emission increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs).

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of the 2002 NSR Reform rules, along with portions of EPA's 1980 NSR rules (45 FR 5276, August 7, 1980). On June 24, 2005, the District of Columbia Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d (DC Cir. 2005). In summary, the Court of Appeals for the District of Columbia vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from recordkeeping, *e.g.*, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules. EPA has not yet responded to the Court's remand regarding recordkeeping provisions.

What is being addressed in this document?

EPA is proposing to approve the Iowa Department of Natural Resources' (IDNR) request to revise the Iowa SIP to include the PSD portion of the NSR regulations. In general, the Iowa revisions consist of incorporation by reference of substantial portions of the Federal Prevention of Significant Deterioration (PSD) rule and inclusion of other portions of the Federal rule almost verbatim. Iowa has not adopted provisions of the 2002 reform rule which were either vacated or remanded by the Court, as previously described. IDNR has identified portions of its rule which are at variance with the Federal rule and has provided conclusions with respect to equivalency of the State rule with the Federal requirements.

Revisions to the Iowa Administrative Code (567–20.1 and 567–22.4) add language to reference the new Chapter 33 entitled ''Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality.'' These revisions are informational in nature and do not include substantive requirements.

Chapter 33 of the Iowa rules contains the substantive PSD rule revisions which include EPA's NSR reform rules as previously described. The Federal provisions are adopted as follows: (1) The definitions, applicability provisions, public participation procedures, and source obligation provisions (the requirements in 40 CFR 52.21(r) of the Federal rule with the exception of the provision in 40 CFR 52.21(r)(6) which exempts certain emissions changes from the record keeping requirements) are set forth in language which tracks the relevant language of the corresponding federal rules; and, (2) the remainder of the Federal PSD rules upheld by the Court are adopted by reference.

The State's definition section (567–33.3(1)) contains several definitions with wording which differs from the wording in the Federal rule, but the differences are either not substantive or do not affect the stringency of the rule. These differences are described in the technical support document, and EPA believes that the differences do not affect the approvability of the rule. Another example of a difference is that the State does not incorporate by reference the Federal definitions relating to the clean unit exemption and pollution control project exclusion, which provisions were vacated by the court.

The applicability section (567–33.3(2)) discusses the application of PSD program requirements as they apply to the construction of any new major stationary source, or any project at an existing major stationary source in an area designated as attainment or unclassifiable. This section extracts the language from 40 CFR 51.166(a)(7), including the actual-to-projected-actual test for determining whether a modification is subject to the rule and other provisions of the Federal rule.

The public participation procedures in the State rule (567–33.3(17)) are substantially the same as the rules in the existing SIP. EPA believes that these procedures meet the corresponding requirements in 40 CFR 51.166.

The following sections were adopted by reference as specified in 40 CFR 52.21: Ambient air increments; Ambient air ceilings; Restrictions on area classifications; Redesignation; Stack heights; Exemptions; Control technology review; Source impact analysis; Air quality models; Air quality analysis; Source information, and Additional impact analyses.

The provisions of the State rule relating to exclusions from increment consumption, sources impacting Federal Class I areas—additional requirements, and innovative control technology adopt by reference the relevant portions of 40 CFR 51.166 except for the phrases that contain ''the plan may provide that,'' ''the plan provides that,'' ''it shall also provide that,'' and ''mechanism whereby.'' These phrases are excluded to convert the language of 40 CFR 51.166 to substantive rules rather than minimum program requirements. The EPA provisions for plantwide applicability limitations are adopted by reference except that the term ''Administrator'' used in the Federal rule means ''the department of natural resources'' in the State rule. These provisions were reviewed by EPA for consistency with the Federal requirements and are acceptable.

The reference to Clean Units and Pollution Control Projects as set forth in 40 CFR 52.21 and 51.166 are not adopted by reference. In addition, the provision of the Federal rule (40 CFR 52.21(r)(6)), which exempts certain projects from recordkeeping, is not adopted, so that recordkeeping requirements apply to all modifications which use the actual-to-projected-actual test to show nonapplicability. Iowa intended these deviations from the Federal rule to address the Court ruling on EPA's reform rules, and EPA believes they are approvable.

Have the requirements for approval of a SIP revision been met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document that is part of this document, EPA believes that the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What action is EPA proposing?

We are proposing to approve revisions to Iowa's rule at Chapter 20, ''Scope of Title-Definitions-Forms-Rules of Practice,'' and Chapter 22, ''Controlling Pollution,'' as the revisions relate to the NSR regulations. We are also proposing to approve new Chapter 33, ''Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality.'' It should be noted that IDNR has no nonattainment areas so those portions of the NSR reform rules are not being addressed with this rulemaking.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that the proposed approvals in this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–3204 Filed 2–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R03–OAR–2006–0625; FRL–8280–9]

State Operating Permit Programs; West Virginia; Amendments to the Definition of ''a Major Source'' and ''Volatile Organic Compound''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the State of West Virginia's operating permit program to correct the definition of ''a major source'' and ''volatile organic compound.'' West Virginia's revision was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to submit to EPA program revisions in accordance with the Federal Title V regulations. The EPA granted final approval of West Virginia's operating permit program on November 23, 2001. West Virginia amended its operating permit program to address the Federal EPA amendment to the Federal Title V regulations, which went into effect on November 27, 2001. In the Final Rules section of this **Federal Register**, EPA is approving the State's amendment to its operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 28, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0625 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: campbell.dave@epa.gov*.

C. *Mail:* EPA–R03–OAR–2006–0625, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2006–0625. EPA's policy is that all comments received will be included in the public docket without change, and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection

(WVDEP), Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, (215) 814–3377, or by e-mail at *nino.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: February 16, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 07–846 Filed 2–23–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070215036–7036–01; I.D. 012307A]

RIN 0648–AU79

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2007 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures to reduce overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks in 2007, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in the Convention Area would be closed for a 6–week period either beginning August 1, 2007, through September 11, 2007, or November 20, 2007, through December 31, 2007. This proposed rule would also close the U.S. longline fishery in the Convention Area in 2007 once the catch of bigeye tuna harvested with longline gear in the Convention Area reaches 500 metric tons (mt). This action is taken to limit fishing mortality caused by purse seine fishing and longline fishing in the Convention Area and contribute to long-term conservation of the tuna stocks at levels that support healthy fisheries.

DATES: Comments must be received by March 28, 2007.

ADDRESSES: Comments on the proposed rule or the initial regulatory flexibility analysis (IRFA) should be sent to Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 or by email to the Southwest Region at *0648–AU79@noaa.gov*. Comments may also be submitted by email through the Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AU79. Comments also may be submitted by fax to (562) 980–4047. Copies of the initial regulatory impact review/IRFA may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90902–4213.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980–4030.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.gpoaccess.gov/fr/index.html*.

The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. For the purposes of this closure, the Convention Area is defined to include the waters bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries.

Under the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*, NMFS must publish proposed rules to carry out IATTC recommendations that have been approved by DOS. The Southwest Regional Administrator also is required by 50 CFR 300.25(b)(3) to issue a direct notice to the owners or agents of all U.S. purse seine vessels that operate in the ETP of fishery management actions applicable to them that have been recommended by the IATTC and approved by the DOS.

In June 2006, the IATTC adopted a *Resolution for a Program on the Conservation of Tuna in the Eastern Pacific Ocean for 2007*. The June 2006 resolution is a 1–year program on the conservation of tuna in the eastern Pacific Ocean for 2007. This resolution offers a choice for closing the purse seine fishery: either a 6–week closure beginning August 1, 2007, or a 6–week closure beginning November 20, 2007. The resolution of June 2006 incorporated flexibility for nations to administer the purse seine closure in accordance with national legislation and national sovereignty. The selected measure should reduce overfishing in a manner that is fair, equitable, and readily enforceable. NMFS will select one of the two closure periods after consideration of public comment.

The June 2006 resolution also calls upon each Party and cooperating non-Party to ensure that each nation's longline catch of bigeye tuna in the ETP during 2007 will not exceed the catch level of 2001 or 500 mt, whichever is higher. The U.S. catch level of longline caught bigeye tuna for 2001 was estimated to be 150 mt in the Convention Area. Therefore, under this rule, the U.S. quota for longline caught bigeye in the Convention Area would be 500 mt for 2007.

In 2006, the U.S. catch level of longline-caught bigeye tuna in the Convention Area of 150 mt was reached. On July 6, 2006, NMFS closed the U.S. longline fishery for bigeye tuna in the Convention Area for the remainder of 2006.

The IATTC adopted the June 2006 resolution after considering a variety of measures, including the use of quotas and closures (as in 1999 through 2002), a full-month purse seine closure (used in 2003), and a 6–week purse seine closure as used in 2004, 2005, and 2006.

The proposed 2007 time/area closure is based on 2005 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the ETP, as well as records relating to implementation of quotas and closures in prior years. The closure targets the Convention Area and is believed to be sufficient to reduce the risk of overfishing of the tuna stocks, especially when considered in combination with the 6–week closures implemented in 2004, 2005, and 2006. The combined multi-annual, multilateral restrictions should increase the protections from overfishing of the tuna stocks in the Convention Area. In an international fishery the best

approach is through multilateral conservation and management measures. The IATTC met in June 2006 and reviewed tuna stock assessments and fishery information and considered that new information in evaluating the need for management measures for 2007 and future years. The DOS has approved the June 2006 resolution covering the year 2007, including the management measures described above.

On October 30, 2006, the Regional Administrator, Southwest Region, sent a notice to owners and agents of U.S. fishing vessels of the June 2006 resolution adopted by the IATTC and approved by the DOS.

Classification

This action is proposed under the regulations for the Pacific Tuna Fisheries at 50 CFR 300.25.

On December 8, 1999, NMFS prepared a biological opinion (BO) under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, assessing the impacts of the fisheries as they would operate under the interim final rule (65 FR 47, January 3, 2000) implementing the International Dolphin Conservation Program Act (IDCPA). For the final rule (69 FR 176, September 13, 2004) to implement the IDCPA, NMFS amended the incidental take statement included in the December 8, 1999, BO. NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This proposed rule will not result in any changes in the fisheries such that there would be impacts beyond those considered in that BO. The IATTC has also taken action to reduce sea turtle injury and mortality from interactions in the purse seine fishery so impacts of the fisheries should be lower than in the past. Because this closure does not alter the scope of the fishery management regime analyzed in the IDCPA rule, or the scope of the impacts considered in that consultation, NMFS is relying on that analysis to conclude that the purse seine fishery managed under this proposed rule will not likely adversely effect any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. On October 4, 2005, NMFS concluded that the Hawaii-based pelagic, deep-set, tuna longline fishery managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This proposed rule will not result in any changes in the longline fishery such that there would be impacts beyond those considered in that BO.

The U.S. ETP tuna purse seine fisheries occasionally interact with a variety of species of dolphin, and dolphin takes are authorized and managed under the IDCPA. The conservation management measures in this proposed rule do not affect the administration of that program, which is consistent with section 303(a)(2) of the Marine Mammal Protection Act, 16 U.S.C. 1413 (a)(2).

NMFS prepared an EA for the final rule (70 FR 69, April 12, 2005) to implement resolutions adopted by the IATTC and by the Parties to the Agreement on the International Dolphin Conservation Program. The Assistant Administrator for Fisheries concluded that there would be no significant impact on the human environment as a result of that final rule. The impacts of the fisheries as they will operate under the closures in 2007 are within the range of impacts of the alternatives considered in that EA, and are not expected to pose different impacts to the human environment. Therefore, this action does not require further analysis under NEPA.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA prepared describes the economic impact that this proposed rule, if adopted, would have on small entities. A copy of the IRFA for this proposed rule is available for public comment (see **ADDRESSES**). A summary of the analysis follows.

A description of the reasons for, objectives of, and legal basis for this proposed rule is included in the preamble and not repeated here.

This action would prohibit the use of purse seine gear to harvest tuna in the Convention Area for a 6- week period beginning August 1, 2007, through September 11, 2007, or beginning November 20, 2007, through December 31, 2007, and limit the annual 2007 U.S. catch of bigeye tuna caught by longline in the ETP to 500 mt.

The proposed purse seine closure would apply to the U.S. tuna purse seine fleet, which consists of five to ten small vessels (carrying capacity below 400 short tons (363 mt)) and one to two large vessels (carrying capacity 400 short tons (363 mt) or greater). The large vessels usually fish outside U.S. waters and deliver their catch to foreign ports or transship to processors outside the mainland United States. The large vessels are categorized as large business entities (revenues in excess of $4 million per year). A large purse seine vessel typically generates 4,000 to 5,000 mt of tuna valued at between $4 and $5 million per year. The closure should not significantly affect the operations of the one to two large vessels because they are capable of fishing in other areas that would remain open. Also, the one to two large purse seine vessels do conduct fishing operation in other areas. The small vessels are categorized as small business entities (revenues below $4 million per year). They fish out of California in the U.S. exclusive economic zone (EEZ) most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in summer. Some small vessels harvest tuna seasonally when they are available. The proposed time/area closure will have no effect on small vessels because they do not have the endurance and markets to fish that far south for tunas on a regular basis.

For 2006, the United States chose to close the purse seine fishery beginning November 20, 2006, for the remainder of 2006. In 2006 the U.S. catch level of longline caught bigeye tuna in the Convention Area of 150 mt was reached. On July 6, 2006, NMFS closed the U.S. longline fishery for bigeye tuna in the Convention Area for the remainder of 2006.

The existing California based longline fishery, currently consisting of one vessel, does catch bigeye tuna. The portion of the fleet operating out of Hawaii has generally operated outside the boundaries of the Convention Area, and has not made significant catches in those waters. In 2004, 2005, and 2006, the California and Hawaii based longline fishery was limited to 150 metric tons of bigeye tuna in the Convention Area. A closure for the California based longline fleet will significantly affect their operations. However, the California based longline fleet is capable of fishing for other species of fish in the Convention Area which should mitigate the effects of the closure. In 2004, 2005, and 2006, the California based longline fleet landed swordfish and showed fishery management that they were capable of fishing for other species of fish in the Convention Area. With the reopening of the swordfish fishery for the Hawaii fleet, effort directed at bigeye tuna (which has mainly occurred west of the Convention Area) should remain at the

same level. A closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open, outside the boundaries of the Convention Area. In 2005, 500 mt of bigeye tuna were caught by the U.S. longline fishery in the Convention Area. In 2007, if the U.S. longline fishery reaches the 500 metric ton limit, this fishery is capable of fishing in other areas that would remain open.

NMFS is not aware of any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. This rule does not impose reporting or recordkeeping requirements, and the compliance requirements for the closure areas are as described at the outset of this summary.

NMFS considered three alternatives for this proposed rule: The 2006 IATTC Tuna Conservation Resolution allows nations to opt for a 6–week summer closure of the purse seine fishery from August 1 through September 20 of 2007 or a closure from November 20 through December 31, 2007. The August 1 September 20 closure alternative may have a greater economic impact on small entities than the November 20 December 31 closure. In particular, the U.S. purse seine fleet may prefer a closure later in the fishing year because the winter weather is not conducive to fishing. Also, throughout the history of this fishery shipyards have been prepared to accept vessels for scheduled repairs during the winter months. The fishery closure later in the year allows the industry to plan for and mitigate economic impacts of a closure while still providing the conservation benefits to the tuna resources in the ETP.

NMFS also considered the alternative of not implementing the 2006 IATTC Tuna Conservation Resolution. This alternative would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed on pursuant to the Convention would violate the United States' obligations under the Convention, and would violate the Tuna Conventions Act.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: February 21, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–3251 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 021607G]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene the Law Enforcement Advisory Panel (LEAP) to review a revised Draft Joint Amendment 27 to the Reef Fish Fishery Management Plan (FMP)/ Amendment 14 to the Shrimp FMP. This amendment contains alternatives to regulate the harvest and bycatch of red snapper by both the directed commercial and recreational fisheries and the shrimp fishery in the Gulf of Mexico. The need for this amendment arose from the Southeast Data, Assessment and Review (SEDAR) process through which a recent stock assessment showed that the red snapper stock in the Gulf was overfished and overfishing was continuing.

DATES: The meeting will be held on Tuesday, March 13, 2007 from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Beau Rivage Resort and Casino, 875 Beach Boulevard, Biloxi, Mississippi, 888–383–7037.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION: The LEAP will review a scoping document for a potential amendment to address the need for additional management measures for gray triggerfish, greater amberjack, gag, and red grouper. The LEAP will discuss enforcement implications of the potential implementation of a fish-tagging program for stocks managed under individual fishing quotas (IFQs) such as red snapper and the potential use of a Federal fish stamp to identify recreational fishermen fishing in the exclusive economic zone (EEZ). Finally, the LEAP will discuss any enforcement problems and successes of the recently implemented IFQ program for red snapper and review the status of various FMP amendments and other regulatory actions previously approved by the Council.

The LEAP consists of principal law enforcement officers in each of the Gulf States, as well as the NMFS, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration's (NOAA) General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at 813–348–1630.

Although other non-emergency issues not on the agendas may come before the LEAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during this meeting. Actions of the LEAP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) five working days prior to the meeting.

Dated: February 20, 2007.

James P. Burgess,

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

[FR Doc. E7–3244 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 012607A]

RIN 0648–AU26

Fisheries Off West Coast States; Coastal Pelagic Species Fishery; Amendment 12 to the Coastal Pelagic Species Fishery Management Plan

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

ACTION: Availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 12 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) for Secretary of Commerce review. The intent of Amendment 12 to the CPS FMP is to protect all species of krill off the West Coast (i.e., California, Oregon and Washington). This action would prohibit the harvest of all species of krill by any fishing vessel operating in the Exclusive Economic Zone (EEZ) off the West Coast and would deny the use of exempted fishing permits to allow krill fishing.

DATES: Comments on Amendment 12 must be received by April 27, 2007.

ADDRESSES: You may submit comments on this NOA identified by ''I.D. 012607–NOA'' by any of the following methods:

- E-mail: *0648–AU26.SWR@noaa.gov*. Include the I.D. number in the subject line of the message.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562) 980–4047.

Copies of Amendment 12, which includes an Environmental Assessment/Initial Regulatory Flexibility Analysis/Regulatory Impact Review, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034 or Mike Burner, Pacific Fishery Management Council, at 503–820–2280.

SUPPLEMENTARY INFORMATION: The CPS fishery in the EEZ off the West Coast is managed under the CPS FMP, which was developed by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations that can be found at 50 CFR part 660, subpart I.

The Magnuson-Stevens Act requires each Regional Fishery Management Council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment to an FMP, publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 12.

As the principal food source for many fish and non-fish species, krill are a critical component of the marine ecosystem. Off the West Coast krill are important prey for a variety of fish species, including many Council-managed stocks. Krill are also a principal food source for many species of marine mammals and seabirds; some of which are listed as threatened or endangered and warrant special efforts for protection and recovery. Protecting krill will likely minimize adverse impacts on these fish stocks and living marine resources and in turn, help to maintain ecological relationships and ensure the long-term health and productivity of the West Coast ecosystem. Amendment 12 is an attempt to incorporate ecosystem conservation principles into fishery management programs by protecting, to the extent practicable, krill resources, which are an integral part of that ecosystem.

At this time, while a krill fishery off the U.S. West Coast does not exist, there also are no Federal regulations that limit fishing for krill in the EEZ. The states of Washington, Oregon, and California prohibit their vessels from fishing for krill and prohibit landings of krill into their respective ports. However, these prohibitions would not prevent a fishery from developing in the West Coast EEZ by vessels from outside of the region, as long as landings were not made into a West Coast port.

If adopted, Amendment 12 would add all species of krill as a management unit species under the CPS FMP and would place krill under a newly established ''prohibited harvest species'' category. This new category would differ from the existing ''prohibited species'' definition in the FMP because ''prohibited harvest species'' may not be taken by any fishery or gear type in the U.S. EEZ. Optimum yield (OY) for krill would be zero and the harvest of krill would be prohibited. In contrast, ''prohibited species'' may not be taken and retained incidentally by CPS fishery participants, but are legally harvested under provisions in other Council FMPs and Federal regulations. Amendment 12 also proposes that no exempted fishing permits (EFPs) be issued under the EFP procedures of the CPS FMP to allow individuals to harvest krill as an exception to the prohibition of harvest. These actions would fully achieve the objectives of the amendment to the extent practicable, recognizing that environmental conditions and the responses of krill and other resources to changes in environmental conditions are beyond the control of the Council.

NMFS and the Council have considered the potential for development of a krill fishery and the potentially drastic effects a fishery could have on krill resources and on the fish and other species, such as birds and mammals, that are dependent on, or that are sensitive to, the abundance and availability of krill. The Council has agreed it is critical to take preventive action at this time to ensure that a krill fishery will not develop that could potentially harm krill stocks, and in turn harm other fish and non-fish stocks. Therefore, NMFS proposes to prohibit krill fishing in the EEZ off the West Coast.

Public comments on Amendment 12 must be received by April 27, 2007, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 12. A proposed rule to implement Amendment 12 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulation to implement Amendment 12 in the near future.

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

Dated: February 20, 2007.

James P. Burgess,

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

[FR Doc. E7–3247 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 37

Monday, February 26, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt-Toiyabe National Forests; Santa Rosa Ranger District; Martin Basin Rangeland Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Santa Rosa Ranger District of the Humboldt-Toiyabe National Forest will prepare a Supplemental Environmental Impact Statement (SEIS) on a proposal to authorize continued livestock grazing on National Forest System (NFS) lands within the boundaries administered by the Santa Rosa Ranger District. The Project Area is located in Humboldt County, Nevada.

The preparation of this SEIS is needed because the Record of Decision issued on June 2, 2006 for the Martin Basin Rangeland Management Project was appealed, and following review, the decision was reversed. The supplemental analysis will provide additional analysis and disclosure of environmental effects.

DATES: The Draft Supplemental EIS is expected to be released for public review and comment in April of 2007. The Final Supplemental EIS is expected in July of 2007.

ADDRESSES: Send written comments to: Jose Noriega, District Ranger, Santa Rosa Ranger District, 1200 East Winnemucca Blvd., Winnemucca, NV 89445.

FOR FURTHER INFORMATION CONTACT: Jose Noriega, District Ranger, Humboldt-Toiyabe National Forest, Telephone: 775–623–5025, extension 5.

SUPPLEMENTARY INFORMATION:

Background

Initiation of the Martin Basin Rangeland Project began in 2002 with the original Notice of intent published in the **Federal Register** on December 30, 2002. The Draft EIS was released in May of 2004 for a 135-day comment period. The Final EIS was released in June of 2005 and a 45-day comment period was also provided at that time. The Record of Decision for this project was issued on June 2, 2006, by, then Forest Supervisor, Robert L. Vaught.

The Record of Decision for the Martin Basin Rangeland Project was appealed to the Intermountain Regional Forester. On September 6, 2006, the Regional Forester issued a decision on the appeal and remanded the decision back to the Humboldt-Toiyabe National Forest for additional analysis.

Purpose of and Need for Action

The purpose and need as defined in the original FEIS will be modified to indicate more specifically the economic and environmental factors that propel both the authorization of grazing and the modification of the terms and conditions and strategies that govern our current permits.

Proposed Action and Alternatives

The Proposed Action and Alternatives as outlined in the Final Environmental Impact Statement will be supplemented to further define and provide additional details regarding the intent of those alternatives. This Supplemental EIS may also include one or more non-significant Forest Plan Amendments.

Responsible Official

The responsible official is: Edward C. Monnig, Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

Nature of Decision To Be Made

Given the purpose and need, the deciding officer will decide whether or not to continue grazing on the allotments within the Martin Basin Rangeland Project area. If the decision is to continue livestock grazing, then under what standards, mitigation measures and monitoring requirements it will be subject too.

Scoping Process

The scoping period for this EIS was formally initiated in December of 2002 when the original notice of intent for this project was published in the **Federal Register** (December 30, 2002; volume 67, Number 250). While no additional scoping periods are planned prior to the release of the Draft Supplemental Environmental Impact Statement those wishing to submit comments may do so at the address listed above for District Ranger Jose Noriega.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft Supplemental Environmental Impact Statement will be prepared for comment. The comment period on the Draft Supplemental EIS will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability (NOA) in the **Federal Register**.

The Forest Service believes that, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could have been raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can consider them and respond to them in a meaningful manner within the final EIS.

To assist the Forest Service in identifying and considering issues and concerns regarding the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if the comments refer to specific pages, sections, or chapters of the draft document. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the document. Reviewers may wish to refer to the Council on Environmental Quality (CEQ) Regulations for implementing the

procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record of this proposal and will be available for public inspection (Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: January 24, 2007.

Edward C. Monnig,

Forest Supervisor.

[FR Doc. E7–3194 Filed 2–23–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Umatilla National Forest; Columbia and Garfield Counties, WA; Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) To Amend the Umatilla National Forest Land and Resource Management Plan for the Purposes of Implementing the School Fire Salvage Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Umatilla National Forest Supervisor is proposing a non-significant amendment to the Umatilla National Forest Land and Resource Management Plan (LRMP) as amended by Regional Forester Amendment #2 (''Eastside Screens'') to include a definition of ''live'' trees for the School Fire Salvage Recovery Project. The proposed amendment would adopt a scientific metod for determining live trees.

DATES: Under 40 CFR 1502.9(c)(4), there is no formal scoping period for this proposed action. The supplemental draft environmental impact statement is expected March 1, 2007 and the final environmental impact statement is expected June 1, 2007.

ADDRESSES: Send written comments to the Responsible Official, Kevin Martin, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, OR 97801. Send electronic comments to: *comments-pacificnorthwest-umatilla@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Dean R. Millett, Project Team Leader, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347, phone (509) 843–1891, e-mail: *dmillett@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Umatilla NF needs ''to salvage harvest [bured timber] as rapidly as practicable before decay and other wood deterioration occurs to maximize potential economic benefits'' as identified in School Fire Recovery Project FEIS at 1–4. The 9th Court of Appeals recently held in *The Lands Council*, No. 06–35781 (9th Cir.) (Feb. 12, 2007) that the term ''live tree'' includes all trees that are not dead, giving the term its plain meaning. Op. at 12. This definition, which does not reflect the Forest Service practice and interpretation that a live tree must be expected to live greater than five years (citation), prevents the achievement of the need stated above.

The Proposed Action would amend the Forest Plan for the School Project Area to adopt a definition of ''live'' and allow the School Fire Recovery Project Record of Decision to be fully implemented.

Proposed Action

The Umatilla National Forest Supervisor proposes a non-significant Forest Plan amendment to Regional Forester's Amendment #2 to the Umatilla LRMP (''Eastside Screens'') to include a definition of ''live'' trees as used in the wildlife standard No. 6d.2)a). This amendment would apply only to the School Fire Salvage Recovery Project on the Pomeroy Ranger District.

The amended standard would read as follows: (a) Maintain all remnant late and old seral and/or structural live trees ≥21″ diameter at breast height that currently exist within stands proposed for harvest activities. A live tree is defined as a tree rated to have a high probability to survive the effects of a fire as determined by the ''Factors Affecting Survival of Fire Injured Trees: A Rating System for Determining Relative Probability of Survival of Conifers in the Blue and Wallowa Mountains'' (Scott et al. 2002, as amended) (commonly referred to as the Scott Guidelines).

Responsible Official

Kevin Martin, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, OR 97801.

Nature of Decision To Be Made

To amend the Umatilla LRMP as proposed or take no action at this time.

Scoping Process

No scoping will be conducted for this SEIS pursuant to 40 CFR 1502.9(c)(4).

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and address of those who comment, will be considered part of the

public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 20, 2007.

Kevin Martin,

Forest Supervisor.

[FR Doc. 07–841 Filed 2–23–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Bridger-Teton National Forest, Forest Service USDA.

ACTION: Notice of new fee site.

SUMMARY: The Bridger-Teton National Forest is planning to charge a $40 fee for the overnight rental of each of the Sherman Guard Station Cabins. The cabins have not been available for recreation use prior to this date. Rentals of other cabins on the Bridger-Teton National Forest have shown that people appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of the Sherman Guard Station Cabins.

DATES: The Sherman Guard Station Cabins will become available for recreation rental in July, 2007.

ADDRESSES: Forest Supervisor, Bridger-Teton National Forest, P.O. Box 1888, 340 Cache, Jackson, WY 83001.

FOR FURTHER INFORMATION CONTACT: Gary Hayward, Resource Specialist, 307–276–5813 or Timothy Ditton, Office Automation Clerk, 307–276–5800.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Bridger-Teton National Forest currently has four other cabin rentals. These rentals are regularly booked throughout their rental season. A business analysis of Historic Guard Station Cabins has shown that people desire having this sort of recreation experience on the Bridger-Teton National Forest. A market analysis indicates that the $40/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent the Sherman Guard Station Cabins will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: February 8, 2007.

Kniffy Hamilton,

Bridger-Teton National Forest Supervisor.

[FR Doc. 07–843 Filed 2–23–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice for Requests for Proposals for Guaranteed Loans under the Section 538; Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2007

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This is a request for proposals for guaranteed loans under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 for Fiscal Year (FY) 2007 subject to the availability of funding. FY 2006 funding for the section 538 was $99 million. This Notice is being issued prior to passage of a final appropriations bill to allow applicants sufficient time to leverage financing and submit proposals in the form of ''RESPONSES'', and give the Agency maximum time to process applications within the current fiscal year. A Notice of Funding Availability will be published announcing the funding level for GRRHP for FY 2007 once an appropriations act has been enacted. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation, to the extent an appropriation act provides funding for GRRHP for FY 2007. Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

The GRRHP operates under 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at the Rural Development Instructions Web site address *http://www.rurdev.usda.gov/regs/hblist.html#hbw6.*

Eligible lenders are invited to submit responses for the development of affordable rural rental housing, the acquisition with rehabilitation of affordable rural rental housing, and the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205). Equity payment, as stipulated 7 CFR 3560.406, in the transfer of existing direct section 515 housing, is an eligible use of loan proceeds. In order to be considered, direct section 515 housing projects must need repairs and/or undergo revitalization of a minimum of $6,500 per unit.

The Rural Housing Service (RHS) will review responses submitted by eligible lenders, on the lender's letterhead, and signed by both the prospective borrower and lender. Although a complete application is not required in response to this Notice of requests for proposals, eligible lenders may submit a complete application concurrently with the response. However, submitting a complete application will not have an effect on the respondent's score.

DATES: The RHS will review and score all responses received through April 27, 2007. Those responses that are selected that subsequently submit complete applications and meet all Federal environmental requirements will receive commitments to the extent an appropriation act provides funding for GRRHP for FY 2007 until all funds are expended. Responses received prior to April 27, 2007, that meet program criteria, but score less than 25 points or score 25 points or more but have a development cost ratio of equal to or more than 70 percent may be selected for obligation after April 27, 2007, with the highest scoring responses receiving priority as long as funds remain available. The Agency will continue to select the highest scoring Notice responses received after April 27, 2007, notwithstanding the score, as long as the response meets program criteria and funds remain available using the procedure outlined in the next paragraph.

Once a complete application is received and approved by the State Office, an obligation request (request) for 2007 funds will be submitted [via fax] by the State Office to the National Office. Requests submitted to the National Office will be accumulated, but

not obligated, throughout the week until the weekly request submission deadline of midnight Eastern Standard Time (e.s.t.) every Thursday. To the extent that an appropriations act provides funding for GRRHP for FY 2007 and provided that funds remain, the National Office will obligate the requests accumulated through the weekly request submission deadline of the previous week by the following Tuesday (*i.e.*, requests received from Friday, May 18, 2007, to Thursday, May 24, 2007, will be obligated by Tuesday, May 29, 2007). However, requests received prior to April 27, 2007 that are not eligible for obligation until after April 27, 2007, will be obligated no earlier than Tuesday, May 1, 2007. Funds will be allocated in scoring order, with the highest scoring requests being obligated first, until all funds are exhausted. In the event of a tie, priority will be given to the project that: 1st—has the highest percentage of leveraging (lowest Loan to Cost); 2nd—is in the smaller rural community.

As long as funds remain available, requests will be accepted and obligated per this guidance until, September 28, 2007, 12 p.m. e.s.t. Once FY 2007 funds are exhausted, if eligible, requests not obligated will be retained for consideration for FY 2008 funds without having to submit a new response. A notice will be placed in the **Federal Register** if all FY 2007 funds are committed prior to September 28, 2007.

Eligible lenders mailing a response or application must provide sufficient time to permit delivery to the *Submission Address* on or before the closing deadline date and time. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

Submission Address: Eligible lenders will send responses to the Multi-Family Housing Director in the State Office where the project will be located. The lender will also send a copy of its response (copies of ''Lender Certification'' letter and ''Project Specific Data'' sheets only; do not include any application supporting documentation, i.e., market studies, plans/specs, etc.) to: C.B. Alonso, Senior Loan Specialist, Guaranteed Rural Rental Housing Program, Multi-Family Housing Processing Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781.

Rural Development State Offices, their addresses, telephone numbers, and person to contact follows: [this information may also be found at *http://www.rurdev.usda.gov/recd_map.html*]

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Deborah Davis

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8765, TDD (602) 280–8706, Ernie Wetherby

Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3063, Gregory Kemper

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5830, TDD (530) 792–5848, Stephen Nnodim

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Jamie Spakow

Connecticut—Served by Massachusetts State Office

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3600, TDD (302) 857–3585, W. Drew Clendaniel

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 541–2600, Thao Khamoui

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4666, TDD (515) 284–4858, Ambrose H. McGuire

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Tim Rogers

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–4590, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Ghulam R. Sumbal

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7782, TDD (651) 602–7830, Jackie Morris

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Anita J. Dunning

Montana State Office, 900 Technology Blvd., Suite B, Bozeman, MT 59715, (406) 585–2565, TDD (406) 585–2562, Deborah Chorlton

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5594, TDD (402) 437–5093, Byron L. Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV, 89703–9910, (775) 887–1222 (ext. 25), TDD (775) 885–0633, William Brewer

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Robert McDonald

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Art Garcia

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, William Hobbs

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737. Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Donald L. Warren

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Anita Kinyon

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Jillene Davis

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Frank Wetherhold

Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey,

PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Pedro Gomez
Rhode Island—Served by Massachusetts State Office
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007 Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Don Harris
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9758, TDD (254) 742–9712, Gayle Ledyard
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4325, TDD (801) 524–3309, David E. Brown
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6021, TDD (802) 223–6365, Robert McDonald
Virgin Islands—Served by Florida State Office
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, Eileen Nowlin
Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7760, Robert Lund
Western Pacific Territories—Served by Hawaii State Office
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500 (304) 284–4872, TDD (304) 284–4836, Dianne Crysler
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615 (ext. 151), TDD (715) 345–7614, Peter Kohnen
Wyoming State Office, PO Box 11005, Casper, WY 82602, (307) 233–6715, TDD (307) 233–6733, Alan Brooks

FOR FURTHER INFORMATION CONTACT: C.B. Alonso, Senior Loan Specialist, Guaranteed Rural Rental Housing Program, Multi-Family Housing Processing Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. *E-mail: cb.alonso@wdc.usda.gov. Telephone:* (202) 720–1624. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Eligibility of Prior Year Selected Notice of Funding Availability

Responses: FY 2006 NOFA response selections that did not develop into complete applications within the time constraints stipulated by the corresponding State Office have been cancelled. A new response for the project may be submitted subject to the conditions of this Notice.

FY 2006 NOFA responses that were selected by the Agency, and a complete application (including all Federal environmental documents required by 7 CFR part 1940, subpart G, a Form RD 3565–1, and the $2,500 application fee) was submitted by the lender within 90 days from the date of notification of response selection (unless an extension was granted by the State office), will be eligible for FY 2007 program dollars and will compete for available FY 2007 funds without having to complete a FY 2007 response.

General Program Information

Program Purpose: The purpose of the GRRHP is to increase the supply of affordable rural rental housing, through the use of loan guarantees that encourage partnerships between the RHS, private lenders, and public agencies.

Responses Must be Submitted by: The Agency will only accept responses from GRRHP eligible or approved lenders as described in 7 CFR 3565.102 and 3565.103 respectively.

Qualifying Properties: Qualifying properties include new construction for multi-family housing units, the acquisition of existing structures with a minimum per unit rehabilitation expenditure requirement in accordance with 7 CFR 3565.252, and the revitalization, repair and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205). Equity payment, as stipulated 7 CFR 3560.406, in the transfer of existing direct section 515 housing, is an eligible use of loan proceeds. In order to be considered, direct section 515 housing projects must need repairs and/or undergo revitalization of a minimum of $6,500 per unit.

Eligible Financing Sources: Any form of Federal, state, and conventional sources of financing can be used in conjunction with the loan guarantee, including Home Investment Partnership Program (HOME) grant funds, tax exempt bonds, and low income housing tax credits.

Maximum Guarantee: The Agency can guarantee the ''permanent'' portion or both the ''construction and permanent'' portions of a construction/permanent loan. The Agency cannot, however, guarantee only the ''construction'' portion of a construction/permanent loan.

The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in 7 CFR 3565.452. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee.

The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default of the loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

Reimbursement of Losses: Any losses will be split on a pro-rata basis between the lender and the RHS from the first dollar lost.

Interest Rate: RHS will accept the best rate negotiated between the lender and prospective borrower. The lender is not required to provide the interest rate in the response. When applying for interest credit, the lender must provide the basis points over the Long Term Monthly AFR that it will use to calculate the loan note's interest rate. The interest rate must be fixed over the term of the loan.

Interest Credit: For at least 20 percent of the loans made during each fiscal year, the Agency will provide assistance in the form of interest credit, to the extent necessary to reduce the agreed-upon rate of interest to the Long Term Monthly Applicable Federal Rate (AFR) as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 7805, Sec. 1.42–1T. The interest credit will be paid in accordance with HB–1–3565 4.10 D. If 20 percent of the loans have not received interest credit by April 27, 2007, then RHS will award interest credit to those loans that initially requested interest credit and have the highest interest credit priority score until at least 20 percent of the loans have received interest credit. Requests for interest credit must be made in the response. Lenders are not permitted to make requests for interest credit after

the selection process has taken place. When interest credit assistance is requested, lenders must state in the response the maximum basis points above the Long Term Monthly AFR that will be used to calculate the interest rate. Priority points will be awarded to only to those responses submitting proposed interest rates equal to or less than 250 basis points above the Long Term Monthly AFR. Any response submitted that exceeds 250 basis points above the Long Term Monthly AFR will receive a deduction of 20 points from its Priority Score (refer to ''Scoring the Priority Criteria for Selection of Projects'' section of this Notice). A total of 30 points will be deducted from the Priority Score of any response submitted that is 300 basis points or more above the Long Term Monthly AFR.

Due to limited funding, and in order to distribute interest credit assistance as broadly as possible and minimize program costs, the Agency has decided to limit the interest credit to $1.5 million per loan. For example, if an eligible request were made for interest credit on a loan of $2.5 million, up to $1.5 million of the loan would receive interest credit. Interest credit is not available for construction loans. Interest credit is only available for permanent loans. Lenders with projects that are viable with or without interest credit are encouraged to submit a response reflecting financial and market feasibility under both funding options. Responses requesting consideration under both options will not affect interest credit selection. Due to limited interest credit funds and the responsibility of RHS to target and give priority to rural areas most in need, responses requesting interest credit must score a minimum of 55 points under the criteria established in this Notice.

Surcharges for Guarantee of Construction Advances: There is no surcharge for the guarantee of construction advances for FY 2007.

Program Fees for FY 2007: As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender.

(1) Initial guarantee fee. The Agency will charge an initial guarantee fee equal to one percent of the guarantee amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) Annual guarantee fee. An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan as of December 31 will be charged each year or portion of a year that the guarantee is in effect.

(3) There is a non-refundable application fee of $2,500 when the application is submitted.

(4) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(5) There is a flat fee of $500 when a lender requests RHS to reopen an application when a commitment has expired.

(6) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible prospective borrower.

(7) There is no lender application fee for lender approval in FY 2007.

Eligible Lenders: An eligible lender for the section 538 GRRHP as required by 7 CFR 3565.102 must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the state or states where it conducts business. Lender eligibility requirements are contained in 7 CFR 3565.102. Below is a list of some of the eligible lender criteria under 7 CFR 3565.102:

(1) Licensed business entity that meets the qualifications and has the approval of the Secretary of Housing and Urban Development (HUD) to make multi-family housing loans that are insured under the National Housing Act. A complete list of HUD approved lenders can be found on the HUD Web site at *http://www.hud.gov.*

(2) A licensed business entity that meets the qualifications and has the approval of the Ginnie Mae or Freddie Mac or Fannie Mae corporations to make multi-family housing loans that are sold to the same corporations. A complete list of Freddie Mac approved lenders can be found in Freddie Mac's Web site at *http://www.freddiemac.com.* Fannie Mae approved lenders are found at *http://www.fanniemae.com.* For a list of Ginnie Mae issuers, contact Ginnie Mae at *http://www.ginniemae.gov.*

(3) A state or local HFA with a top-tier rating from Moody's or Standard & Poors, or member of the Federal Home Loan Bank system, and the demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner.

(4) Be a GRRHP approved lender, defined as an entity with a current executed multi-family housing Lender's Agreement with RHS.

(5) Lenders that can demonstrate the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In order to be approved the lender will have to have an acceptable level of financial soundness as determined by a lender rating service. The submission of materials demonstrating capacity will be required if the lender's response is selected. Lenders who are otherwise ineligible may become eligible if they maintain a correspondent relationship with an eligible lender that does have the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In this case, the eligible lender must submit the response and application. All contractual and legal documentation will be signed between RHS and the lender that submitted the response and application.

GRRHP Lender Approval Application: Lenders whose responses are selected will be notified by the RHS to submit a request for GRRHP lender approval application within 30 days of notification. Lenders who request GRRHP approval must meet the standards in the 7 CFR 3565.102 and 103. Lenders that have received GRRHP lender approval in the past and are in good standing do not need to reapply for GRRHP lender approval.

Submission of Documentation for GRRHP Lender Approval: All lenders that have not yet received GRRHP lender approval must submit a complete lender application to: Director, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 1263, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. Lender applications must be identified as ''Section 538 Guaranteed Rural Rental Housing Program'' on the envelope.

As RHS does not have a formal application form, a complete application consists of a cover letter requesting GRRHP lender approval and the following documentation:

(1) Request for GRRHP lender approval on the lender's letterhead;

(2) Lenders who are HUD, Ginnie Mae, Freddie Mac or Fannie Mae multi-family approved lenders are required to show evidence of this status, such as a copy of a letter designating the distinction;

(3) The lender's Loan Origination, Loan Servicing, and Portfolio Management Handbooks. These handbooks should detail the lender's policies and procedures on loan origination through termination for multi-family loans;

(4) Portfolio performance data;

(5) Copies of standard documents that will be used in processing GRRHP loans;

(6) Resumes and qualifications of key personnel that will be involved in the GRRHP;

(7) Identification of standards and processes that deviate from those outlined in the GRRHP Origination and Servicing Handbook (HB–1–3565) found at *http://www.rurdev.usda.gov/regs/hblist.html#hbw6.*

(8) A copy of the most recent audited financial statements;

(9) Lender specific information including: (a) Legal name and address, (b) list of principal officers and their responsibilities, (c) certification that the officers and principals of the lender have not been debarred or suspended from Federal programs, (d) Form AD 1047, (e) certification that the lender is not in default or delinquent on any Federal debt or loan, or possesses an outstanding finding of deficiency in a federal housing program, and (f) certification of the lender's credit rating; and

(10) Documentation on bonding and insurance.

Additional Construction Lender Requirements

The Agency can guarantee the ''permanent'' portion or both the ''construction and permanent'' portions of a construction/permanent loan. The Agency will not, however, guarantee only the ''construction'' portion of a construction/permanent loan.

A lender making a construction loan must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of 7 CFR Part 3565, subpart C. A lender who originates and services construction/permanent loans must agree to manage the construction and draw activities in the manner described in the Chapter 5 of HB–1–3565. Lenders must meet either the basic or the demonstrated eligibility test in paragraphs 2.4 and 2.5 of HB–1–3565 and the lender approval requirements set forth in paragraph 2.6 of HB–1–3565. Lenders must clearly identify policies and processes for multi-family construction lending. Lenders must also provide a summary of their multi-family construction lending activity in the same form as specified in paragraph 2.5 of HB–1–3565. The Agency may, at its discretion, consider other types of construction loans—such as those for commercial development—as a substitute for multi-family construction experience.

Lender Responsibilities: Lenders will be responsible for the full range of loan origination, underwriting, management, servicing, compliance issues, and property disposition activities associated with their projects. The lender will be expected to provide guidance to the prospective borrower on the RHS requirements during the application phase. Once the guarantee is issued, the lender is expected to service each loan it underwrites or contract these services to another capable entity.

Discussion of Notice Responses

Content of Notice Responses: All responses require lender information and project specific data. Incomplete responses will not be considered for funding. Lenders will be notified of incomplete responses. Complete responses are to include a signed cover letter from the lender on the lender's letterhead and the following information:

(1) *Lender certification*—The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the GRRHP guarantee. Lender certification must be on the lender's letterhead and signed by both the lender and the prospective borrower.

(2) *Project specific data*—The lender must submit the project specific data below on the lender's letterhead, signed by both the lender and the prospective borrower.

Lender Name	Insert the lender's name.
Lender Tax ID #	Insert lender's tax ID #.
Lender Contact Name	Name of the lender contact for loan.
Mailing Address	Lender's complete mailing address.
Phone #	Phone # for lender contact.
Fax #	Insert lender's fax #.
E-mail Address	Insert lender contact e-mail address.
Borrower Name and Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Tax Classification Type	State whether borrower is for profit, not for profit, etc.
Borrower Tax ID #	Insert borrower's tax ID #.
Borrower Address, including County	Insert borrower's address and county.
Borrower Phone #	Insert borrower's phone #.
Principal or Key Member for the Borrower	Insert name and title.
Borrower Information and Statement of Housing Development Experience.	Attach relevant information.
New Construction, Acquisition With Rehabilitation, or the Revitalization, Repair, and Transfer (as stipulated in 7 CFR 3560.406) of Existing Direct Section 515 Housing.	State whether the project is new construction or acquisition with rehabilitation. Transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds listed in 7 CFR 3565.205.
Project Location Town or City	Town or city in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert zip code.
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, senior (all residents 55 years or older), or mixed.
Property Description and Proposed Development Schedule	Provide as an attachment.
Total Project Development Cost	Enter amount for total project.
# of Units	Insert the # of units in the project.
Ratio of 3–5 bedroom units to total units	Insert percentage of 3–5 bedroom units to total units.
Cost Per Unit	Total development cost divided by # of units.
Rent	Proposed rent structure.
Median Income for Community	Provide median income for the community.
Evidence of Site Control	Attach relevant information.
Description of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.

Interest Credit (IC)	Is interest credit requested for this loan? (Yes or No).
Basis Points over the Long Term Monthly Applicable Federal Rate	Lenders seeking interest credit must provide the maximum basis points above the Long Term Monthly AFR that will be used to calculate the interest rate. Priority points will only be given for basis points equal to or less than 250 above the Long Term Monthly AFR.
If Above Is Yes, Should Proposal Be Considered Under Non-Interest Credit Selection If Scoring Does Not Meet The Minimum Point Threshold of 55 Points for an Interest Credit Award?	If Yes, proposal must show financial feasibility for Non-IC consideration.
Borrower's Proposed Equity	Insert amount.
Tax Credits	Have tax credits been awarded? If tax credits were awarded, submit a copy of the award notice/evidence of award with your response. If not, When do you anticipate an award will be made (announced)? What is the [estimated] value of the tax credits?
Other Sources of Funds	List all funding sources other than tax credits and amounts for each source.
Loan to Total Development Cost	Guaranteed loan divided by the total development costs of project.
Debt Coverage Ratio	Net Operating Income divided by debt service payments.
Percentage of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.
Empowerment Zone (EZ) or Enterprise Community (EC), Colonia, Tribal Lands, or State's Consolidated Plan or State Needs Assessment.	Yes or No. Is the project in a recognized EZ or EC, Colonia, on an Indian Reservation, or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing.
Population	Provide the population of the county, city, or town where the project is or will be located.
Is a Guarantee for Construction Being Requested?	State yes or no. The Agency can guarantee the "permanent" portion or both the "construction and permanent" portions of a construction/permanent loan. The Agency will not, however, guarantee only the "construction" portion of a construction/permanent loan.
Loan Term	Minimum 25-year term . Maximum 40-year term (includes construction period). May amortize up to 40 years. Balloon mortgages permitted after the 25th year.

Scoring of Priority Criteria for Selection of Projects: All 2007 responses will be scored based on the criteria set forth below to establish their priority for obligation of funds. Per 7 CFR 3565.5 (b), priority will be given to projects: in smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3–5 bedroom units to total units, or located in Empowerment Zones/Enterprise Communities or on tribal lands. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Additional points will be awarded to responses for the revitalization, repair, and transfers of existing direct Section 515 housing.

Prior to April 27, 2007, projects with an overall score of 25 points or more and a loan to development cost ratio less than 70 percent will be processed and, when ready, obligated on a first-come-first-serve basis, provided funds are available. Projects that score less than 25 points, and projects that score 25 points or more and do not have a loan to development cost ratio less than 70 percent, may be processed up to the point of obligation, but they will not be obligated until after April 27, 2007. After April 27, 2007, the Agency will select the highest scoring proposals using the procedure outlined in the **DATES** section of this Notice.

Subject to available funding, all projects scoring 55 points or more on the seven priority criteria and that request and demonstrate a need for an interest credit subsidy, will receive interest credit awards.

The seven priority criteria for projects are listed below.

Priority 1—Projects located in eligible rural communities with the lowest populations will receive the highest points.

Population size	Points
0–5,000 people	15
5,001–10,000 people	10
10,001–15,000 people	5
15,001–20,000 people	0

Priority 2—The most needy communities as determined by the median income from the most recent census data will receive points. The RHS will allocate points to projects located in communities having the lowest median income. Points for median income will be awarded as follows:

Median income (dollars)	Points
Less than 35,000	20
35,000–less than 45,000	15
45,000–less than 55,000	10
55,000–less than 65,000	5
65,000 or more	0

Priority 3—Projects that demonstrate partnering and leveraging in order to develop the maximum number of units and promote partnerships with state and local communities will also receive points. Points will be awarded as follows:

Loan to total development cost ratio (percentage)	Points
90–100	0
Less than 90–70	15
Less than 70–50	20
Less than 50	30

Priority 4—The development of projects on Tribal Lands, or in an Empowerment Zone or Enterprise Community will receive points. The RHS will attribute 20 points to projects that are developed in any of the locations described in this priority. The development of projects in a Colonia or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing will receive points. The RHS will attribute 20 points

to projects that are developed in any of the locations described in this priority.

Priority 5—The RHS will award points to projects with the highest ratio of 3–5 bedroom units to total units as follows:

Ratio of 3–5 bedroom units to total units	Points
More than 50%	6
21%–50%	5
Less than 21%–more than 0%	1

Priority 6—RHS will award points for basis points above the long term monthly AFR used to calculate the interest rate. The score for basis points is as follows:

Basis points	Points
300 or more	−30
251 to 299	−20
200 to 250	10
100 to 199	15
0 to 99	20

Priority 7—Notice responses for the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds listed in 7 CFR 3565.205) will receive an additional 20 points.

Notifications: Responses will be reviewed for completeness and eligibility. The RHS will notify those lenders whose responses are selected via letter. The RHS will request lenders without GRRHP lender approval to apply for GRRHP lender approval within 30 days upon receipt of notification of selection. For information regarding GRRHP lender approval, please refer to the section entitled ''Submission Of Documentation For GRRHP Lender Approval'' in this Notice.

Lenders will also be invited to submit a complete application and the required application fee of $2,500 to the Rural Development State Office where the project is located.

Submission of GRRHP Applications: Notification letters will instruct lenders to contact the Rural Development State Office immediately following notification of selection to schedule required agency reviews.

Rural Development State Office staff will work with lenders in the development of an application package. In response to the Notice, lenders must submit a response to the office address identified in the Notice for the scoring and ranking of a proposed GRRHP project. The lender must provide the requested information concerning the project, to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding. The Agency will determine the highest ranked responses based on priority criteria and a threshold score.

Notice responses will at least include the following [but the Agency, at its sole discretion, may request additional information]:

(1) The Project

(a) A brief description of the proposed location of the project, including town, county, state, and congressional district.

(b) A description of the property and improvements, including lot size, number of units, building type, type of construction, etc., including preliminary drawings, if available.

(c) The proposed development schedule.

(d) Total project development cost.

(e) The proposed rent structure and area median income (HUD published area median incomes can be found online at *http://www.huduser.org*).

(f) Evidence of site control by the proposed borrower or a purchase option.

(g) Description of any environmental issues that may affect the project.

(h) Amount of loan to be guaranteed.

(i) Type of project (*e.g.* elderly or family).

(2) The Proposed Financing

(a) Proposed loan amount and the proposed borrower's equity.

(b) Proposed use of interest credit—If the lender proposes to use interest credit, this section should include the maximum basis points the lender will charge the borrower for the project. The interest rate may not be lower than the published Long Term Monthly AFR at the closing of the lender's loan. Selection and scoring criteria that the project must meet to receive interest credit will be published in the Notice.

(c) Estimated development budget (total and cost/unit) and the proposed sources and uses of funds. This information should include all proposed financing sources—the amount, type, rates and terms of loans, tax credits, or grant funds. Letters of application and commitment letters should be included, if available.

(d) Estimated loan-to-development cost ratio for the guaranteed loan.

(e) Proposed Agency guarantee percentage for guaranteed loan (under no condition can the percentage exceed 90 percent of the loan amount).

(f) Collateral—all security, in addition to the real property, proposed to secure the loan.

(3) The Proposed Borrower

(a) The name of the borrower and the type of ownership entity. List the general partners if a limited partnership, officers if a corporation or members of a Limited Liability Corporation.

(b) Borrower's contact name, mailing address, phone and fax numbers, and e-mail address.

(c) Certification that the borrower or principals of the ownership are not barred from participating in Federal housing programs and are not delinquent on any Federal debt.

(d) Borrower's unaudited or audited financial statements.

(e) Statement of borrower's housing development experience.

(4) Lender Eligibility and Approval Status

Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender's application for approved lender status can be submitted with the response but must be submitted to the National Office within 45 calendar days of the lender's receipt of the ''notice to proceed with application processing'' letter.

(5) Competitive Criteria

Information that shows how the proposal is responsive to the selection criteria specified in the Notice.

(6) Lender Certification

A commitment letter signed by the lender, on the lender's letterhead, indicating that the lender will make a loan to the borrower for the proposed project, under specified terms and conditions subject only to the issuance of a guarantee by the Agency.

The deadline for the submission of a complete application and application fee is 90 days from the date of notification of response selection. If the application and fee are not received by the appropriate State Office within 90 days from the date of notification, the selection is subject to cancellation, thereby allowing another response that is ready to proceed with processing to be selected. The State Office has the ability to extend this 90-day deadline for receipt of an application only for good cause.

Obligation of Program Funds: The RHS will only obligate funds to projects that meet the requirements for obligation, including having undergone a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA) and having submitted the $2,500

application fee and completed Form RD 3565–1 for the selected project.

Conditional Commitment: Once required documents for obligation and the application fee are received and all NEPA requirements have been met, the Rural Development State Office will issue a conditional commitment, which stipulates the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

Issuance Of Guarantee: The RHS State Office will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the completion of any conditional requirements.

Dated: February 16, 2007.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E7–3172 Filed 2–23–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD

[January 21, 2007 through February 20, 2007]

Firm	Address	Date petition accepted	Product
Prosco, Inc. DBA Ideal Products.	*227 East Main Street, Sykesville, PA 15865.*	1/23/2007	*Hunting and fishing apparel.*
Industrial Molded Rubber Products Inc. DBA Northern Prairie Polymers, LLC.	*20015 176th St., Big Lake, MN 55309.*	1/23/2007	*Custom molded products such as seals, coatings, belts, gaskets, packings and hoses.*
Tommila Brothers, Inc	*497 Route 12N P.O. Box 188, Troy, NH 03465.*	1/24/2007	*High quality lumber for flooring, molding, and architectural millwork for a variety of industries.*
St. Marys Carbon Company	*259 Eberl Street, St. Marys, PA 15857.*	1/24/2007	*Carbon and metal powder products.*
Automated Production Assemblies, Inc.	*33957 Doreka, Fraser, MI 48026.*	1/29/2007	*Metal automotive components.*
Spring Health Products, Inc	*705 General Washington Ave. Ste 701, Norristown, PA 19403.*	1/31/2007	*Dental equipment.*
Broncorp Manufacturing, Inc	*5957 Broadway, Denver, CO 80216.*	1/31/2007	*Packing containers and cutlery.*
Econocorp, Inc	*72 Pacella Park Drive, Randolph, MA 02368.*	1/30/2007	*Packaging machinery.*
Alston Tascomb, Inc	*13512 Vintage Pl., Chino, CA 91710.*	1/31/2007	*Contract center solutions and telephone answering systems.*
Disposable Instrument Company, Inc.	*14248 Santa Fe Trail Dr., Shawnee Mission, KS 66215–1238.*	1/30/2007	*Standard wound drainage trocars and OEM trocars.*
Narrow Fabric Industries Corporation.	*701 Reading Ave., Reading, PA 19611.*	2/16/2007	*Narrow elastic and lace products.*

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 20, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E7–3174 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Erika P. Jardine, aka Eriklynn Pattie Jardine, aka Erika Pattie Jardine; In the Matter of: Erika P. Jardine, aka Eriklynn Pattie Jardine, aka Erika Pattie Jardine, P.O. Box 3633, Vista, CA 92085; Order Denying Export Privileges

A. Denial of Export Privileges of Erika P. Jardine

On February 22, 2006, in the U.S. District Court in the Eastern District of Pennsylvania, following a plea of guilty, Erika P. Jardine (''Jardine'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''), Jardine pled guilty of willfully exporting and attempting to export and causing to export, from the United States to European Countries, defense articles, that is small arm protective inserts (SAPIs), which were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export.

In addition to the violation of the AECA, Jardine was convicted of theft and selling of U.S. property, in violation of 18 U.S.C. 641(2000). Jardine was sentenced to six months imprisonment followed by three years of supervised release and fined $6,500. Her scheduled release date is February 28, 2007.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (2000))(''Act'')[1] and Section 766.25 of the Export Administration Regulations[2] provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * Section 38 of the Arms Export Control Act,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Jardine's conviction for violating the AECA, and have provided notice and an opportunity for Jardine to make a written submission to the Bureau of Industry and Security as provided in Section 766.25 of the Regulations. I have also received a written submission from Jardine explaining why she does not believe a 10 year denial is appropriate and have decided, following consideration of her submission and consultations with the Office of Export Enforcement, including the Director, Office of Export Enforcement, to deny Jardine's export privileges under the Regulations for a period of seven years from the date of Jardine's conviction.

Accordingly, it is hereby *Ordered:*

1. Until February 22, 2013, Erika Jardine, aka Eriklynn Pattie Jardine, aka Erika Pattie Jardine, P.O. Box 3633, Vista, CA 92085, and when acting for or on behalf of Jardine, her representatives, assigns, agents, or employees, (collectively referred to hereinafter as the ''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Erika Jardine by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be

[1] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[2] The Regulations are currently codified at 15 CFR Parts 730–774 (2006).

made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until February 22, 2013.

VI. In accordance with Part 756 of the Regulations, Jardine may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Jardine. This Order shall be published in the **Federal Register**.

Dated: February 9, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07–842 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 26, 2007.

FOR FURTHER INFORMATION CONTACT: David Dirstine, AD/CVD Operations Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4033.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 2006, the Department of Commerce (the Department) published its preliminary results of administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania. See *Cetain Hot–Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 62082 (October 23, 2006). The period of review is November 1, 2004, through October 31, 2005. The final results of review are currently due no later than February 20, 2007.

Extension of Time Limit for Final Results

The Tariff Act of 1930, as amended (the Act), provides at section 751(a)(3)(A) that the Department will issue the final results of an administrative review of an antidumping duty order within 120 days after the date on which the preliminary determination is published. Section 751(a)(3)(A) of the Act provides further that, if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 120-day period to 180 days.

The Department has determined that it is not practicable to complete the preliminary results by the current deadline of February 20, 2007, because it has extended the briefing schedule for interested parties and needs additional time to consider the issues raised in case and rebuttal briefs.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 45 days to April 6, 2007.

We are issuing this notice in accordance with section 751(a)(3)(A) of the Act.

Dated: February 16, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–3235 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Preliminary Results of Countervailing Duty New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review of the countervailing duty (''CVD'') order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2005, through December 31, 2005. We preliminarily find that the net subsidy rate for the company under review is *de minimis*. *See* the ''Preliminary Results of Review'' section of this notice, *infra*. Interested parties are invited to comment on these preliminary results. *See* the ''Public Comment'' section, *infra*.

EFFECTIVE DATE: February 26, 2007.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on certain welded carbon steel pipe and tube products from Turkey. *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986). On March 30, 2006, the Department received a request from Toscelik Profil ve Sac Endustrisi A.S. and its affiliated export trading company, Tosyali Dis Ticaret A.S. (collectively referred to as ''Toscelik''), a producer and exporter of subject merchandise, to initiate a new shipper review. On May 2, 2006, the Department initiated a CVD new shipper review covering the period January 1, 2005, through December 31, 2005. *See Certain Welded Carbon Steel Standard Pipe from Turkey: Notice of Initiation of Countervailing Duty New Shipper Review*, 71 FR 25814 (May 2, 2006); *see also*, Memorandum to the File, ''Request for CVD New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey,'' (April 26, 2006) (''Initiation Checklist'').[1]

On May 8, 2006, the Department issued a questionnaire to Toscelik and the Government of the Republic of Turkey (''the GOT''); we received the GOT's questionnaire response on July 6, 2006, and Toscelik's response on July 10, 2006. On September 6, 2006, we issued supplemental questionnaires to Toscelik and the GOT. We received Toscelik's and the GOT's supplemental questionnaire responses on October 13, 2006.

On September 20, 2006, the Department published in the **Federal Register** an extension of the deadline for the preliminary results of this new shipper review. *See Certain Welded Carbon Steel Standard Pipe from Turkey: Extension of Time Limit for Preliminary Results of Countervailing*

[1] A public version of the Initiation Checklist is available on the public record in the Department's Central Records Unit (≥CRU≥) (room B-099).

Duty New Shipper Review, 71 FR 54979 (September 20, 2006).

On January 8 through January 12, 2006, we conducted verification in Ankara, Turkey, of the questionnaire responses submitted by the GOT, and in Iskenderun, Turkey, of the questionnaire responses submitted by Toscelik.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The only company subject to this review is Toscelik. This review covers eleven programs.

Additionally, we recently completed the companion antidumping (''AD'') new shipper review with respect to the AD order covering the same subject merchandise. *See Final Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 71 FR 43444 (August 1, 2006), and accompanying Issues and Decision Memorandum (''AD NSR Memo'').[2] In that review, we thoroughly examined the issue of whether Toscelik's sales were bona fide. *See* AD NSR Memo, at Comment 1. We, therefore, have not revisited that question in this review.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (''HTSUS'') as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The period for which we are measuring subsidies is January 1, 2005, through December 31, 2005.

Company History

As noted above, Toscelik Profil ve Sac Endustrisi A.S. (''Toscelik Profil'') and its affiliated foreign trade company, Tosyali Dis Ticaret A.S. (''Tosyali''), produce and export subject merchandise. Toscelik Profil and Tosyali are wholly owned by Tosyali Holding, a Turkish holding company. Toscelik Profil, which produces subject merchandise for both the domestic and export markets, was established in 1992.[3] Tosyali, founded in 1996, is the exporter of record with respect to Toscelik Profil's export sales and sells subject merchandise to unaffiliated customers in the United States. Toscelik Profil and Tosyali did not export, and was not affiliated with an exporter or producer that did export to the United States during the period of investigation (*i.e.*, 1985). *See* Initiation Checklist.

Subsidies Valuation Information

Benchmark Interest Rate

To determine whether government–provided loans from the Export Credit Bank of Turkey (''Export Bank'') conferred a benefit to the company, the Department uses, where possible, company–specific interest rates for comparable commercial loans. *See* 19 CFR 351.505(a). Toscelik Profil, however, did not have commercial short–term loans denominated in Turkish lira (''YTL'') that were comparable to the pre–shipment loans against which it paid interest during the POR. *See* Memorandum to the File, ''Verification of the Questionnaire Responses Submitted by Toscelik Profil ve Sac Endustrisi A.S. and its affiliated exporter, Tosyali Dis Ticaret A.S.,'' at 7 (February 15, 2007) (''Toscelik Report'').[4]

Where no company–specific benchmark interest rates are available, the Department's regulations direct us to use a national average interest rate as the benchmark. *See* 19 CFR 351.505(a)(3)(ii). According to the GOT, however, there is no official national average short–term interest rate available.[5] Therefore, we have calculated the benchmark interest rate for short–term YTL–denominated loans based on short–term interest rate data for 2005, as reported by *The Economist*.[6]

To calculate the benchmark, we sourced short–term interest rates to represent quarterly rates for Turkey in 2005. Specifically, we sourced the interest rate reported in the last weekly publication of *The Economist* for each quarter of 2005, *i.e.*, the March 26, 2005, June 25, 2005, September 24, 2005, and December 24, 2005, editions. We then simple averaged those rates to calculate an annual short–term interest rate for Turkey.[7] We then compared the nominal benchmark average interest rate with the nominal interest rates that the company paid against the Pre–Shipment Export Credit YTL–denominated loans.[8] *See* Memorandum to the File, ''Calculations for the Preliminary Results of the New Shipper Review of the Countervailing Duty Order on Certain Welded Carbon Steel Standard Pipe from Turkey,'' at 2 (February 20, 2007) (''Preliminary NSR Calculations''). This methodology is consistent with the Department's practice. *See Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006) (''*2004 Pipe Final*''), and accompanying Issues and Decision Memorandum, at ''Benchmark Interest Rates'' under ''Subsidies Valuation Information'' and Comment 1 (''*2004 Pipe Memorandum*'').

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Deduction from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law allows companies that operate internationally to claim a lump sum tax deduction equal to 0.5 percent of the foreign exchange revenue earned from exports and other international activities.[9] The deduction may also be used to cover certain undocumented expenses, which were incurred through international activities, that would otherwise be non–deductible for tax purposes (*e.g.*, expenses paid in cash, such as for lodging, gasoline, and food).

[2] A public version of the memorandum is available on the public record in CRU (room B-099).

[3] Toscelik Profil was founded as ''Celik Endustri Urunleri San. ve Insaat Malz'' in 1992. The company name was subsequently changed to its current name, ''Toscelik Profil ve Sac Endustrisi A.S.'' in 1997.

[4] A public version of the verification report is available on the public file in the Department's CRU (room B-099).

[5] *See* GOT's Initial Questionnaire Response, at 14 (July 6, 2006). A public version of the GOT's response is available on the public record in the CRU.

[6] In each issue, *The Economist* reports short-term interest data on a percentage per annum basis for select countries.In each issue, The Economist reports short-term interest data on a percentage per annum basis for select countries.

[7] The short-term YTL interest rates sourced from The Economist do not include commissions or fees paid to commercial banks, *i.e.*, they are nominal rates. *See Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination*, 67 FR 55815 (August 30, 2002) (''Wire Rod''), and accompanying Issues and Decision Memorandum, at ''Benchmark Interest Rates'' (''Wire Rod Memorandum'').

[8] It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. *See Countervailing Duties; Final Rule*, 63 FR 65348, 65362 (November 25, 1998) (''*Preamble*''). Toscelik Profil, however, was able to break-out the bank commission it paid against the loans and report separately the interest rates set on the loans by the Export Bank. Therefore, for purposes of these preliminary results, we have conducted our loan comparison on a nominal interest rate basis.

[9] These actions include construction, repair, installation, and transportation activities that occur abroad.

Consistent with the *2004 Pipe Final*, we preliminarily find that this tax deduction is a countervailable subsidy. *See 2004 Pipe Memorandum*, at ''Deduction from Taxable Income for Export Revenue'' under ''Programs Determined To Be Countervailable.'' The deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (''the Act''), because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is specific under section 771(5A)(B) of the Act because its receipt is contingent upon export performance. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings.

During the POR, Tosyali used the deduction with respect to its 2004 income taxes to cover certain expenses, incurred through international activities, and not as a lump sum deduction claimed on its 2004 tax return. Specifically, Tosyali took the deduction directly on its income statement within the ''marketing and selling expenses'' account. The deduction within this expense account reduced Tosyali's taxable income. *See* Toscelik Report, at 7–8.

The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for this program, we calculated the tax savings realized by Tosyali in 2005, as a result of the deduction for export earnings. We then divided that benefit by the company's total export sales for 2005. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.20 percent *ad valorem*.

B. Pre–Shipment Export Credits

Turkey's Export Bank provides short–term pre–shipment export loans to exporters through intermediary commercial banks. This loan program is designed to support export–related firms. Loans are made to exporters who commit to export within a specified period of time. These loans cover up to 100 percent of the FOB export value and may be extended for a maximum of 360 days. These loans are denominated in either YTL or foreign currency. The interest rates charged on these pre–shipment loans are set by the Export Bank. In several previous determinations, the Department found this program to be countervailable because receipt of the loans is contingent upon export performance and the interest rates paid on these loans are less than the amount the recipient would pay on comparable commercial loans. *See, e.g., 2004 Pipe Memorandum*, at ''Pre–Shipment Export Credits'' under ''Programs Determined To Be Countervailable.''

We also found that this program is an untied export loan program because the loans are not specifically tied to a particular destination at the time of approval and the borrower only has to show that the export commitment was satisfied (*i.e.*, exports amounting to the FOB value of the credit) to close the loan. *See id.* In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings. During the POR, Toscelik Profil paid interest against pre–shipment export credit loans denominated in YTL.

Pursuant to section 771(5)(E)(ii) of the Act, a benefit shall be treated as conferred ''in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' To calculate the amount of interest the recipient would pay on a comparable YTL–denominated commercial loan, in absence of a company–specific interest rate, we have used, as the benchmark rate, a simple average of short–term interest rates for Turkey as reported by *The Economist* in 2005. *See* ''Benchmark Interest Rate'' section, *supra*, for more information.

Using this benchmark rate, we continue to find the pre–shipment export credit loans countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could obtain on the market. Therefore, the loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that Toscelik Profil made on the loans and the payments the company would have made on comparable commercial loans during the POR. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

To determine the benefit, we calculated the difference between the actual interest paid on the pre–shipment loans during the POR and the interest that would have been paid using the benchmark interest rate. We then divided the benefit amount by the company's total export sales for 2005. On this basis, we preliminarily determine the net countervailable subsidy under this program to be less than 0.005 percent *ad valorem*.[10]

II. Program Preliminary Determined To Not Confer Countervailable Benefits

A. Inward Processing Certificate Exemption

Under the Inward Processing Regime (''IPR''),[11] companies are exempt from paying customs duties and value added taxes (''VAT'') on raw material imports to be used in the production of exported goods. Companies may choose whether to be exempted from the applicable duties and taxes or have them refunded upon export. Under the exemption system, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment indicated on the Inward Processing Certificate (''IPC'').

To participate in this program, a company must hold an IPC, which lists the amount of raw materials to be imported and the amount of product to be exported. There are two types of certificates: D–1 and D–3. During the POR, Toscelik Profil utilized D–1 certificates to import raw materials for use in the production of pipe and tube exports. We verified that Tosyali did not have D–1 certificates. *See* Memorandum to the File, ''Verification of the Questionnaire Responses Submitted by the Government of the Republic of Turkey,'' at 7 (February 15, 2007) (''GOT Report'').[12] We also verified that neither Toscelik Profil nor Tosyali had D–3 certificates. *See id.*[13]

An IPC specifies the maximum quantity of inputs that can be imported under the certificate. The value of imported inputs may not exceed the value of the exported products. In setting the amount of raw material inputs that can be imported, the GOT

[10] Where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total CVD rate. *See, e.g., Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 39998 (July 12, 2005), and accompanying Issues and Decision Memorandum at ''Purchases at Prices that Constitute More than Adequate Remuneration.''

[11] The IPR is governed by the following GOT provisions: Customs Code No. 4458 (Articles 80, 108, 111, 115, and 121), IPC Council of Ministers' Decree No. 2005/8391, and Communique of IPR No. Export 2005/1.

[12] A public version of the verification report is available on the public file in the Department's CRU (room B-099).

[13] For more information about D-3 certificates, *see* GOT Verification Report, at 5; *see also, 2004 Pipe Memorandum*, at ''Inward Processing Certificate Exemption'' under ''Programs Determined To Not Confer Countervailable Benefits.''

relies on yield rates to determine the amount of each raw material input required to produce a given unit of exported product. The yield rate used for each input is either a company–specific yield rate or is an industry average rate set by the Undersecretariat of Foreign Trade (''UFT'') based on its knowledge of production processes, production capacity reports submitted by companies, and declarations by independent engineers regarding yield rates for raw materials consumed in the production of finished goods. *See* GOT Report, at 5–6. The GOT refers to those yield rates when reviewing a company's input/output usage table to ensure that a company's expected export quantities are sufficient to cover the quantity of input imported duty–free under the program.[14]

If a company applies for an IPC using a company–specific yield rate for the raw material to be imported, the company's production data must be validated by independent engineers and the company's production process is subject to verification by the UFT. See id. At verification, we confirmed, through examination of the company's production records, that the yield rate used by Toscelik Profil to apply for D–1 certificates accurately reflects the company's production performance. *See* Toscelik Report, at 11.

Pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. With regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

During the POR, Toscelik Profil received duty and VAT exemptions under D–1 certificates on certain imported inputs used in the production of steel pipes and tubes and not duty or VAT refunds. There is no evidence on the record of this review that demonstrates that the amount of exempted inputs imported under the program was excessive or that Toscelik Profil used the imported inputs for any other product besides those exported. *See* Toscelik Report, at 10–12. In addition, consistent with *2004 Pipe Final*, we verified that the GOT continues to have a monitoring system in place to confirm which inputs are consumed in the production of the exported products and in what amounts, and that the system remains reasonable for the purposes intended.[15] *See* GOT Report, at 5–8.

Therefore, we preliminarily determine that, during the POR, the tax and duty exemptions, which Toscelik Profil received on imported inputs under D–1 certificates of the IPR, did not confer countervailable benefits as the company consumed the imported inputs in the production of exported products, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits on Toscelik Profil because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Further, because neither Toscelik Profil nor Tosyali had D–3 certificates during the POR, we preliminarily determine that this aspect of the IPR was not used.

III. Programs Preliminarily Determined To Not Be Used

We examined the following programs and preliminarily determine that the respondents did not apply for or receive benefits under these programs during the POR:

A. VAT Support Program (Incentive Premium on Domestically Obtained Goods)[16]
B. Pre–Export Credit Loans
C. Foreign Trade Company Loans
D. Post–Shipment Export Loans
E. Pre–Shipment Rediscount Loans
F. Subsidized Turkish Lira Credit Facilities
G. Subsidized Credit for Proportion of Fixed Expenditures
H. Regional Subsidies.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated a subsidy rate for Toscelik for the period January 1, 2005, through December 31, 2005. We preliminarily determine that the net countervailable subsidy rate is 0.20 percent *ad valorem*, which is *de minimis*, pursuant to 19 CFR 351.106(c).

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailing duties all shipments of subject merchandise produced by Toscelik entered, or withdrawn from warehouse, for consumption from January 1, 2005, through December 31, 2005. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise produced by Toscelik, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this new shipper review.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, pursuant to 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department, pursuant to 19 CFR 351.309(d). Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public

[14] For more information on how the UFT confirms the appropriate amount of raw material imports for the export commitment amount under an IPC, *see 2004 Pipe Memorandum*, at ''Inward Processing Certificate Exemption'' under ''Programs Determined To Not Confer Countervailable Benefits'' (please note that ''waste/usage rate'' has the same meaning as ''yield rate''); *see also*, GOT's Questionnaire Response, at Exhibit 5, pages 10-11 (July 14, 2006).

[15] In the *2004 Pipe Final*, the Department found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs are consumed in the production of the exported product and in what amounts, and that the system is reasonable for the purposes intended. *See 2004 Pipe Memorandum*, at ''Inward Processing Certificate Exemption'' under ''Programs Determined To Not Confer Countervailable Benefits.''

[16] Although we found this program to be terminated in *Wire Rod*, residual payments for purchases made prior to the program's termination were permitted. *See Wire Rod Memorandum*, at 11.

hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results, pursuant to 19 CFR 351.310(d)(1).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. *See* 19 CFR 351.305(b)(3). The Department will publish the final results of this new shipper review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 20, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–3237 Filed 2–23–07; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of completion of panel review of the final affirmative antidumping determination made by the U.S. International Trade Administration, in the matter of Certain Softwood Lumber Products from Canada, Secretariat File No. USA–CDA–2002–1904–02.

SUMMARY: Pursuant to the Decision of the Binational Panel dated January 5, 2007, respecting the motions to dismiss the final affirmative antidumping determination filed by the United States Department of Commerce and the Government of Canada, this proceeding was completed on February 16, 2007.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On January 5, 2007, the Binational Panel issued an order, which concluded that this matter has been rendered moot and granted the motions of the Administering Authority (the International Trade Administration) and the Government of Canada to dismiss this proceeding. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists discharged from their duties effective February 16, 2007.

Dated: February 20, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–3156 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021607H]

Notice of Intent to Prepare an Environmental Assessment for Implementation of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

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

ACTION: Notice; intent to prepare an environmental assessment; request for written comments.

SUMMARY: NMFS announces its intent to prepare an Environmental Assessment (EA) in accordance with the National Environmental Policy Act of 1969 (NEPA) on the immediate Federal actions required to implement the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). Although NEPA does not require publication of a notice-of-intent (NOI) to prepare an EA or a formal scoping process, it encourages public input opportunities. Therefore, NMFS is issuing this NOI to facilitate public involvement. The scoping process for the EA will include a 30-day period for submission of written comments on issues the U.S. should consider when, once a party to the Convention, implementing its relevant provisions.

DATES: Comments must be received by 5 p.m., local time, on March 28, 2007.

ADDRESSES: You may submit written comments by any of the following methods:

- E-mail: *initialaction.wcpfc@noaa.gov*. Include in the subject line the following document identifier: ''Scoping for Initial Action WCPFC''. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Mail or Hand Delivery: William L. Robinson, Regional Administrator, National Marine Fisheries Service, Pacific Islands Region, 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814.
- Fax: (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS, Pacific Islands Region; telephone: (808) 944–2200; fax: (808) 973–2941; e-mail: *tom.graham@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention was opened for signature in Honolulu on September 5, 2000, and entered into force in June 2004. The Convention established a management body called the Western and Central Pacific Fisheries Commission (Commission), comprised of those States and entities that are bound to the Convention. The United States played an active role during all of the negotiating sessions and the preparatory conferences prior to entry into force. Domestic procedures allowing for U.S. adherence to the Convention, and thus membership to the Commission, are currently being processed by the Administration. Upon completion of these procedures, and action by the President, the U.S. will deposit its instrument of accession with the Convention's depository in 2007, and become a party to the Convention and a Member of the Commission. The Territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands will also be eligible to participate in the Commission, in accordance with provisions of the Convention and the Commission's Rules of Procedure governing the participation of territories.

The current Parties to the Convention are: Australia, Canada, China, Cook Islands, European Community, Federated States of Micronesia, Fiji, France (extends to French Polynesia, New Caledonia and Wallis and Futuna), Japan, Kiribati, Korea, Marshall Islands, Nauru, New Zealand (extends to Tokelau), Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon

Islands, Tonga, Tuvalu, and Vanuatu. Chinese Taipei (Taiwan), as a fishing entity, has also agreed to be bound by the Convention.

The Convention Area comprises approximately all waters of the Pacific Ocean to the west of the 150 meridian of west longitude. A map showing the exact boundaries of the Convention Area can be found on the Commission's website at: *http://www.wcpfc.int/pdf/Map.pdf*.

Initial Action by NMFS Necessary to Implement the Convention

The United States will implement the provisions of the Convention within the area of application of the Convention (the Convention Area) under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA), and possibly under authorities of the High Seas Fishing Compliance Act of 1995 (HSFCA), the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the South Pacific Tuna Act of 1988 (SPTA), and other applicable law.

The HSFCA implements the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993, and establishes a system of permitting, reporting, and regulation for U.S. vessels fishing on the high seas. The MSA governs the conduct of U.S. fisheries that operate in federal waters (and in certain circumstances in both federal waters and beyond federal waters on the high seas), primarily through fishery management plans developed by the Regional Fishery Management Councils and approved by the Secretary of Commerce. The SPTA implements the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, and includes licensing and other requirements and restrictions for U.S. purse seine vessels fishing in the area of application of the Treaty.

The WCPFCIA, which implements the Convention, was enacted in January 2007. Authority to administer and enforce the WCPFCIA, including to promulgate regulations, is given to the Secretary of Commerce (Secretary). The Secretary is directed to consult with the Secretary of State, the agency in which the Coast Guard is operating, and other appropriate departments and agencies of the United States in promulgating regulations.

To implement the Convention for the United States, NMFS will need to take some actions immediately and some actions in the future. Certain Convention provisions require no action on the part of NMFS because the United States is already compliant as a result of existing legal requirements.

The actions considered in this EA, collectively referred to here as NMFS' ''initial action'', are limited to the Convention provisions that are ready for implementation. These are related to the basic and specific provisions and requirements in the Convention that require no further action by the Commission for NMFS to be able to develop and implement regulations. It is important that this initial action be taken immediately to ensure the United States is able to meet its obligations under the WCPFCIA and that U.S. vessels operating in the Convention Area are in compliance with the Convention.

Examples of Convention provisions that NMFS considers ready for initial action include the following: authorizing vessels fishing for highly migratory fish stocks on the high seas in the Convention Area; requiring that vessels accommodate observers from the regional vessel observer program; requiring that U.S. vessels accept boarding and inspection by authorized inspectors of other members while on the high seas in the Convention Area; requiring vessels on the high seas in the Convention Area to carry and use position-fixing transmitters as part of a vessel monitoring system (VMS); and prohibiting (with certain exemptions) purse seine vessels from transshipping at sea within the Convention Area.

In the case of the authorization-to-fish requirement, reasonable alternatives for agency action might include: rely solely on the current high seas permitting requirements under the HSFCA (no action alternative); develop a specific Convention-related endorsement requirement linked to the already-required HSFCA permits; or introduce a new stand-alone WCPFC permit requirement.

Certain Convention provisions ready for initial action, such as the prohibition on at-sea transshipping by purse seiners (subject to any specific exemptions adopted by the Commission), leave no room for the development of reasonable alternatives. In such cases, that is, when the agency has no discretion in how to implement a provision, NEPA does not apply.

The United States is currently partially compliant with some Convention provisions. The VMS requirements are an example. United States' purse seine and longline vessels operating in the Convention Area are currently required under the SPTA and MSA to carry VMS transmitters if directed by NMFS; provision of the transmitters' signals to the Commission is the only action needed for compliance. However, a small number of distant-water albacore troll vessels that operate in the Convention Area are not currently required to carry VMS transmitters. NMFS will likely need to consider alternatives related to the installation of the transmitters and their maintenance.

While the initial action generally will not include the Commission's Conservation and Management Measures (CMMs), some CMMs adopted by the Commission are simply further elaborations on procedures for basic Convention provisions; for example, CMM 2006–08, on high seas boarding and inspection procedures, establishes the procedures needed to activate the Convention's basic provision on high seas boarding and inspection. CMMs such as this one are considered ready for initial action and will be considered with their underlying Convention provisions in this EA.

Examples of Convention provisions that are not ready for initial action are those that require further elaboration by the Commission, and most CMMs adopted by the Commission. Some CMMs may be partially or fully implemented under the MSA. The roles of the Western Pacific, Pacific, and North Pacific Fishery Management Councils in such cases will be clarified, in part based on a memorandum of understanding between the Secretary and the councils, that is to be developed under the WCPFCIA. In any case, these actions are outside the scope of this EA.

The full text of the Convention can be obtained from the Commission's website at: *http://www.wcpfc.int/convention.htm*.

At this time, NMFS is not considering authorizing new fisheries and no major changes to the operations of current fisheries in the Convention Area are anticipated. The U.S. purse-seine, longline, and distant-water troll fleets that operate in the Convention Area are currently subject to permitting and other requirements under the HSFCA, MSA, and SPTA and the conduct of these fisheries has been analyzed elsewhere with respect to NEPA.

Public Involvement

In late 2005, NMFS held scoping meetings to provide general information about, and seek public input on, potential regulatory and other actions to be taken by the Agency should the

United States ratify the Convention and enact implementing legislation (notice published October 19, 2005, at 70 FR 60795). With the enactment of implementing legislation in the form of the WCPFCIA in January 2007, and, following action by the President, the need to fulfill the immediate obligations of the United States under the Convention, NMFS seeks to build on the earlier scoping process and is accepting additional comments on the scope of issues to be included in this EA.

Authority: 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 5501 *et seq.*; 16 U.S.C. 973 *et seq.*; Pub. L. 109–479, 120 Stat. 3575.

Dated: February 20, 2007.

James P. Burgess,

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

[FR Doc. E7–3240 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011107D]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Conducting Precision Strike Weapons Testing and Training by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization (LOA) to take four species of marine mammals, by harassment, incidental to testing and training during Precision Strike Weapons (PSW) tests in the Gulf of Mexico (GOM), a military readiness activity, has been issued to Eglin Air Force Base (AFB).

DATES: This authorization is effective from February 20, 2007, through February 19, 2008.

ADDRESSES: The application and LOA are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or by contacting one of the individuals mentioned below (See **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead or Candace Nachman, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization, in the form of annual LOAs, may be granted for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to PSW testing and training within the Eglin Gulf Test and Training Range in the GOM, were published on November 24, 2006 (71 FR 67810) and remain in effect from December 26, 2006 through December 27, 2011. The four species that Eglin AFB may take in small numbers during PSW testing and training are Atlantic bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), dwarf sperm whales (*Kogia simus*), and pygmy sperm whales (*Kogia breviceps*).

Issuance of the annual LOA to Eglin AFB is based on findings made in the preamble to the final rule that the total takings by this project would result in no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring and reporting requirements. Without any mitigation measures, a small possibility exists for one bottlenose dolphin and one spotted dolphin to be exposed to blast levels from the PSW testing sufficient to cause mortality. Additionally, less than two cetaceans might be exposed to noise levels sufficient to induce Level A harassment (injury) annually, and as few as 31 or as many as 52 cetaceans (depending on the season and water depth) could potentially be exposed (annually) to noise levels sufficient to induce Level B harassment in the form of temporary (auditory) threshold shift(TTS).

While none of these impact estimates consider the proposed mitigation measures that will be employed by Eglin AFB to minimize potential impacts to protected species, NMFS has authorized Eglin AFB to lethally take one marine mammal, two marine mammals by Level A harassment, and up to 53 marine mammals by Level B harassment (TTS) annually. However, the proposed mitigation measures described in the final rule (71 FR 67810, November 24, 2006) and the LOA are anticipated to reduce potential impacts to marine mammals in both numbers and degree of severity. These measures include a conservative safety range for marine mammal exclusion; incorporation of aerial and shipboard survey monitoring efforts in the program both prior to and after detonation of explosives; and a prohibition on detonations whenever marine mammals are detected within the safety zone, may enter the safety zone at the time of detonation, or if weather and sea conditions preclude adequate aerial surveillance. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements, and receipt of reports required by the LOA.

Dated: February 20, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–3242 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB); Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Times and Dates: The meeting will be held Tuesday March 6, 2007, from 10:30 a.m. to 5:30 p.m. and Wednesday March 7, 2007, from 7:45 a.m. to 4 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held both days tentatively at the Hilton Washington DC/Silver Spring, 8727 Colesville Road, Silver Spring, Maryland 20910, pending approval of a purchase order. Please check the SAB Web site *http://www.sab.noaa.gov* for confirmation of the venue.

Status: The meeting will be open to public participation with a 30-minute public comment period on March 6 (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by March 2, 2007, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after March 2, 2007, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) NOAA's Regional Collaboration Initiative; (2) NOAA's Role in Research on Ocean Acidification; (3) Monitoring the Performance of Research in NOAA; (4) update on the NOAA Response to the Reports of the Hurricane Intensity Research Working Group (HIRWG); (5) update on the NOAA Response to the Report of the External Ecosystem Task Team (EETT); (6) Report on the Review of the Cooperative Institute for Climate Applications and Research (CICAR); and (7) Report on the Review of the Cooperative Institute for Oceanographic Satellite Studies (CIOSS). There will also be a joint meeting of the SAB and the NOAA Research Council.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910 (Phone: 301–734–1156, Fax: 301–713–1459, E-mail: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov*.

Dated: February 21, 2007.

Mark E. Brown,

Chief Financial Officer and Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 07–866 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–KD–P

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Initial Patent Applications.

Form Number(s): PTO/SB/01–01A, PTO/SB/02A–02B, PTO/SB/02LR, PTO/SB/03–03A, PTO/SB/04–07, PTO/SB/13PCT, PTO/SB/14, PTO/SB/16–19, PTO/SB/29–29A, PTO/SB/101–110, EFS-Web Original New Utility, Design, and Provisional Application Forms.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 10,677,624 hours annually.

Number of Respondents: 543,591 responses per year.

Avg. Hours Per Response: The USPTO estimates that it takes between 24 minutes to 30 hours to gather the information, prepare, and submit the various paper and electronic applications in this collection, depending on the situation and the amount of information that needs to be submitted. Since EFS-Web is still relatively new, the USPTO does not yet have a good indication of how much time is saved by filing applications or documents electronically via EFS-Web. Accordingly, the USPTO has estimated the same time to complete the electronically-filed applications as it does to complete those submitted in paper form. As experience with EFS-Web grows, the USPTO will reevaluate the time required for electronically-filed versus paper-filed applications and documents. The USPTO estimates that it takes between 30 minutes to 1 hour to gather the information, prepare, and submit the petitions in this collection.

Needs and Uses: This collection of information is required by 35 U.S.C. 131 and 37 CFR 1.16 through 1.84. An applicant must provide sufficient information to allow the USPTO to properly examine the application or petition to determine whether it meets the requirements outlined in the patent statutes and regulations. The various fee and application transmittal forms, the declarations, the cover sheets, and the petitions permit applicants to supply all of the information necessary to process the application and enables the USPTO to ensure that all of the information has been provided in order to process the application.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions, farms, the Federal Government, and State, Local, or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov*. Include ''0651–0032 copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 28, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: February 20, 2007.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E7–3182 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–16–P

PATENT AND TRADEMARK OFFICE

Practitioner Records Maintenance, Disclosure, and Discipline Before the Patent and Trademark Office

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: Susan.Brown@uspto.gov.* Include ''0651–0017 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Christine Nucker, U.S. Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–6071; or by e-mail at *oed@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Director of the United States Patent and Trademark Office (USPTO) has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. 2, 32 and 33). The USPTO Code of Professional Responsibility (37 CFR 10.20 to 10.112) describes how attorneys or practitioners should conduct themselves professionally and outlines their responsibilities for recordkeeping and reporting violations or complaints of misconduct to the USPTO, while the Investigations and Disciplinary Proceedings rules (37 CFR 10.130 to 10.170) dictate how the USPTO can discipline attorneys and practitioners.

The USPTO Code of Professional Responsibility requires an attorney or agent to maintain complete records of all funds, securities, and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties. These recordkeeping requirements are necessary to maintain the integrity of client property. Each State Bar requires its attorneys to perform similar record keeping.

The Code also requires an attorney or agent to report knowledge of certain violations of the Code to the USPTO. If the complaint is found to have merit, the USPTO will investigate and possibly prosecute violations of the Code. The Director of the Office of Enrollment and Discipline (OED) may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on noncompliance with the regulations.

Practitioners who have been excluded or suspended from practice before the USPTO must keep and maintain records of their steps to comply with the suspension or exclusion order. These records serve as the practitioner's proof of compliance with the order.

Some existing information requirements that were added into the last renewal of this collection are now being deleted in compliance with the Terms of Clearance issued by the Office of Management and Budget (OMB) with the previous Notice of Action for this collection on July 2, 2004. The Terms of Clearance stated that ''the agency is reminded of the statutory exemptions from the PRA in 44 U.S.C. 3518(c)(2)(B)(ii) for the conduct of administrative action or investigation involving an agency against specific individuals or entities.'' Therefore, the Responses to Requests/Requirements for Information, Requests for Extensions of Time to Respond, Responses to Settlement Offers, and Responses to Show Cause are being deleted from this collection.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when an individual is required to participate in the information collection.

III. Data

OMB Number: 0651–0017.

Form Number(s): There are no forms associated with this collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit; not-for-profit institutions.

Estimated Number of Respondents: 485 responses.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 2 to 60 hours, depending upon the complexity of the situation, to gather the necessary information, maintain the required records, prepare the complaint, and submit the various documents in this information collection to the USPTO.

Estimated Total Annual Respondent Burden Hours: 9,180 hours.

Estimated Total Annual Respondent Cost Burden: $328,200. At $30 per hour for a para-professional/clerical worker, the USPTO estimates $266,400 per year for salary costs associated with respondents for the record keeping requirements in this collection. For complaint/violation reporting, the USPTO predicts that half of the complaints will be filed by practitioners and that the remaining complaints will be split evenly between non-legal professionals and semi-professionals or skilled trades persons. The USPTO estimates that it will cost practitioners $304 per hour, non-legal professionals $156 per hour, and semi-professionals or skilled trades persons $60 per hour to submit a complaint, for a weighted average hourly rate of $206 per hour. Considering these factors, the USPTO estimates $61,800 per year for salary costs associated with filing a complaint, for a total annual respondent cost burden of $328,200 per year.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements)	26	330	8,580
Record Keeping Maintenance Under Suspension or Exclusion from the USPTO	60	5	300
Complaint/Violation Reporting	2	150	300

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Total		485	9,180

Estimated Total Annual (Non-hour) Respondent Cost Burden: $95. There are no capital start-up costs, maintenance costs or filing fees associated with this information collection. There are, however, postage costs.

The public may submit the complaints in this collection to the USPTO by mail through the United States Postal Service. If these documents are sent by first-class mail, a certificate of mailing for each piece of correspondence, stating the date of deposit or transmission to the USPTO, may also be included.

The USPTO expects that the complaints will be mailed to the USPTO with first-class postage, at an average cost of 63 cents. The USPTO estimates that up to 150 responses may be submitted by first-class mail, for a postage cost of $95 per year.

Therefore, this information collection has a total of $95 in annual (non-hour) respondent cost burden.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 8, 2007.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E7–3209 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

DATES: March 29, 2007, from 8 a.m. to 4 p.m., and March 30, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at Humphrey's Half Moon Inn, 2303 Shelter Island Drive, San Diego, California 92106.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B721, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than March 20, 2007.

Dated: February 16, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–854 Filed 2–23–07; 8:45 am]

BILLING CODE 5001–07–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning a Coherent Radar and Ladar Polarimeter

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Patent Application No. 10/631,218 entitled ''A Coherent Radar and Ladar Polarimeter,'' filed on July 25, 2003. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Office of Research and Technology Applications, SDMC–RDTC–TDL (Ms. Susan D. McRae), Bldg. 5220, Von Braun Complex, Redstone Arsenal, AL 35898.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Gilsdorf, Patent Attorney, e-mail: *joan.gilsdorf@smdc.army.mil* (256) 955–3213 or Ms. Susan D. McRae, Office of Research and Technology Applications, e-mail: *susan.mcrae@smdc.army.mil;* (256) 955–1501.

SUPPLEMENTARY INFORMATION: The invention pertains to determining the state of polarization of an electromagnetic signal. A polarimeter includes a receiver that receives a first polarization (P1) of the signal and splits the first polarization of the signal into the in-phase (I_{P1}) and quadrature (Q_{P1}) components, and receives a second poplarization (P2) of the signal and splits the second polarization of the signal into the in-phase (I_{P1}) and quadrature (Q_{P2}) components. The polarimeter may also include a processor that receives each of the in-phase and quadrature components ((I_{P1}), (Q_{P1}), (I_{P2}), and (Q_{P2})) of the first and second polarizations and determines the Stokes polarization vector components (s_0, s_1, s_2, and s_3) of the signal.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–851 Filed 2–23–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning the Monitoring and Tracking of Emergencies in Support of the E–911 System

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Patent No. 7,177,623 entitled ''Localized Cellular Awareness and Tracking of Emergencies,'' issued on February 13, 2007. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Office of Research and Technology Applications, SDMC–RDTC–TDL (Ms. Susan D. McRae), Bldg. 5220, Von Braun Complex, Redstone Arsenal, AL 35898.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Gilsdorf, Patent Attorney, e-mail: *joan.gilsdorf@smdc.army.mil* (256) 955–3213 or Ms. Susan D. McRae, Office of Research and Technology Applications, e-mail: *susan.mcrae@smdc.army.mil*; (256) 955–1501.

SUPPLEMENTARY INFORMATION: The invention pertains to establishing a three-way call between a wireless 911 caller, an emergency 911 dispatcher, and security/law enforcement personnel assigned to monitor a particular property. When a wireless 911 caller makes a 911 call from a specific property, the wireless network provides the caller's automatic location identification (ALI) information to a Localized Cellular Awareness and Tracking of Emergencies (LoCATE) System Unit (LSU) before the call is routed to the 911 dispatcher. The LSU uses the ALI information to determine the phone numbers of the surveillance property's assigned security/law enforcement personnel (*e.g.*, a building security guard) and provides these phone numbers to the wireless network. The LSU requests the wireless network to establish a three-way call between the 911 caller, the 911 emergency dispatcher, and the surveillance property's assigned security/law enforcement personnel. Thus, the invention provides a real-time communication link with a specific property's assigned security/law enforcement personnel, who can provide the most immediate response to an emergency occurring at the property before the arrival of the traditional or official first responders who are dispatched by the 911 dispatcher. Possible surveillance applications include buildings, campuses, national monuments, crime zones, airports, sports arenas, parades, amusement parks, bridges, borders, highways, waterways, special events, etc.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–852 Filed 2–23–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement To Address Operational Changes at Center Hill Dam, Center Hill Lake, DeKalb County, TN, That Could Affect Pool Elevations

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

ACTION: Notice.

SUMMARY: The Corps of Engineers (Corps) is preparing a Draft Environmental Impact Statement (DEIS) to address operational changes at Center Hill Dam that could affect pool elevations. Center Hill Dam impounds Center Hill Lake in central Tennessee. The DEIS is necessary to provide National Environmental Policy Act (NEPA) compliance to address changes that could include, but are not limited to water quality, aquatic, riparian, and terrestrial habitat, recreation, water supply, flood storage, economics, hydropower production, and safety as a result of operating Center Hill Lake below normal pool elevations for extended periods of time. Several engineering studies have identified a heightened level of risk at Center Hill Dam due to increasing seepage problems under and around the dam. Since March 2005, the Corps has attempted to keep fall, winter and early spring lake levels from extreme rises due to high inflow. Seepage problems are made worse during continual high lake levels. As a result, the Corps plans to maintain lower lake levels, but still within the operations curve, to reduce pressure on the dam foundation, abutments, and rim walls until a permanent remedy is in place. A major grouting project to address the dam seepage is scheduled for the fall of 2007, followed by installation of a cutoff wall through the earthen portions of the dam and adjoining rim walls. Although not anticipated, the Corps may have to lower the lake pool significantly below the operating pool should seepage conditions worsen, or new information determine this action is necessary to reduce risk. This notice serves to initiate the NEPA process. The Corps plans to prepare and circulate a DEIS which serves to cover possible impacts due to extreme changes in lake levels that could occur during the repair of the dam's foundation and abutments.

DATES: Written comments concerning issues to be considered in preparing the DEIS, must be received by the Corps of Engineers on or before March 28, 2007.

ADDRESSES: Written comments on issues to be considered in the DEIS shall be mailed to: Joy Broach, Project Planning Branch, Nashville District Corps of Engineers, P.O. Box 1070 (PM–P), Nashville, TN 37202–1070. Comments may also be e-mailed to: *CenterHill.Repair@lrn02.usace.army.mil*.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the notice, please contact Joy Broach, Environmental Team, (615) 736–7956, Linda Adcock, Center Hill Dam Seepage Major Rehabilitation Project Manager, (615) 736–5940, or Public Affairs Office, (615) 736–7161.

SUPPLEMENTARY INFORMATION:

1. Center Hill Dam was designed in the 1930s, constructed in the 1940s, and impounded in the early 1950s. The dam was built on karst geology using accepted engineering practices of the day. Since the 1960s, seepage flows through the dam's right abutment and left rim wall have been monitored, and recently became a concern with increased seepage and development of turbid flows through springs below the left rim wall. Signs of seepage increase through the main dam and saddle dam foundations have also been noted. A formal risk assessment is currently being conducted to determine if a need exists to significantly alter lake levels outside the normal operations curve to reduce risk to people and property.

2. A comprehensive plan for repairs has been approved; however, these repairs will take a number of years to implement. Until the repairs are sufficiently complete, the Corps has determined that it is in the public's interest to operate Center Hill Lake at the lower range of the operations curve. Many rehabilitation alternatives were considered and potential impacts analyzed and are discussed in the following NEPA documents: *Proposed Center Hill Dam Seepage Rehabilitation, Environmental Assessment, July 2005*; and *Proposed Center Hill Dam Seepage Rehabilitation, Environmental Assessment Supplement 1, March 2006.* These documents have been included by reference. No significant environmental and economic consequences are anticipated under current dam repair plans; however,

some water intakes and boat ramps may need to be extended for safe operation.

3. Though not expected, the Corps recognizes that if seepage conditions worsen, or new information determines that the lake elevations should be significantly changed to ensure the public's health, safety, and welfare; then the following resources could be significantly impacted:

(1) The cold-water fisheries both in the lake and tailwater;

(2) Water quality throughout the Caney Fork River and downstream in the Cumberland River;

(3) Federally listed threatened and endangered species;

(4) Designated uses of the waterway including fish and aquatic life, livestock watering and wildlife, irrigation;

(5) And economics including electric power production, municipal and industrial water supply, recreation, navigation, flood damage reduction, and disruption to communities, jobs, and other related factors.

4. *Current Actions to Reduce Risk.* Several actions have already been taken to reduce the risk. Prior to 2005, spring rains were captured in the reservoir to maximize downstream flood protection and hydropower generation. Beginning in March 2005, the pool was managed more aggressively to reduce inflow peaks and adhere more closely to the prescribed guide curves. In 2006, continuous surveillance was initiated at the dam. This involves providing patrols to monitor the dam, known seepage and trouble spots, and downstream areas. Currently, the Corps is conducting exploratory drilling to assess the limestone rock condition and key access points for future grouting activities. Additional coordination and exercises have been held with state and local emergency management agencies. These agencies will be provided flood inundation maps to help coordinate emergency evacuation planning. The Corps has improved its emergency notification procedures, increased instrumentation in, on, and around the dam, and conducted numerous public meetings to advise the public of problems with the dam.

5. A DEIS will be undertaken to review current actions taken and to consider other possible alternatives to reduce stress on the dam.

6. This notice serves to solicit comments from the public; Federal, State and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate impacts of these proposed activities. Any comments received by the agency will be considered in determining future operations. In the decision-making process, comments are used to assess impacts on public health and safety, endangered species, historic properties, water quality, water supply and conservation, economics, aesthetics, wetlands, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, energy needs, food and fiber production, mineral needs, considerations of property ownership, general environmental effects, and in general, the needs and welfare of the people.

7. Activities proposed that may require a review under the guidelines promulgated by the Administrator, Environmental Protection Agency (EPA), under authority of Section 404(b)(1) of the Clean Water Act (40 CFR part 230) include fill placement for water intake extensions, boat ramp extensions, and other mitigation actions.

8. Other Federal, State, and local approvals that may be required for proposed work are as follows:

a. Section 401 water quality certification from the Tennessee Department of Environment and Conservation.

b. Coordination with the U.S. Fish and Wildlife Service for the Endangered Species Act and Fish and Wildlife Coordination Act.

c. Coordination with the Tennessee Wildlife Resources Agency.

d. Coordination with the State Historic Preservation Officer and President's Advisory Council on Historic Preservation.

9. Significant issues to be analyzed in the DEIS include impacts to fisheries, tailwater mussel resources, water quality, flood control, recreation, navigation, water supply, electric power production, economics, and community development. The U.S. Fish and Wildlife Service has agreed to be a Cooperating Agency on the DEIS. A DEIS should be available in June 2007.

10. *Public Meetings:* At present, no public meetings have been scheduled to scope for potential issues to be evaluated in the DEIS. Requests for public meetings should be directed to Mr. William Peoples, Chief, Public Affairs Office, U.S. Army Corps of Engineers, Nashville District, Nashville, TN, 37202–1070. Mr. Peoples may be reached by telephone at (615) 736–7834.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–853 Filed 2–23–07; 8:45 am]

BILLING CODE 3710–GF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Development of an Inlet Management Plan That Includes the Repositioning and Realignment of the Main Ebb Channel of Rich Inlet and To Use the Material To Nourish Figure Eight Island, North of Wilmington, New Hanover County, NC

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from Figure ''8'' Beach Homeowners Association to develop a management plan for Rich Inlet that would mitigate chronic erosion on the northern portion of Figure Eight Island so as to preserve the integrity of its infrastructure, provide protection to existing development, and ensure the continued use of the oceanfront beach along the northernmost three miles of its oceanfront shoreline. Figure Eight Island is an unincorporated privately developed island located on the southeast coast of North Carolina, approximately eight miles north of Wilmington. The island is bordered to the south by Mason Inlet and Wrightsville Beach; and to the north by Rich Inlet and Lea-Hutaff Island, an undeveloped, privately-owned island.

The inlet management plan would involve the repositioning and realignment of the main ebb channel of Rich Inlet to a location closer to the north end of Figure Eight Island. The intended alignment is to be essentially perpendicular to the oceanfront shorelines of the adjacent islands. The new channel position would be periodically maintained with maintenance episodes dictated by natural shifts in the channel position that produce unfavorable shoreline responses on the north end of Figure Eight Island. While the main focus of the project is to relocate the main ebb bar channel, consideration will also be given to possible alterations in Nixon Channel and Green Channel to determine if such modification would enhance the stability of the new channel. Nixon Channel meanders along a southwesterly path on the landward

side of the north end of Figure Eight Island; connecting to the Atlantic Intracoastal Waterway (AIWW) at a point approximately two miles west of the Rich Inlet throat. Green Channel meanders to the northeast on the landward side of Lea-Hutaff Island and intersects with the AIWW approximately 1.75 miles north of the Rich Inlet throat.

Material dredged from the inlet and channels will be placed along the central and northern portions of Figure Eight Island and, if needed, along portions of Lea-Hutaff Island. The objective of the placement of beach fill along the Figure Eight Island's shoreline is to keep the design fill density less than 50 cubic yards/foot, to avoid the placement of a permanent static vegetation line. This beach fill would be maintained through a program of periodic beach nourishment events with the material extracted from the dredging of Rich Inlet to maintain the inlet in an optimum location.

DATES: A public scoping meeting for the Draft EIS will be held at Eaton Elementary School, located at 6701 Gordon Road, on March 1, 2007 at 6 p.m. Written comments will be received until March 29, 2007.

ADDRESSES: Copies of comments and questions regarding scoping for the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number 2006–41158–067, Post Office Box 1890, Wilmington, NC 28402–1890.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Mickey Sugg, Wilmington Regulatory Field Office, telephone: (910) 251–4811.

SUPPLEMENTARY INFORMATION:

1. *Project Description.* The Figure Eight Beach Homeowners Association proposes to develop an inlet management plan for Rich Inlet that will produce semi-permanent positive shoreline impacts on the extreme north end of Figure Eight Island. Through a variety of investigations, it has been determined that chronic erosion problems along the northern sections of Figure Eight Island have been directly linked to changes in the orientation and position of the main ebb channel through Rich Inlet. When the main ebb channel of the inlet is oriented toward the southeast or in the direction of Figure Eight Island, and positioned close to the north end of the island, the shoreline immediately south of the inlet tends to accrete. The accretion is associated with the wave sheltering (''breakwater effect'') provided by the south side of the ebb tide delta which also moves with the channel. During periods in which the main bar channel migrates to the north toward Lea-Hutaff Island and is oriented in a southeasterly direction, the north end of Figure Eight Island erodes. The northward movement of the main ebb channel is accompanied by the northward shift of the south side of the ebb tide delta away from the north end of Figure Eight Island, thus removing the ''breakwater effect'' afforded by the south side of the ebb tide delta.

A geomorphic analysis of Rich Inlet will be performed utilizing historical aerial photographs of Rich Inlet and the adjacent shorelines. The geomorphic analysis will be used to develop alternative channel positions and alignments that will assist in determining the desired changes on the north end of Figure Eight Island. The analysis will also assist in identifying any positive and/or negative impacts associated with Lea-Hutaff Island. The position and alignment of the main ebb channel design and design alternatives will be evaluated to determine the potential effects on the adjacent shorelines and natural resources located within the study area.

2. *Proposed Action.* The scope of activities for the formulation of the management plan for Rich Inlet will include the following engineering and geological investigations: (1) Detailed geomorphic studies of the inlet and its impacts on the shorelines of Figure Eight Island and Lea-Hataff Island; (2) numerical model simulations of various channel alternatives including possible modifications of Nixon and Green channels; (3) geotechnical investigations to determine sediment quality in the inlet and connecting channels; (4) compatibility analysis of the inlet material with the native beach material; and (5) and analysis of the physical impacts of the project on the inlet complex (including the adjacent marshes and connecting channels) and on Figure Eight Island and Lea-Hutaff Island.

The Figure Eight Island beach fill design will consist of the disposal material from Rich Inlet channel along the island shoreline in a general template of a horizontal berm constructed to an elevation of +6.0 feet NAVD (National Geodetic Vertical Datum) with a 1V:15H seaward slope. The width of the berm, which would begin near the seaward toe of the existing dune system, will depend on the volume of material removed from Rich Inlet to construct the new channel and the slope the material assumed during placement. Another design objective is to keep the design fill density less than 50 cubic yards/foot, to avoid the placement of a permanent static vegetation line. The volume of material that would be removed to construct the new channel will depend on the final design of the channel but could range between 500,000 cubic yards and 2,000,000 cubic yards. Some of the channel material may be used to construct or maintain the dune system on portions of Figure Eight Island. Existing profiles will be analyzed to identify the range of natural beach and dune elevations, widths, and slopes. The beach fill design will include beach fill construction templates and equilibrium cross-sections to estimate the seaward limit of cross-shore spreading over the project life and the reduction in beach width due to changes in profile shape following construction.

Beach planform performance will be evaluated based on the numerical modeling for the proposed projects. The numerical model evaluation of various channel alternatives will employ a process-based numerical model known as Delft3D developed by WL Delft Hydraulics (WL Delft Hydraulics, 2005). Delft3D is an advanced 2D/3D hydrodynamic model that can simulate water level changes, currents, wave transformation, sediment transport, and bathymetric (morphological) changes in coastal environments. The model evaluations will consider short-term changes (i.e., tidal cycles and storms) to the inlet's flow pattern and morphology; as well as long-term (one to five years) changes in flow patterns and inlet morphology associated with various inlet channel alternatives. The model simulations will also be used to evaluate the importance of modifications of Nixon and/or Green Channels on the overall stability and associated impacts of the new channel.

Comprehensive geotechnical investigations of the Rich Inlet system including the inlet throat, flood tidal delta, ebb tidal delta, and feeder channels Nixon and Green Channel will be used to identify and map sand quality and quantity to be placed on the shoreline of Figure Eight Island or elsewhere as the study dictates. The proposed sand search will be completed in two phases: (1) Research and planning, and (2) jet probes and vibrance collection and analysis. Sand resources in the study area will be evaluated for compatibility with native beach sand. This evaluation is necessary to determine the potential performance of sand on the beach since the performance is highly dependent on similar sediment characteristics including mean grain size, sorting, and

composition of borrow sands and native sands.

The research and planning phase includes a comprehensive analysis of historical geophysical data, hydrographic survey data, and aerial photographs of the inlet to determine potential channel shall lag deposit sites and historic preferred channel alignment. The jet probe survey will provide preliminary qualitative information of the sediment contained in the feeder channels and the ebb tide delta of Rich inlet. Areas suspected of containing the best quality and quantity of sand resources within the preferred channel realignment corridor will be targeted for vibracore investigation.

A magnetometer survey was performed on September 3, 2006 on the wreck site of the Wild Dayrell. The Wild Dayrell is a side-wheel steamer which ran aground near in the Rich Inlet complex on February 3, 1864. The location of the Wild Dayrell and its debris field will play a major role in options associated with the location of the new inlet channel. In addition, a cultural resource study of the final borrow area and channel design will be performed using a magnetometer survey controlled by differential global positioning. Cartographic and historical research will be conducted to collect available historical data.

Natural resource studies and investigations which may be conducted in support of the plan formulation might include: (1) Identification and biological characterization of estuarine habitat types (salt march, shelfish, submerged aquatic vegetation) in a defined project area using aerial mapping and/or groundtruth investigations; (2) pre-project monitoring of threatened and endangered species and their associated habitats as determined through coordination with project stakeholders; and (3) development and/or implementation of project monitoring and mitigation plans based on the project impact assessment.

3. *Issues.* There are several potential environmental issues that will be addressed in the EIS. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

a. Potential impacts to marine biological resources (benthic organisms, passageway for fish and other marine life) and Essential Fish Habitat, particularly within Green Channel.

b. Potential impacts to threatened and endangered marine mammals, birds, fish, and plants.

c. Potential impacts to water quality.

d. Potential increase in erosion rates to adjacent Lea-Hutaff.

e. Potential impacts to Navigation, commercial and recreational.

f. Potential impacts to the long-term-management of Rich Inlet.

g. Potential impacts to private and public property.

h. Cumulative impacts of Inlet and Inlet channel relocations throughout North Carolina.

i. Cumulative impacts for using inlets as sand source in nourishment projects.

j. Potential impacts on public health and safety.

k. Potential impacts to recreational and commercial fishing.

l. The compatibility of the material for nourishment.

m. Potential impacts to cultural resources, particularly the Wild Dayrell shipwreck.

4. *Alternatives.* Several alternatives are being considered for the proposed project. These alternatives will be further formulated and developed during the scoping process, and an appropriate range of alternatives, including the no federal action alternative, will be considered in the EIS.

5. *Scoping Process.* A public scoping meeting (see **DATES**) will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS. Participation in the public meeting by federal, state, and local agencies and other interested organizations and persons is encouraged.

The COE will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act; with the National Marine Fisheries Service under the Magnuson-Stevens Act and Endangered Species Act; and with the North Carolina State Historic Preservation Office under the National Historic Preservation Act. Additionally, the EIS will assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and will be coordinated with the North Carolina Division of Coastal Management (DCM) to determine the project's consistency with the Coastal Zone Management Act. The COE will closely work with DCM through the EIS to ensure the process complies with all State Environmental Policy Act (SEPA) requirements. It is the COE and DCM's intentions to consolidate both NEPA and SEPA processes to eliminate duplications.

6. *Availability of the Draft EIS.* The Draft EIS is expected to be published and circulated sometime in 2008, and a public hearing will be held after the publication of the Draft EIS.

Dated: February 12, 2007.

John E. Pulliam, Jr.,

Colonel, U.S. Army District Commander.

[FR Doc. 07–848 Filed 2–23–07; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare Supplement III to the Final Environmental Impact Statement, New Orleans to Venice, LA, Hurricane Protection Project: Incorporation of Non-Federal Levees From Oakville to St. Jude, Plaquemines Parish, LA

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

ACTION: Notice of Intent.

SUMMARY: The U.S. Army of Corps of Engineers, New Orleans District, is initiating this study under the authority of Public Law 109–234, Title II, Chapter 3, Flood Control and Coastal Emergencies, page 38 (120 STAT.454–455), hereinafter ''4th Supplemental'', provides: ''For an additional amount for 'Flood Control and Coastal Emergencies', as authorized by section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), for necessary expenses relating to the consequences of Hurricane Katrina and other hurricanes, $3,145,024,000, to remain available until expended: Provided, that the Secretary of the Army is directed to use the funds appropriated under this heading to modify, at full Federal expense, authorized projects in southeast Louisiana to provide hurricane and storm damage reduction and flood damage reduction in the greater New Orleans and surrounding areas; * * * $215,000,000 shall be used to replace or modify certain non-Federal levees in Plaquemines Parish to incorporate the levees into the existing New Orleans to Venice hurricane protection project; * * *.''

The Flood Control and Coastal Emergencies Section of Title II, Chapter 3 of the Joint Explanatory Statement of the Committee of Conference, page 115, states: ''Funds totaling $3,145,024,000 are recommended to continue repairs to flood and storm damage reduction projects. These projects are to be funded at full Federal expense. * * * Additionally, the Conferees include: * * * $215,000,000 for incorporation of non-Federal levees on the west bank of the Mississippi River in Plaquemines Parish in order to provide improved storm surge protection and to protect evaucations routes; * * *''

FOR FURTHER INFORMATION CONTACT: Questions concerning the Supplemental Environmental Impact Statement (SEIS) should be addressed to Mr. Alan W. Bennett at: U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2516, fax number (504) 862–2088 or by e-mail at *alan.w.bennett@mvn02.usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The proposed action would replace or modify and incorporate certain non-Federal levees on the west bank of the Mississippi River in Plaquemines Parish, Louisiana into the existing New Orleans to Venice hurricane protection project. The proposed project study area includes the west bank of the Mississippi River, starting near the community of Oakville to the north and ending at St. Jude to the south. The New Orleans to Venice hurricane protection project was authorized by Public Law 87–874, as amended. Under this authority, the U.S. Army Corps of Engineers constructed a hurricane protection levee system extending along a protion of the west bank of the Mississippi River. This SEIS is being prepared as a third supplemental to the July 1974 final EIS, ''New Orleans to Venice, Louisiana, Hurricane Protection Project'', filed with the Council on Environmental Quality on January 6, 1975.

The existing federally authorized hurricane protection system does not provide continuous protection from Belle Chasse to Venice. Specifically, approximately 34 miles of existing non-Federal levees in Plaquemines Parish do not provide hurricane and storm damage reduction protection to the authorized level of the New Orleans to Venice hurricane protection project. This condition exposes residents and businesses in several west bank communities and the hurricane evacuation route, Louisiana Highway 23, to a higher potential for flooding in the event of a storm or hurricane. Engineering, economic, and environmental analysis would be used to determine the most cost effective plan, which would provide for the greatest overall public benefit.

2. *Alternatives.* Several levee alignments are being investigated to protect these communities, businesses, the hurricane evacuation route, and to avoid wetland impacts. In addition, non-structural alternatives such as relocations or raising homes and businesses are also being developed and evaluated. Incremental analysis of costs and benefits for different reaches of the levee alignments would also be conducted. Various protection levels for the levee alignments would also be investigated.

3. *Scoping.* Scoping is the process for determining the scope of alternatives and significant issues to be addressed in the SEIS. A notice requesting scoping comments will be sent to affected Federal, State, and local agencies, affected Indian tribes, and all interested parties requesting their input on alternatives and issues to be evaluated in the SEIS. The notice will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

Two public scoping meetings will be held in March 2007. The meetings will be held in the vicinity of Belle Chasse and West Pointe a la Hache. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

4. *Significant Issues.* The tentative list of resources and issues to be evaluated in the SEIS includes tidal wetlands (marshes and swamps), aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the SEIS include hurricane and flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

5. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on essential fish habitat. The draft SEIS or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. *Estimated Date of Availability.* The earliest that the draft SEIS is expected to be available is in spring 2008.

Dated: February 16, 2007.

Richard P. Wagenaar,

Colonel, U.S. Army, District Commander.

[FR Doc. 07–850 Filed 2–23–07; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF ENERGY

Office of International Regimes and Agreements; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (Euratom) and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and Canada.

This subsequent arrangement concerns the retransfer of 846,126 kg of Natural UO_3 (82.7% U), containing 700,000 kg of Uranium. This material will be retransferred from Cameco Corporation, Canada, to Springfields Fuels Ltd., United Kingdom for ultimate use as nuclear power reactor fuel by Electric Power Development Company Ltd., Japan. Springfields Fuels Ltd. is authorized to receive nuclear material pursuant to the U.S.-Euratom Agreement for Cooperation.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 20, 2007.

For the Department of Energy.

Anatoli Welihozkiy,

Acting Director, Office of International Regimes and Agreements.

[FR Doc. E7–3180 Filed 2–23–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of International Regimes and Agreements; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (Euratom) and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and Canada.

This subsequent arrangement concerns the retransfer of 51,775.1 kg of Natural UF6 (67.6% U), containing 35,000 kg of Uranium. This material will be retransferred from Cameco Corporation, Canada, to Urenco Ltd., Netherlands for enrichment and return to the United States for use as fuel in nuclear power reactors by STP Nuclear Operating Company, Texas. Urenco Ltd. is authorized to receive nuclear material pursuant to the U.S.-Euratom Agreement for Cooperation.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 20, 2007.

For the Department of Energy.

Anatoli Welihozkiy,

Acting Director, Office of International Regimes and Agreements.

[FR Doc. E7–3181 Filed 2–23–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Cancellation of Programmatic Environmental Impact Statement for Implementation of the Carbon Sequestration Program

AGENCY: National Energy Technology Laboratory, Department of Energy.

ACTION: Notice of cancellation of Environmental Impact Statement Process.

SUMMARY: The Department of Energy (DOE) has decided to cancel the preparation of a Programmatic Environmental Impact Statement (PEIS) for the assessment of potential environmental impacts from DOE's Carbon Sequestration Program, as described in a Notice of Intent published in the **Federal Register** on April 21, 2004 (69 FR 21514). DOE had intended to prepare the PEIS, pursuant to the National Environmental Policy Act (NEPA), to address the potential environmental impacts of carbon sequestration technologies and potential future demonstration activities under the Carbon Sequestration Program, which is being implemented by the DOE Office of Fossil Energy through its National Energy Technology Laboratory. DOE conducted public scoping meetings in May and June 2004 in eight cities, and began preparation of the PEIS.

However, upon further consideration, DOE has determined that the continuation of the PEIS did not warrant its effort and expense since the research from the Regional Partnerships and other Program activities in carbon sequestration are enhancing our understanding of the area and the PEIS would not direct any programmatic decisions at this time. DOE will continue to perform project-specific NEPA reviews of its carbon sequestration research, development and demonstration activities.

In order to facilitate future project-specific NEPA reviews, DOE will make available to the public a Carbon Sequestration Reference Document, based on the data and analyses developed in conjunction with the PEIS preparation effort. DOE believes this approach would best enable the Department to meet its Carbon Sequestration Program objectives and continue to provide pertinent environmental data and analyses for future project- and site-specific NEPA reviews under the Program.

FOR FURTHER INFORMATION CONTACT: Heino Beckert, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 880, Morgantown, WV 26507–0880, by telephone (304) 285–4132, or electronic mail at *heino.beckert@netl.doe.gov.*

Issued in Pittsburgh, PA, on this 9th day of February, 2007.

Carl O. Bauer,

Director, National Energy Technology Laboratory.

[FR Doc. E7–3178 Filed 2–23–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

February 16, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No:* 349–122.

c. *Date Filed:* February 1, 2007.

d. *Applicant:* Alabama Power Company (APC).

e. *Name of Project:* The Martin Dam Project.

f. *Location:* The project is located on the Tallapoosa River, in Coosa, Elmore, and Tallapoosa Counties, Alabama. The proposed non-project use would occupy project lands and waters on Lake Martin at Shoreline Pointe-East in the northeast quarter of Section 7, Township 20 North, Range 23 east, in Tallapoosa County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r), and 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, Senior Engineer; 600 18th Street North, Birmingham, AL 35203, (205) 257–1403.

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406, or by e-mail: *Lesley.Kordella@ferc.gov*.

j. *Deadline for filing comments and or motions:* March 15, 2007.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–349–122) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC requests Commission approval to permit Mr. Tim Pilato, a property owner at Shoreline Pointe-East to install six personal watercraft jet-port docks to the existing community docks. The docks would add approximately 300 square feet to the existing footprint, and would be located within one mile by water

from the existing Blue Creek Marina and the Lakeside Marina. There will be no dredging during construction.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3214 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–66–001]

Port Barre Investments, L.L.C. (d/b/a Bobcat Gas Storage); Notice of Amendment Application

February 20, 2007.

On February 7, 2007, in Docket No. CP06–66–001, Port Barre Investments, L.L.C. (d/b/a Bobcat Gas Storage (Bobcat)), pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 Subparts A of the Federal Energy Regulatory Commission's (Commission) regulations, filed to amend its certificate issued on July 20, 2006 in Docket No. CP06–66–000, 166 FERC ¶61,052. The requested amendment would increase the working gas capacity of each of two authorized storage caverns from 6.0 billion cubic feet (Bcf) to 6.75 Bcf, increasing the total project working gas capacity to 13.5 Bcf. Bobcat also seeks to: construct a new 16-inch diameter, 2.11-mile pipeline to a Texas Eastern Transmission, L.P. (TETCO) interconnect; decrease the pipeline diameters of three previously authorized natural gas pipelines; construct a new 12-inch diameter,2.14-mile pipeline in the South pipeline Corridor to the point of interconnect between the West and South Pipeline Corridors; and, construct a 16-inch diameter, 1.34-mile line brine pipeline, all as more fully described in the application. Further, Bobcat asks that the Commission issue requested authorizations on an expedited basis by April 21, 2007.

Questions concerning the application should be directed to Paul W. Bieniawski (*pbieniawski@bobcatstorage.com*) or Thomas R. Dill (*tdill@bobcatstorage.com*) at Bobcat Gas Storage, 1500 City West Boulevard, Suite 560, Houston, Texas 77042, or by calling (713) 800–3500, Facsimile: (713) 800–3540 or Lisa M. Tonery (*ltonery@kslaw.com*) or Tania S. Perez (*tperez@kslaw.com*) at King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 or by calling 212–556–2100, Facsimile: (212) 556–2222.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered.

The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically.

This filing is accessible on-line at *http://www.ferc.gov,* using the

''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 9, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3221 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–15–002, CP05–16–002, CP05–17–002]

Caledonia Energy Partner, L.L.C.; Notice of Application

February 20, 2007.

Take notice that on February 8, 2007, Caledonia Energy Partner, L.L.C. (Caledonia), 2001 Timber Creek Road, Flower Mound, Texas 75028, filed in Docket No. CP05–15–002, et. al., an application to amend its certificates of public convenience and necessity issued on April 19, 2005, pursuant to section 7(c) of the Natural Gas Act, as amended, to authorize certain minor modifications to its storage facilities in Lowndes and Monroe Counties, Mississippi, as well as, certain modifications to the pro forma tariff approved in the above referenced dockets. This filing is available for review at the Commission in the Public Reference Room or may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Jim Goetz, Caledonia Energy Partners, L.L.C., 2001 Timber Creek Road, Flower Mound, Texas 75028, phone: (972) 691–3332, or fax: (972) 874–8743.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (*http://www.ferc.gov*) site under the ''e-Filing'' link.

Comment Date: March 9, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3228 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP07–171–000

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 20, 2007.

Take notice that on February 15, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of March 17, 2007:

Seventh Revised Sheet No. 385,
First Revised Sheet No. 385A.

Columbia states that on February 15, 2007, it filed with the Commission revisions to Section 18 of the General Terms and Conditions of its Tariff to close a loophole that currently exists with respect to inventory transfers involving Rate Schedule SIT.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3227 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–172–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 20, 2007.

Take notice that on February 15, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of March 17, 2007:

Seventh Revised Sheet No. 144
Fifth Revised Sheet No. 146
First Revised Sheet No. 148
Original Sheet No. 149
Seventh Revised Sheet No. 318

Columbia Gulf states that on February 15, 2007 it filed with the Commission revisions to Section 4 of the General Terms and Conditions of its tariff.

Columbia Gulf's Tariff contains the procedures that a shipper must follow to obtain available capacity on Columbia's Gulf system. The proposed new tariff language will address the issue of how far in the future service can be permitted to commence after a request for service has been made.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3220 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–523–000]

ColumbiaGrid; Notice of Filing

February 13, 2007.

Take notice that on February 2, 2007, ColumbiaGrid, acting on behalf of Avista Corporation and Puget Sound Energy, Inc. tendered for filing a Planning and Expansion Functional Agreement with an effective date of April 4, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 23, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3187 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–34–000]

Entergy Gulf States, Inc.; Notice of Petition for Declaratory Order

February 15, 2007.

Take notice that on January 24, 2007, Entergy Gulf States, Inc. (EGSI) submitted a petition requesting that the Commission issue a declaratory order finding that the payment of one or more dividends out of paid-in capital by EGSI to its parent, Entergy Corporation, under the facts and circumstances described in the petition, will not violate Section 305(a) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 2, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3190 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–82–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

February 16, 2007.

Take notice that on February 6, 2007, Florida Gas Transmission Company, LLC (FGT), 5444 Westheimer Road, Houston, Texas 77056, filed in Docket No. CP07–82–000, a prior notice request pursuant to sections 157.205 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act to construct, own, and operate a 6.64 mile loop of FGT's existing 30-inch mainline, located in Clay County, Florida, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, FGT proposes to construct approximately 6.64 miles of 30-inch pipeline loop (East Leg Expansion), and in accordance with the U.S. Department of Transportation safety requirements, FGT will install one new mainline valve, in Clay County, Florida. FGT states that the proposed pipeline is an extension of their existing 30-inch mainline. FGT estimates the cost of construction to be $16,000,000. FGT asserts that the East Leg Expansion project will provide incremental firm transportation service capacity of 10,000 MMBtu/d to help meet gas requirements for a new electric generation plant that Florida Municipal Power Agency is constructing in St. Lucie County, Florida.

Any questions regarding the application should be directed to Stephen T. Veatch, Sr. Director, Certificates and Tariffs, Florida Gas Transmission Company, LLC, 5444 Westheimer Road, P.O. Box 4967, Houston, Texas 77210–4967 at (713) 989–2024.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3215 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–546–000]

ISO New England, Inc.; Notice of Filing

February 20, 2007.

Take notice that on February 15, 2007, ISO New England, Inc. (ISO–NE) filed a package of revisions to its Market Rules to implement the Forward Capacity Market (FCM) Settlement Agreement approved by the Commission in Devon Power LLC, 115 FERC ¶ 61,340, order on reh'g, 117 FERC ¶ 61,133 (2006).

In the portion of this filing docketed as Docket No. ER07–546–000, ISO–NE is filing the following tariff provisions relating to the FCM:

- Definitions, and those tariff sheets related to qualification, Section III.13.1 (effective date requested: February 16, 2007).
- Changes to the Installed Capacity Requirements (ICR) Market Rules (effective date requested: March 1, 2007).
- Market Rules governing the Forward Capacity Auction (FCA), Section III.13.2 (effective date requested: April 16, 2007)

The remainder of the proposed tariff provisions filed by ISO–NE have been docketed as Docket No. ER07–547–000.

Comments, protests and motions to intervene or notices of intervention in Docket No. ER07–546–000 will be due on or before March 8, 2007.

Parties interested only in the matters to be considered in Docket No. ER07–

546–000 should seek to intervene and/or protest only in that docket. Parties interested only in the matters to be considered in Docket No. ER07–547–000 should seek to intervene and/or protest only in that docket. Parties interested in the matters to be considered in both dockets should file separate motions to intervene or notices of intervention and/or protests in each docket.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 8, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3222 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–547–000]

ISO New England, Inc.; Notice of Filing

February 20, 2007.

Take notice that on February 15, 2007, ISO New England, Inc. (ISO–NE) filed a package of revisions to its Market Rules to implement the Forward Capacity Market (FCM) Settlement Agreement approved by the Commission in Devon Power LLC, 115 FERC ¶ 61,340, order on reh'g, 117 FERC ¶ 61,133 (2006).

In the portion of this filing docketed as Docket No. ER07–547–000, ISO–NE is filing the following tariff provisions relating to the FCM:

- Changes to the Tariff's Financial Assurance Policies and Billing Policy (effective date requested: June 1, 2007)
- All of the remaining changes to Market Rule 1 proposed in ISO–NE's February 15, 2007 filing that will not be addressed in Docket No. ER07–546–000 (effective date requested: June 15, 2007)

The remainder of the proposed tariff provisions filed by ISO–NE have been docketed as Docket No. ER07–546–000.

Comments, protests and motions to intervene or notices of intervention in Docket No. ER07–547–000 will be due on or before March 15, 2007.

Parties interested only in the matters to be considered in Docket No. ER07–546–000 should seek to intervene and/or protest only in that docket. Parties interested only in the matters to be considered in Docket No. ER07–547–000 should seek to intervene and/or protest only in that docket. Parties interested in the matters to be considered in both dockets should file separate motions to intervene or notices of intervention and/or protests in each docket.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 15, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3223 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–170–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 20, 2007.

Take notice that on February 15, 2007, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Thirteenth Revised Sheet No. 478, to be effective April 1, 2007.

National Fuel states that the purpose of this filing is to submit for Commission review and acceptance two non-conforming amendments to service agreements between Bay State Gas Company and National Fuel. The amendments contain provisions which deviate from the Form of Service Agreement for Firm Storage Transportation and Firm Storage Service contained in National Fuel's tariff.

National Fuel states that copies of its filing were served upon its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3226 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–169–000]

Questar Overthrust Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 20, 2007.

Take notice that on February 12, 2007, Questar Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective March 12, 2007:

First Revised Volume No. 1–A
Fourth Revised Sheet No. 31
Fifth Revised Sheet No. 32
Seventh Revised Sheet Nos. 33 and 34
Fifth Revised Sheet No. 34A
Fourth Revised Sheet No. 66
Original Sheet No. 66A

Overthrust states it is proposing to modify its gas quality specifications to control hydrocarbon liquid dropout by setting a maximum Cricondentherm Hydrocarbon Dew Point (CHDP) with a safe harbor provision.

Overthrust states that copies of the filing have been served upon Overthrust's customers and the public service commissions of Utah and Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3225 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12580–001]

Shenango Dam Hydroelectric Company, LLC; Notice of Surrender of Preliminary Permit

February 16, 2007.

Take notice that Shenango Dam Hydroelectric Company, LLC, permittee for the proposed Shenango Dam Project, has requested that its preliminary permit be terminated. The permit was issued on August 18, 2005, and would have expired on July 31, 2008.[1] The project would have been located on the Shenango River in Mercer County, Pennsylvania.

The permittee filed the request on February 6, 2007, and the preliminary permit for Project No. 12580 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3217 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–74–000, CP07–75–000, CP07–76–000, CP07–77–000]

Sonora Pipeline, LLC; Notice of Applications

February 15, 2007.

Take notice that on January 31, 2007, Sonora Pipeline, LLC (Sonora), 1862 West Bitters, Bldg. #1, San Antonio, Texas 78248, filed an application in Docket No. CP07–75–000 pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations requesting issuance of an order and a Presidential Permit authorizing Sonora to site, construct, operate, and maintain two bidirectional border crossing facilities in Hidalgo County, Texas.

[1] 112 FERC ¶62,154.

Also take notice that on January 31, 2007, Sonora filed pursuant to Section 7(c) of the NGA and the Commission's regulations: (1) An application in Docket No. CP07–74–000 for a certificate of public convenience and necessity authorizing the construction and operation of 20.2 miles of 30-inch pipeline, the Mission Line, and 8.7 miles of 30-inch pipeline, the Progresso Line, which will extend from the two proposed border crossing facilities; (2) an application in Docket No. CP07–76–000 for a blanket construction certificate under Part 157, Subpart F of the Commission's regulations; and (3) an application in Docket No. CP07–77–000 for a blanket transportation certificate under Part 284 Subpart G of the Commission's regulations.

Take further notice that certain additional information is required, and Commission staff has identified this information to the applicant. To the extent that such information is not filed with the Secretary by February 20, 2007, Sonora's application is subject to rejection pursuant to 18 CFR 157.8 (c).

These filings are available for review at the Commission's Washington, DC offices or may be viewed on the Commission's Web site at *http://www.ferc.gov* the ''e-Library'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlinesupport@ferc.gov* or *Telephone:* 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

Any questions regarding these applications should be directed to James B. Smith, Sonora Pipeline, LLC, 1862 West Bitters, Bldg. #1, San Antonio, Texas 78248, or phone at (210)764–8642.

On June 6, 2005, the Commission staff granted Sonora's request to utilize the Pre-Filing Process and assigned Docket No. PF05–15–000 to staff activities involving Sonora's project. Now, as of the filing of Sonora's applications on January 31, 2007, the Pre-Filing Process for this project has officially concluded. And while the PF Docket Number is now closed, all of the information contained in the Pre-Filing Process will become part of the proceeding. From this time forward, Sonora's proceeding will be conducted in Docket Nos. CP07–74–000, CP07–75–000, CP07–76–000, and CP07–77–000 as noted in the caption of this Notice. All future correspondence should refer to these CP docket numbers only.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this Project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project and/or associated pipeline. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 285.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 8, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3191 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12486–001]

Twin Lakes Canal Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

February 16, 2007.

a. *Type of Filing:* Notice of Intent to File License Application for an original License and Pre-Application Document.

b. *Project No.:* 12486–001.

c. *Date Filed:* December 15, 2006.

d. *Submitted by:* Twin Lakes Canal Company.

e. *Name of Project:* Bear River Narrows Hydroelectric Project.

f. *Location:* The proposed Bear River Narrows Hydroelectric Project would be located in Southeastern Idaho on the Bear River. The project would be located entirely within Franklin County approximately nine miles Northeast of Preston, Idaho.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Nick Josten, Project Engineer, GeoSense, 2742 Saint Charles Ave., Idaho Falls, ID 83404, (208) 528–6152.

i. *FERC Contact:* Shana Murray (202) 502–8333 or via e-mail at *shana.murray@ferc.gov.*

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph n below.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Twin Lakes Canal Company filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. Copies of the PAD and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph n.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and SD1 as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Bear River Narrows Hydroelectric Project) and number (P–12486–001), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by April 14, 2007.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

o. At this time, Commission staff intends to prepare an Environmental Assessment for the project, in accordance with the National Environmental Policy Act. However, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, the scoping meetings will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

We will hold a daytime and nighttime scoping meeting at the times and places noted below. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The time and location of these meetings are as follows:

Date and Time: Wednesday, March 14, 2007, 1 p.m.

Location: Fairgrounds, Robinson Building, 146 West 2nd Street North, Preston, Idaho 83263.

Date and Time: Wednesday, March 14, 2007, 7 p.m.

Location: Fairgrounds, Robinson Building, 146 West 2nd Street North, Preston, Idaho 83263.

For Directions: Please call Clair Bosen, of Twin Lakes Canal Company at (208) 852–1612.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph p. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the proposed project on Tuesday, March 13, 2007, starting at 10 a.m. All participants should meet at the Twin Lakes Canal Company, located at 2 North State Street, Preston, Idaho 83263. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Clair Bosen at (208) 852–1612 on or before March 13, 2007.

Scoping Meeting Objectives

At the scoping meeting, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and potential study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meeting. Directions on how to obtain a copy of the PAD and SD1 are included in item m of this document.

Scoping Meeting Procedures

The scoping meeting will be recorded by a stenographer and will become part of the formal Commission record on the project.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3216 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 20, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–4–000.
Applicants: Aquila, Inc.; MEP Pleasant Hill LLC.
Description: Aquila, Inc. and MEP Pleasant Hill LLC submit a withdrawal of their application filed 10/12/06.
Filed Date: 02/02/2007.
Accession Number: 20070202–5015.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2948–010; ER00–2918–009; ER00–2917–009; ER97–2261–020; ER01–556–008; ER01–1654–011; ER02–2567–009; ER02–699–003; ER01–1949–009; ER04–485–006; ER07–247–01; ER07–245–001; ER07–244–001.
Applicants: Baltimore Gas and Electric Company; Constellation Power Source Generation, Inc.; Calvert Cliffs Nuclear Power Plant, Inc.; Constellation Energy Commodities Group, Inc.; Handsome Lake Energy, LLC; Nine Mile Point Nuclear Station, LLC; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group Maine, LLC; Power Provider LLC; R.E. Ginna Nuclear Power Plant, LLC; Raven One, LLC; Raven Two, LLC; Raven Three, LLC.
Description: Constellation Energy Group, Inc, *et al,* submit a Notice of Change in Status in their market-based rate entities.
Filed Date: 02/09/2007.
Accession Number: 20070216–0250.
Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER02–488–005.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Operating Protocol for Existing Generators, FERC Electric Tariff, First Revised Rate Schedule 4.
Filed Date: 02/12/2007.
Accession Number: 20070213–0084.
Comment Date: 5 p.m. Eastern Time on Monday, March 05, 2007.

Docket Numbers: ER03–1001–002.
Applicants: Galt Power Inc.
Description: Galt Power, Inc submits its triennial market power update.
Filed Date: 02/12/2007.
Accession Number: 20070213–0085.
Comment Date: 5 p.m. Eastern Time on Monday, March 05, 2007.

Docket Numbers: ER04–157–016.
Applicants: Vermont Electric Cooperative, Inc.
Description: Vermont Electric Cooperative, Inc submits a compliance filing recalculations and supporting documentation reflecting the modification of charges etc.
Filed Date: 02/01/2007.
Accession Number: 20070202–0227.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER04–691–081.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits its responses to FERC's letter dated 1/26/07 seeking additional information on the Midwest ISO's compliance filing dated 2/26/06.
Filed Date: 02/12/2007.
Accession Number: 20070214–0004.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER05–636–006.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator Inc submits an errata to its 1/16/07 Filing of a Supplement to Compliance Filing of Large Generator Interconnection Agreement.
Filed Date: 02/09/2007.
Accession Number: 20070214–0008.
Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER06–435–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator Inc submits an amended Large Generator Interconnection Agreement among Great River Energy.
Filed Date: 02/09/2007.
Accession Number: 20070212–0032.
Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER06–185–007.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits an Informational Report Setting Forth Timetable for Completion of RTGP Based Bill Corrections of New York Independent System Operator, Inc.
Filed Date: 02/01/2007.
Accession Number: 20070201–5051.
Comment Date: 5 p.m. Eastern Time on Thursday, March 01, 2007.

Docket Numbers: ER06–1014–002.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits a Price Validation Informational Report.
Filed Date: 02/01/2007.
Accession Number: 20070131–5088.
Comment Date: 5 p.m. Eastern Time on Thursday, March 01, 2007.

Docket Numbers: ER07–150–002.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits its Open Access Transmission Tariff in compliance with the Commission's Letter Order issued 12/20/06.
Filed Date: 02/09/2007.
Accession Number: 20070212–0034.
Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER07–166–001.
Applicants: Texas New Mexico Power Company.
Description: Public Service Company of New Mexico submits its compliance filing with FERC's 12/21/06 Order.
Filed Date: 02/09/2007.
Accession Number: 20070212–0035.
Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER07–231–001.
Applicants: PJM Interconnection, LLC; New York Independent System Operator, Inc.; ISO New England Inc.
Description: PJM Interconnection, LLC et al submits rate schedule and tariff sheets that reflect for the three respective control areas in conformance w/ Order 614 etc under ER07–231.
Filed Date: 02/12/2007.
Accession Number: 20070213–0029.
Comment Date: 5 p.m. Eastern Time on Monday, March 05, 2007.

Docket Numbers: ER07–412–001.
Applicants: ECP Energy I, LLC.
Description: ECP Energy I, LLC submits an amendment to application of ECP Energy I, LLC for order accepting initial tariff, waiving regulations, and granting blanket approvals.
Filed Date: 02/09/2007.
Accession Number: 20070212–0036.
Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER07–430–001.
Applicants: Dunhill Power, L.P.
Description: Dunhill Power, LP submits a response to FERC's request for clarification on the upstream ownership.
Filed Date: 02/12/2007.
Accession Number: 20070213–0087.
Comment Date: 5 p.m. Eastern Time on Monday, March 05, 2007.

Docket Numbers: ER07–529–000.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to their FERC Electric tariff, Third Revised Volume 1 under ER07–529.

Filed Date: 02/09/2007.

Accession Number: 20070212–0045.

Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER07–530–000.

Applicants: Red Shield Environmental, L.L.C.

Description: Red Shield Environmental, LLC submits its FERC Electric Rate Schedule 1.

Filed Date: 02/09/2007.

Accession Number: 20070212–0044.

Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER07–531–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Millenium Inorganic Chemicals, Inc *et al.*

Filed Date: 02/09/2007.

Accession Number: 20070212–0043.

Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Docket Numbers: ER07–533–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to the Midwest ISO Open Access Transmission and Energy Markets Tariff.

Filed Date: 02/12/2007.

Accession Number: 20070213–0028.

Comment Date: 5 p.m. Eastern Time on Monday, March 05, 2007.

Docket Numbers: ER07–534–000.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Co et al submits a service agreement under LG&E/KU Tariff for Cost-Based Sales of Capacity and Energy.

Filed Date: 02/12/2007.

Accession Number: 20070213–0086.

Comment Date: 5 p.m. Eastern Time on Monday, March 05, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–20–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp's application under Section 204 of the Federal Power Act for an order authorizing the issuance of securities in an amount not to exceed $60 million.

Filed Date: 02/09/2007.

Accession Number: 20070212–0033.

Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07–9–000.

Applicants: AES TEG TEP Holdings B.V.

Description: AES TEG/TEP Holdings Notification of Self-Certification of Foreign Utility Company Status.

Filed Date: 02/09/2007.

Accession Number: 20070209–5083.

Comment Date: 5 p.m. Eastern Time on Friday, March 02, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3229 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

February 20, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–59–000.

Applicants: FirstEnergy Generation Corporation.

Description: FirstEnergy Generation Corp submits an application requesting Commission authorization to consummate a transaction whereby it will lease a 93.5% interest in an existing generation facility.

Filed Date: 2/6/2007.

Accession Number: 20070208–0196.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: EC07–60–000.

Applicants: Alliance Energy Renewables, LLC; Mirant New York, Inc.; Mirant NY-Gen, LLC.

Description: Alliance Energy Renewables, LLC et al. submit an application for approval of the disposition of jurisdictional facilities, pursuant to section 203 of the FPA.

Filed Date: 2/7/2007.

Accession Number: 20070208–0124.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 28, 2007.

Docket Numbers: EC07–61–000.

Applicants: Horsehead Corporation; Horsehead Holding Corp.

Description: Horsehead Corp, et al. submit an application for order authorizing upstream disposition of jurisdictional facilities and blanket authorization under section 203 of the FPA.

Filed Date: 2/14/2007.

Accession Number: 20070216–0240.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4345–021; ER98–511–009.

Applicants: Oklahoma Gas and Electric Company; OGE Energy Resources Inc.

Description: Oklahoma Gas and Electric Company et al. submit a change in status report relating to market-based rate authority previously granted to each of the OGE Companies in compliance with Order 652.

Filed Date: 2/6/2007.

Accession Number: 20070208–0189.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: ER00–1770–014; ER96–1361–011; ER98–4138–007; ER99–2781–009; ER98–3096–013; ER01–202–006; ER02–453–008; ER04–472–005; ER04–529–005.

Applicants: Conectiv Delmarva Generation LLC; Atlantic City Electric Company; Potomac Electric Power Company; Delmarva Power & Light Company; Pepco Energy Services, Inc.; Potomac Power Resources, LLC; Conectiv Energy Supply, Inc.; Conectiv Atlantic Generation, LLC; Conectiv Bethlehem, LLC; Fauquier Landfill Gas, LLC; Rolling Hills Landfill Gas, LLC.

Description: Pepco Holdings, Inc et al. submit a notification of change in status.

Filed Date: 2/13/2007.

Accession Number: 20070216–0020.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 6, 2007.

Docket Numbers: ER00–2885–014; ER06–864–006; ER06–1543–004; ER01–2765–013; ER02–1582–012; ER02–1785–009; ER02–2102–013; ER97–2414–009; ER03–1283–006.

Applicants: Cedar Brakes I LLC; Bear Energy LP; Brush Cogeneration Partners; Cedar Brakes II LLC; Mohawk River Funding IV, LLC; Thermo Cogeneration Partnership L.P.; Utility Contract Funding, LLC; Lowell Cogeneration Company Limited Partnership; Vineland Energy LLC.

Description: Bear Energy, LP et al. notify that they have entered into an energy management agreement with MMC Mid-Sun, LLC pursuant to Order 652.

Filed Date: 2/7/2007.

Accession Number: 20070209–0108.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 28, 2007.

Docket Numbers: ER01–313–010; ER01–424–010.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Grid Management Charges in accordance with Opinion 463–B.

Filed Date: 2/8/2007.

Accession Number: 20070212–0003.

Comment Date: 5 p.m. Eastern Time on Thursday, March 1, 2007.

Docket Numbers: ER01–1011–010; ER01–1335–008; ER01–642–006.

Applicants: Redbud Energy, LP; Magnolia Energy LP; Cottonwood Energy Company LP.

Description: Cottonwood Energy Co., LP et al. submit a notice of change in status for Public Utilities with market based rate authority, Order 652.

Filed Date: 2/15/2007.

Accession Number: 20070220–0045.

Comment Date: 5 p.m. Eastern Time on Thursday, March 8, 2007.

Docket Numbers: ER02–1330–007.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co. submits an erratum to their 1/17/07 compliance filing, pursuant to FERC's 12/18/06 Order.

Filed Date: 2/6/2007.

Accession Number: 20070208–0094.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: ER03–114–003; ER04–183–002.

Applicants: Great Bay Power Marketing, Inc.; Great Bay Hydro Corporation.

Description: Great Bay Power Marketing, Inc. and Great Bay Hydro Corp. submit an updated market power analysis, and a request for an extension of deadline for filing the Triennial Market Update.

Filed Date: 02/13/2007.

Accession Number: 20070216–0015.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 6, 2007.

Docket Numbers: ER03–1330–002.

Applicants: Ebersen, Inc.

Description: Ebersen, Inc. submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1.

Filed Date: 2/14/2007.

Accession Number: 20070220–0051.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER05–1065–007.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. on behalf of the Entergy Operating Companies submits a report of inaccurate data due to OASIS software issues.

Filed Date: 2/15/2007.

Accession Number: 20070220–0049.

Comment Date: 5 p.m. Eastern Time on Thursday, March 8, 2007.

Docket Numbers: ER05–1178–008; ER05–1191–008.

Applicants: Gila River Power, LP; Union Power Partners, LP

Description: Gila River Power, LP et al. submits a notice of non-material change in status relating to their upstream ownership structure pursuant to Section 35.27(c) of Rules and Regs.

Filed Date: 2/7/2007.

Accession Number: 20070208–0190.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 28, 2007.

Docket Numbers: ER07–64–003.

Applicants: ALLETE, Inc.

Description: ALLETE, Inc. submits an original revised rate schedule and a distribution wheeling rate for Central MN Ethanol Co-op interconnection etc. pursuant to Order 614.

Filed Date: 2/15/2007.

Accession Number: 20070220–0047.

Comment Date: 5 p.m. Eastern Time on Thursday, March 8, 2007.

Docket Numbers: ER07–129–002.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits a response to FERC's 1/30/07 request for additional information.

Filed Date: 2/13/2007.

Accession Number: 20070216–0019.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 6, 2007.

Docket Numbers: ER07–406–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. on behalf of the Entergy Operating Companies submits revised mutually-executed Network Operating Agreement with Cleco Power LLC pursuant to FERC's 2/7/07 Order.

Filed Date: 2/14/2007.

Accession Number: 20070220–0050.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–477–000.

Applicants: Florida Power & Light Company.

Description: Florida Power and Light Company submits revisions to its Transmission Service Agreement with Seminole Electric Coop, Inc. in compliance with FERC's 5/21/04 Order.

Filed Date: 1/25/2007.

Accession Number: 20070131–0120.

Comment Date: 5 p.m. Eastern Time on Friday, March 2, 2007.

Docket Numbers: ER07–488–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits its annual update of the transmission access charge balancing account adjustment under ER07–488.

Filed Date: 1/31/2007.

Accession Number: 20070207–0069.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER07–489–001.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Co. submits an errata to its 1/31/07 filing of an executed EEI Master Power Purchase and Sale Agreement with Tohono O'Odham Utility Authority.

Filed Date: 2/6/2007.
Accession Number: 20070208–0187.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: ER07–491–001.
Applicants: Acacia Energy, Inc.
Description: Acacia Energy, Inc. submits an Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority and a proposed Substitute Original Sheet 1.
Filed Date: 2/15/2007.
Accession Number: 20070220–0046.
Comment Date: 5 p.m. Eastern Time on Thursday, March 8, 2007.

Docket Numbers: ER07–500–001.
Applicants: Xcel Energy Operating Companies.
Description: Xcel Energy Operating Companies submits a correction to its initial filing by providing Attachment 4 which was inadvertently omitted from the 2/2/07 filing.
Filed Date: 2/13/2007.
Accession Number: 20070216–0018.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 6, 2007.

Docket Numbers: ER07–521–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits a compliance filing in response to Order 681 and 681–A.
Filed Date: 2/5/2007.
Accession Number: 20070208–0184.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–522–000.
Applicants: Old Trail Wind Farm, LLC.
Description: Old Trail Wind Farm, LLC submits a petition for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.
Filed Date: 2/7/2007.
Accession Number: 20070208–0186.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 28, 2007.

Docket Numbers: ER07–524–000.
Applicants: Warren Power, LLC.
Description: Warren Power LLC submits a Cost-Based Capacity and Energy Sale Agreement w/ EWO Marketing, LP pursuant to Section 205 of the FPA and Part 35 of FERC's Regulations.
Filed Date: 2/7/2007.
Accession Number: 20070208–0122.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 28, 2007.

Docket Numbers: ER07–525–000.
Applicants: Entergy Services Inc.
Description: Entergy Services, Inc. on behalf of Entergy Operating Companies submits the mutually-executed 2/5/07 Long-Term Firm Point-to-Point Transmission Service Agreement with American Electric Power Service Corp.
Filed Date: 2/7/2007.
Accession Number: 20070208–0121.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 28, 2007.

Docket Numbers: ER07–526–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits an amended Dillon I Wind Project Interconnection Facilities Agreement et al. with Dillon Wind, LLC.
Filed Date: 2/8/2007.
Accession Number: 20070212–0048.
Comment Date: 5 p.m. Eastern Time on Thursday, March 1, 2007.

Docket Numbers: ER07–527–000.
Applicants: Longview Fibre Paper and Packaging, Inc.
Description: Longview Fibre Paper and Packaging, Inc. submits an application for order accepting market-based rate tariff, granting authorizations and blanket authority, and waiving certain requirements.
Filed Date: 2/8/2007.
Accession Number: 20070212–0047.
Comment Date: 5 p.m. Eastern Time on Thursday, March 1, 2007.

Docket Numbers: ER07–528–000.
Applicants: Brookfield Energy Marketing U.S. LLC.
Description: Brookfield Energy Marketing US, LLC submits application for market-based rate authorization (FERC Electric Tariff, Original Volume 1) and certain waivers and blanket authorizations.
Filed Date: 2/8/2007.
Accession Number: 20070212–0046.
Comment Date: 5 p.m. Eastern Time on Thursday, March 1, 2007.

Docket Numbers: ER07–535–000.
Applicants: Rolling Hills Landfill Gas, LLC.
Description: Rolling Hills Landfill Gas, LLC submits a notice of cancellation and Order 614 complaint, canceled tariff sheet terminating the market-based rate tariff & requests waiver of FERC's notice requirements.
Filed Date: 2/13/2007.
Accession Number: 20070216–0016.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 6, 2007.

Docket Numbers: ER07–536–000.
Applicants: American Electric Power System Corporation.
Description: American Electric Power Service Corp. on behalf of American Electric Power System et al. submits Notice of Cancellation of an Interconnection and Local Delivery Service Agreement with certain operating companies.
Filed Date: 2/13/2007.
Accession Number: 20070216–0017.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 6, 2007.

Docket Numbers: ER07–537–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits its Capital Budget Quarterly filing for Fourth Quarter of 2006.
Filed Date: 2/14/2007.
Accession Number: 20070216–0021.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–538–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits a Transmission Access Charge Informational Filing effective 10/1/06–12/31/06.
Filed Date: 2/14/2007.
Accession Number: 20070216–0022.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–539–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp submits Original Service Agreement 928 with Cornwall Street Railway Light and Power Co, Ltd.
Filed Date: 2/14/2007.
Accession Number: 20070216–0023.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–540–000.
Applicants: Berkshire Power Company, LLC.
Description: Niagara Mohawk Power Corp dba National Grid submits Original Service Agreement 913 with Canadian Niagara Power Co, Inc and amendments to the agreements under FERC Electric Tariff, Original Volume 1.
Filed Date: 2/14/2007.
Accession Number: 20070216–0024.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–541–000.
Applicants: Entergy Services Inc.
Description: Entergy Services Inc acting as agent for Entergy Operating Companies submits the mutually-executed January 11, 2007 Long-Term Firm Point-to-Point Transmission Agreement with NRG Power Marketing, Inc.
Filed Date: 2/14/2007.
Accession Number: 20070216–0243.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–542–000.
Applicants: AmPro Energy Wholesale LP.
Description: AmPro Energy Wholesale submits a notice of cancellation of its FERC Electric Tariff, Original Volume 1.

Filed Date: 2/14/2007.
Accession Number: 20070216–0244.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–543–000.
Applicants: Linden VFT, LLC.
Description: Linden VFT, LLC submits a petition for authority to make sales of transmission rights at negotiated rates acceptance of open season report and request for waivers.
Filed Date: 2/14/2007.
Accession Number: 20070216–0245.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–544–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Jurisdictional Agreement w/Lehi City Power pursuant to Section 205 of the Federal Power Act.
Filed Date: 2/14/2007.
Accession Number: 20070216–0246.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–545–000.
Applicants: Commonwealth Edison Company.
Description: Exelon Corporation on behalf of Commonwealth Edison Company submits a Construction Agreement with High Trail Wind Farm, LLC.
Filed Date: 2/14/2007.
Accession Number: 20070216–0247.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–548–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Co submits an executed wholesale distribution service agreement for service to MATEP, LLC.
Filed Date: 2/15/2007.
Accession Number: 20070216–0147.
Comment Date: 5 p.m. Eastern Time on Thursday, March 8, 2007.

Docket Numbers: ER07–549–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits a Revised Schedule 21 pursuant to Section II of the ISO New England Inc. Transmission, Markets and Services Tariff, and requesting Waiver of the Commission's 60-day notice requirements.
Filed Date: 2/14/2007.
Accession Number: 20070216–0146.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 7, 2007.

Docket Numbers: ER07–550–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions & amendments to its Open Access Transmission & Energy Markets Tariff relating to proposed amendments to the BA Agreement.

Filed Date: 2/15/2007.

Accession Number: 20070216–0155.

Comment Date: 5 p.m. Eastern Time on Friday, March 23, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E7–3230 Filed 2–23–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2277]

AmerenUE; Notice of Scoping Meetings and Intent To Prepare an Environmental Document

February 13, 2007.

By letter dated February 2, 2007 to the Federal Energy Regulatory Commission, AmerenUE (licensee) affirmed its intention to rebuild the upper reservoir of the Taum Sauk Pumped Storage Project (FERC No. 2277). The Taum Sauk Project is located in Reynolds County, Missouri near the town of Lesterville.

The upper reservoir was severely damaged during an uncontrolled breach of the northwest corner of the reservoir on December 14, 2005. The proposed project involves rebuilding the upper reservoir with a concrete-faced, symmetrical, roller compacted concrete (RCC) dam. The work would involve the complete removal of the existing rockfill dike that forms the upper reservoir and the construction of an RCC dam using the existing rockfill as the aggregate.

The Commission intends to prepare an environmental document under the National Environmental Policy Act (NEPA) for the Taum Sauk upper reservoir rebuilding project. The NEPA document will be used by the Commission to identify environmental impacts and to identify measures that would help mitigate the impacts caused by construction activities. To support and assist our environmental review, we are beginning a public scoping process to ensure that all pertinent issues are identified and analyzed, and that the environmental document is thorough and balanced.

We invite the participation of governmental agencies, non-governmental organizations, and the general public in the scoping process, and will be preparing Scoping Document (SD) to provide information on the proposed project and to solicit written and verbal comments and suggestions on our preliminary list of issues and alternatives to be addressed in the NEPA document. The SD will be distributed to parties on the mailing list

for this project, as well as other individuals and organizations that we have identified as having an interest in the Taum Sauk Project. The SD will be available from our Public Reference Room at (202) 208–1371. It will also be accessible online at *http://www.ferc.gov* using the ''eLibrary'' link—select ''General Search'', and enter ''P–2277'' in the ''Docket Number'' box. You may also call (202)–208–2222 for assistance.

Following distribution of the SD, Commission staff will hold two scoping meetings on March 12, 2007, to receive input on the appropriate scope of the environmental analysis. The first meeting will be with the resource agencies to focus on their concerns and the second meeting will be with the general public to receive their input. Each meeting is open and the public and agencies may attend either or both meetings. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: March 12, 2007.

Time: 9 a.m. to 11:30 a.m. (CST).

Location: Missouri Department of Natural Resources, Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri 65102.

Public Scoping Meeting

Date: March 12, 2007.

Time: 7 p.m. to 9 p.m. (CST).

Location: Lesterville High School, State Highway 21, Lesterville, Missouri 63654.

At the scoping meetings, Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the environmental document; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the Commission's NEPA document, including viewpoints in opposition to, or in support of, staff's preliminary views expressed in the SD; (4) determine the resource issues to be addressed in the NEPA document; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis. Staff will also be soliciting input on potential measures that could be implemented to minimize construction-related impacts. The meetings will be recorded by a stenographer and become part of the formal record for this project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist Commission staff in defining and clarifying the issues to be addressed in the NEPA document. Interested parties may also file written scoping comments. All such comments (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The deadline for filing scoping comments is April 11, 2007.

Scoping comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) or the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Please direct any questions about the scoping process to Thomas J. LoVullo at (202) 502–8900.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3185 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 16, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No.:* 2233–066.

c. *Date Filed:* December 29, 2006.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* The Willamette Falls Project is located on the Willamette River near the cities of West Linn and Oregon City, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Ms. Julie A. Keil, Director, Hydro Licensing, Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204, *telephone:* (503) 464–8864.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Linda Stewart at (202) 502–6680, or e-mail address: *linda.stewart@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 15, 2007.

k. *Description of Request:* Portland General Electric Company proposes to increase the flashboard height on the concrete dam along the crest of Willamette Falls from 2 to 3.5 feet. The increase in flashboard height would help maintain the river level at Willamette Falls at an elevation which would allow the fish bypass systems to operate at their intended design with full powerhouse operation. Additionally, Portland General Electric Company proposes to install temporary adult lamprey passage structures between flashboard sections, extending downstream of the dam cap to the rock shelf to provide areas for upstream adult lamprey passage.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov;* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*; for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3218 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Jurisdictional Review and Soliciting Comments, Protests and/or Motions To Intervene

Take notice that the following review has been initiated by the Commission:

a. *Review Type:* Jurisdictional Review.

b. *Project No.:* 2306–080.

c. *Owner:* Great Bay Hydro Corporation.

d. *Name of Project:* Clyde River Hydroelectric Project.

e. *Location:* The project is located on the Clyde River in Orleans County, Vermont.

f. *Owner Contact:* Mr. William Rodgers, Great Bay Hydro Corporation, 1 New Hampshire Avenue, Suite 125, Portsmouth, NH 03801. (603) 766–4990.

g. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

h. *Deadline for filing comments, protests, and/or motions to intervene:* March 20, 2007.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov.*

Please include the docket number (Project No. 2306–080) on any comments, protests, and/or motions to intervene filed.

i. *Description:* Great Bay Hydro Corporation filed an application on January 5, 2006, proposing to amend the license to, among other things, remove from the license and project boundary, the Seymour and Echo reservoirs and convey them to the state of Vermont, because they are not needed for project purposes. Staff will review the jurisdictional status of the two reservoirs to determine whether they are needed for project purposes.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Protests, Comments, and/or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests and/or motions to intervene must be received on or before the specified comment date for the particular application.

l. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and/or ''MOTIONS TO INTERVENE'', as applicable, and the Docket Numbers of the particular review.

m. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described review. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3224 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–11–000]

Demand Response in Wholesale Markets; Notice of Technical Conference on Demand Response in Wholesale Markets

February 16, 2007.

A technical conference will be held on Monday, April 23, 2007, at 9 a.m. (EST), on integrating demand response in wholesale markets, including items previously set for conference in a Commission order.[1] The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. The agenda will be announced in a subsequent notice.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

A free webcast of this event will be available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts. It also offers access to this event via television in the Washington, DC area and via phone bridge for a fee. Visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at the Capitol Connection 703–993–3100 for information about this service.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information on the technical conference, please contact:

David Kathan (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory

[1] PJM Interconnection, L.L.C., 117 FERC ¶ 61,218, at P 45 (2006).

Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6404, *David.Kathan@ferc.gov.*

Aileen Roder (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6022, *Aileen.Roder@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E7–3219 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Independent Coordinator of Transmission (ICT) Stakeholders Policy Committee Meeting

February 13, 2007.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholders Policy Committee Meeting: February 20, 2007 (9 a.m.–3 p.m. CST), Hyatt DFW, International Parkway, P.O. Box 619014, DFW Airport, Texas, 75261, 972–453–1234.

The discussions may address matters at issue in the following proceedings:

Docket No. EL01–88	Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER03–171	Entergy Mississippi, Inc.
Docket No. EL02–107	Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, Duke Energy North America, LLC v. Entergy Services, Inc., Entergy Operating Companies.
Docket No. ER02–405	Entergy Services, Inc.
Docket No. EL02–88	Wrightsville Power Facility, L.L.C v. Entergy Arkansas, Inc.
Docket Nos. EL03–3, ER02–1472	Entergy Gulf States, Inc.
Docket Nos. EL03–4, ER02–1151	Entergy Services, Inc.
Docket Nos. EL03–5, ER02–1609	Entergy Services, Inc.
Docket No. EL03–3	Entergy Operating Companies.
Docket No. ER02–1472	Entergy Operating Companies.
Docket No. ER07–406	Entergy Operating Companies.
Docket No. ER07–398	Entergy Operating Companies.
Docket No. ER07–399	Entergy Operating Companies.
Docket No. ER07–259	Cleco Energy LLC.
Docket No. EL03–4	Entergy Operating Companies.
Docket No. ER02–1069	Entergy Operating Companies.
Docket No. EL03–13	Entergy Operating Companies.
Docket No. ER02–2243	Entergy Operating Companies.
Docket No. EL05–15	Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc.
Docket No. EL06–76	Arkansas Public Service Commission v. Entergy Services, Inc., et al.
Docket No. ER03–583	Entergy Services, Inc. and EWO Marketing, L.P.
Docket Nos. ER03–681, ER03–682	Entergy Services, Inc. and Entergy Power, Inc.
Docket No. ER03–744	Entergy Services, Inc. and Entergy Louisiana, Inc.
Docket No. EL04–20	Carville Energy LLC v. Entergy Services, Inc.
Docket No. EL04–49	Quachita Power LLC v. Entergy Services, Inc.
Docket No. EL04–99	Mississippi Delta Entergy Agency, et al. v. Entergy Services, Inc.
Docket No. EL05–1	Union Power Partners v. Entergy Services, Inc.
Docket No. EL05–21	Tenaska Frontier Partners v. Entergy Services, Inc.
Docket No. ER06–1555–000	Entergy Services, Inc.
Docket Nos. ER03–1272, EL05–22	Entergy Services, Inc.
Docket No. EL07–25	Entergy Services, Inc.
Docket No. ER05–1358	KGen Hinds LLC.
Docket No. ER05–1394	KGen Hot Spring LLC.
Docket No. ER05–1419	Hot Spring Power Company, LP.

These meetings are open to the public.

For more information, contact John Rogers, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (202) 502–8564 or *john.rogers@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3186 Filed 2–23–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8281–1]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board; Radiation Advisory Committee (RAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Radiation Advisory Committee (RAC) to discuss its draft advisory regarding EPA's draft White Paper: Modifying EPA Radiation Risk Models Based on BEIR VII, dated August, 2006.

DATES: The SAB RAC will hold a public teleconference on Friday, March 9, 2007 from 11 a.m. to 2 p.m. Eastern Standard Time.

ADDRESSES: Telephone conference call only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number, access code, and other information for the public teleconference may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), by mail at the EPA SAB Staff Office (1400F), U.S. EPA, 1200

Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9984; by fax at (202) 233–0643; or by e-mail at: *kooyoomjian.jack@epa.gov.* General information concerning the SAB can be found on the SAB Web site at: *http://www.epa.gov/sab.*

Technical Contact: For questions and information concerning the Agency's draft document being reviewed, contact Dr. Mary E. Clark, U.S. EPA, ORIA by telephone at (202) 343–9348, fax at (202) 243–2395, or e-mail at: *clark.marye@epa.gov.*

SUPPLEMENTARY INFORMATION: *Background:* Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the SAB Staff Office hereby gives notice of this public teleconference meeting of the SAB RAC. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB RAC will comply with the provisions of FACA and all appropriate EPA and SAB procedural policies. The purpose of this teleconference is to discuss a draft advisory being prepared by the SAB RAC concerning the Agency's draft White Paper: Modifying EPA Radiation Risk Models Based on BEIR VII, dated August, 2006.

EPA's Office of Radiation and Indoor Air (ORIA) requested this Advisory to obtain advice from the SAB on the application of BEIR VII, and on issues relating to the modifications and expansions of EPA's methodology for estimating radiogenic cancers. The SAB RAC met via conference call on September 6, 2006, in a face-to-face public meeting in Washington, DC on September 26–28, 2006 (See 71 FR 45545, August 9, 2006); and in public teleconferences on November 28 and December 18, 2006 (See 71 FR 62590, October 26, 2006). The public teleconference announced in this **Federal Register** notice is a continuation of the meetings, and provides an opportunity for the SAB RAC to deliberate on its draft advisory.

Availability of Teleconference Materials: The teleconference agenda and SAB RAC draft materials will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to the teleconference. Additional background information on this review includes the draft White Paper (available at: *http://epa.gov/radiation/news/recentadditions.htm*) and background materials, such as the BEIR VII document (available at: *http://newton.nap.edu/catalog/11340.html#toc*).

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB RAC to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested parties should contact the DFO, contact information provided above, in writing via e-mail seven days prior to the teleconference meeting date. For the Friday, March 9, 2007 teleconference meeting, the deadline is Friday, March 2, 2007 to be placed on the public speaker list. *Written Statements:* Written statements should be received in the SAB Staff Office seven days prior to the teleconference meeting. For the Friday, March 9, 2007 teleconference meeting, the deadline is Friday, March 2, 2007, so that the information may be made available to the SAB RAC for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. K. Jack Kooyoomjian at (202) 343–9984 or *kooyoomjian.jack@epa.gov.* To request accommodation of a disability, please contact Dr. Kooyoomjian preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: February 16, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–3208 Filed 2–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8281–4]

Safe Drinking Water Act Determination; Underground Injection Control Program, Determination of Indian Country Status for Purposes of Underground Injection Control Program Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: This notice announces the availability of EPA's Land Status Determination, which concludes that the approximately 160 acres of land located in the southeast portion of Section 8, Township 16N, Range 16W, in the State of New Mexico (the Section 8 land), is part of a dependent Indian community under 18 U.S.C. 1151(b) and, thus, considered to be ''Indian country.'' EPA is therefore the appropriate agency to consider underground injection control (UIC) permit applications under the Safe Drinking Water Act (SDWA) for that land.

DATES: The determination was signed on February 6, 2007.

FOR FURTHER INFORMATION CONTACT: David Albright, at *albright.david@epa.gov*, or 415.972.3971.

SUPPLEMENTARY INFORMATION: In the late 1980s, Hydro Resources, Inc. (HRI) sought a UIC permit for its property located within the Section 8 land. After considering materials submitted by the Navajo Nation and the New Mexico Environment Department (NMED), EPA determined that the Indian country status of the Section 8 land was in dispute and, thus, that EPA would be the appropriate agency to issue the SDWA UIC permit. The State of New Mexico and HRI challenged EPA's determination. In 2000, in *HRI* v. *EPA,* 198 F.3d 1224 (10th Cir. 2000), the United States Court of Appeals for the Tenth Circuit upheld EPA's decision to implement the UIC program throughout HRI's Section 8 land because the Indian country status of that land was in dispute. The Court remanded the matter to EPA to make a final administrative decision on the Indian country status of the disputed land.

In 2005, HRI approached NMED concerning a UIC permit for its proposed mining operations on the Section 8 land. In response, NMED formally requested that EPA determine the Indian country status of the Section 8 land to identify whether EPA or NMED is the appropriate agency to consider a UIC permit application from HRI for that land.

On November 2, 2005, EPA issued a **Federal Register** notice (see 70 FR 66402) inviting written comments and information from the public and interested parties on whether the Section 8 land constituted a dependent Indian community in whole or in part. EPA received comments from twenty-five (25) commenters, including HRI, the Navajo Nation, the State of New Mexico, and others.

The Agency reviewed the status of the land in light of the comments it received, the existing case law, and a November 3, 2006 opinion from the United States Department of the Interior (DOI) Solicitor, who has special expertise on Indian country questions. EPA also consulted with the Navajo Nation pursuant to its federal trustee relationship.

On February 6, 2007, EPA issued its final determination concluding that the Section 8 land is part of a dependent Indian community under 18 U.S.C. 1151(b) and, thus, ''Indian country.'' EPA is therefore the appropriate agency to consider underground injection control permit applications under the Safe Drinking Water Act (SDWA) for that land. For a copy of the Determination and other supporting material, go to *http://www.epa.gov/region09/water/groundwater/permit-determination.html*.

Dated: February 15, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–3203 Filed 2–23–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Monday, March 5, 2007, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

CLOSED SESSION: Litigation Recommendation: General Counsel Recommendation.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

Contact Person for More Information: Stephen Llewellyn, Acting Executive Officer, on (202) 663–4070.

Dated: February 22, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–884 Filed 2–22–07; 1:30 pm]

BILLING CODE 6570–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Thursday, March 1, 2007, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (C)(6), (c)(8), and (9)(A)(ii), Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: February 22, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 07–881 Filed 2–22–07; 12:53 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings Notice

DATE AND TIME: Thursday, March 1, 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Advisory Opinion 2007–03: Senator Barack Obama and the Obama Exploratory Committee by counsel, Robert F. Bauer and Rebecca Gordon, of Perkins Coie LLP. Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–888 Filed 2–22–07; 2:26 pm]

BILLING CODE 6715–01–M

FEDERAL TRADE COMMISSION

Public Workshop; Proof Positive: New Directions for ID Authentication

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice announcing a two-day public workshop and requesting public comment and participation.

SUMMARY: The FTC and other participating agencies are planning to host a two-day public workshop to explore the role of authentication processes in preventing identity theft. The workshop will provide a forum for discussion among public sector, private sector, and consumer representatives about better ways to authenticate the identities of individuals.

DATES: Workshop, Proof Positive: New Directions for ID Authentication, will be held on April 23, 2007 from 8:30 a.m. to 5 p.m. and April 24, 2007, from 8:30 a.m. to 12:30 p.m., in the Federal Trade Commission's Satellite Building Conference Center located at 601 New Jersey Avenue, NW., Washington, DC. The events are open to the public and attendance is free of charge. There will be no pre-registration.

Participants: As discussed below, written requests to participate as a panelist in the workshop must be filed on or before March 9, 2007. Persons filing requests to participate as a panelist will be notified on or before March 23, 2007, if they have been selected to participate.

Comments: Whether or not selected to participate, persons may submit written comments on the issues and topics set out below. Such comments must be filed on or before March 23, 2007.

ADDRESSES: Interested parties are invited to submit requests to participate and comments in accordance with the following instructions:

Requests To Participate as Panelist in Workshop:

Parties seeking to participate as panelists in the workshop must notify the FTC in writing of their interest in participating on or before March 9,

2007. Requests to participate as a panelist should be captioned ''ID Workshop—Request to Participate, P075402'' and may be submitted by any of the following methods. However, if the request contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

• *E-mail:* Requests to participate can be submitted electronically to: *idmworkshop@ftc.gov.*

• *Mail or Hand Delivery:* A request to participate filed in paper form should include ''ID Workshop, P075402,'' both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your request by e-mail, as prescribed above. The FTC is requesting that any request filed in paper form be sent by courier or overnight service, if possible.

Parties should include in their requests a statement setting forth their expertise in or knowledge of the issues on which the workshop will focus and their contact information, including a telephone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected.

FTC staff will select a limited number of panelists to participate in the workshop, using the following criteria.

1. The party has expertise in or knowledge of the issues that are the focus of the workshop;

2. The party's participation would promote a balance of interests being represented at the workshop; and

3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s).

The FTC will notify panelists on or before March 23, 2007, as to whether they have been selected. The number of parties selected will not be so large as to inhibit effective discussion among them. For those not serving as panelists, there also will be time during the workshop to ask questions.

Comments

The FTC requests that interested parties submit written comments on the issues raised below. Studies, surveys, research, and empirical data are especially useful. Comments should be captioned ''ID Workshop—Comment, P075402'' and must be filed on or before March 23, 2007. If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [2] Otherwise, comments may be submitted by any of the following methods.

• *Electronic Filing:* Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-idmworkshop* 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 *https://secure.commentworks.com/ftc-idmworkshop.*

• *Mail or Hand Delivery:* A comment filed in paper form should include ''ID Workshop, P075402,'' both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. 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 above. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

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 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: Stacey Brandenburg, Joanna Crane, or Naomi Lefkovitz at (202)–326–2252.

SUPPLEMENTARY INFORMATION:

Background and Proposed Agenda

Identity theft takes many forms and is committed for various purposes, including financial gain, avoidance of criminal penalties, and facilitating criminal activity (e.g., opening new credit accounts or draining bank accounts, evading criminal arrest warrants, and facilitating terrorist activities). But in its most basic form, it is a crime of deception relying on the unauthorized use of identifying information or credentials of another individual. At present, many transactions that depend on correct identification are conducted either remotely, or if in person, between individuals who are strangers. Because such transactions necessarily rely on an individual's use of identifying information or credentials in order to prove his or her identity, there is a potential risk of identity theft. Thus, the ability to determine when an individual is not who he or she purports to be is an important key to preventing identity theft.

The Identity Theft Task Force (''Task Force'') was established by Executive Order of the President on May 10, 2006. The Order directed the Task Force to deliver a strategic plan to the President on the Federal Government's response to identity theft. The Task Force, which is chaired by the Attorney General and co-chaired by the Chairman of the FTC, delivered an interim set of recommendations on September 19, 2006 that included the recommendation to hold a workshop focused on promoting improved means of authenticating the identities of individuals.[3]

To implement the Task Force's recommendation and to begin greater study of this area, the FTC and other Task Force agencies [4] will hold a workshop to explore the means by

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). 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).

[2] Commission Rule 4.2(d), 16 CFR 4.2(d). 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).

[3] President's Identity Theft Task Force Summary of Interim Recommendations (2006), available at *http://www.ftc.gov/opa/2006/09/idtheft.htm.*

[4] For a list of the agencies comprising the Task Force, see Executive Order: Strengthening Federal Efforts to Protect Against Identity Theft (2006), available at *http://www.whitehouse.gov/news/releases/2006/05/20060510–3.html.*

which identity theft can be prevented through better authentication of individuals.[5] The workshop will facilitate a discussion among public sector, private sector, and consumer representatives and will focus on technological and policy requirements for developing better authentication processes, including the incorporation of privacy standards and consideration of consumer usability.

To help in planning for the workshop, the FTC invites comments on ways to improve authentication processes in order to reduce the incidence of identity theft, including but not limited to, comments on the issues and topics set out below:

1. Establishing Identity—Understanding Verification Processes

- In what ways can identities be established? How can individuals prove their identities when establishing them in the first instance?
- Please comment on the strengths and weaknesses of relying on traditional identification documentation or credentials such as birth certificates, Social Security cards, driver's licenses, and passports.
- Please comment on the strengths and weaknesses of new or emerging tools for establishing individuals' identities. Examples may include consumer information databases, which can be used to confirm whether a name and other personal information (e.g., Social Security number) belong together, and fraud detection software, which can be used to identify anomalous patterns or behaviors that may signal use of a false identity.
- What roles should the public sector or the private sector have in establishing identification credentials? Within the public sector, what roles should different levels of government (i.e., federal, state, local) have in establishing identification credentials?

[5] The term ''authentication'' generally means the process of ensuring that an individual is who she or he claims to be. However, this process is more easily understood as comprising two distinct steps. The first step is the identification of an individual at the onset of the relationship between the individual and the verifying entity (e.g., an individual's identity will be verified when he or she applies for a passport or opens a financial account). The second step is the reaffirmation that the individual is the same individual whose identity was initially verified (e.g., the individual's passport is checked when he or she travels in or out of the country or the individual provides a password or other credentials to the financial institution when accessing an existing account). Although different terms can be applied to these steps, the first step is often labeled verification and the second step, particularly with respect to online environments, is often labeled authentication. For greater clarity, these distinctions are used in the invitation for comment section set forth herein.

2. Confirming the Established Identity—Current or Emerging Use of Authentication Technologies or Methods

- What are some current or emerging authentication technologies or methods (e.g., biometrics, public key infrastructure, knowledge-based authentication) for confirming established identities? Describe the contexts in which they may be used and their strengths and weaknesses.
- Please comment on the concept of multifactor authentication and how it is being or should be applied.
- To what extent are consumer information databases being used to authenticate individuals? One example of such use is to support knowledge-based authentication tools, which generate questions the answers to which only the consumer would know.
- To what extent do current or emerging authentication technologies or methods incorporate or rely on readily available identification information, such as Social Security numbers? How might such reliance affect the risk of identity theft?
- To what extent do these technologies or methods meet consumer needs, such as ease of use? To what extent do these technologies or methods raise privacy concerns, including concerns about the tracking and profiling of an individual's movements or transactions by the public or private sector?

3. Comparing Verification and Authentication Systems

- What are some of the different models for verification and authentication systems? Please comment on their strengths and weaknesses. For example, what are the relative merits of a centralized identification system where a single or a limited number of organizations identify all individuals and issue credentials that other entities can rely upon versus a decentralized identification system where each organization develops its own procedures and separately verifies and authenticates the individuals with which it is involved?
- In considering the relative merits of different systems, please comment on:
  - ○ Consumer acceptance and to what degree consumer education may facilitate such acceptance; and
  - ○ Any privacy concerns including issues raised with respect to data collection, use, and storage.
- In addition to reducing identity theft, how might better systems or processes for proving claims of identity generate other consumer benefits (e.g., providing access to various commercial or government services)?
- How are other countries addressing verification and authentication issues, particularly as the issues relate to identity theft? What lessons can be learned?

4. Upcoming Challenges in Authentication

- As technologies converge to allow consumers to conduct financial or other sensitive transactions in new ways, how can appropriate authentication processes or technologies be incorporated to ensure that consumers receive the intended benefits of these advances without exposing them to new vulnerabilities?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–3238 Filed 2–23–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0000] [60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection.

Title of Information Collection: Understanding Barriers and Successful Strategies for Faith-Based Organizations in Accessing Grants.

Form/OMB No.: 0990–

Use: The ''Understanding Barriers and Successful Strategies for Faith-Based Organizations in Accessing Grants'' study aims to complement internal Health and Human Services (HHS) efforts to provide equal access to federal discretionary grants for faith-based organizations by collecting information directly from such organizations on their experiences applying for federal grants.

Frequency: Single time.

Affected Public: Not-for-profit institutions.

Annual Number of Respondents: 290.

Total Annual Responses: 290.

Average Burden per Response: 35.3 minutes.

Total Annual Hours: 170.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60 days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Resources and Technology, Office of Resources Management, Attention: Sherrette Funn-Coleman (0990–NEW), Room 537–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: February 15, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–3175 Filed 2–23–07; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0243] [60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension.

Title of Information Collection: OCR Pre-grant Data Request Form.

Form/OMB No.: 0990–0243.

Use: The form is designed to collect data from health care providers who have requested certification to participate in the Medicare program. This civil rights compliance determination is an essential component of HHS' decision to grant or deny certification and must be made prior to the Department's final notification of its decision to the provider.

Frequency: Recordkeeping single time.

Affected Public: Business or other for-profit.

Annual Number of Respondents: 3,500.

Total Annual Responses: 3,500.

Average Burden per Response: 15 hours.

Total Annual Hours: 52,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Resources and Technology, Office of Resources Management, Attention: Sherrette Funn-Coleman (0990–0243), Room 537–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: February 15, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–3177 Filed 2–23–07; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Availability of the Hydroxyurea Expert Panel Report; Request for Public Comment

AGENCY: National Institute of Environmental Health Sciences; National Institutes of Health, HHS.

ACTION: Request for comment.

SUMMARY: CERHR announces availability of the hydroxyurea expert panel report by March 5, 2007 on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in print from CERHR (see ''**ADDRESSES**'' below). This expert panel report is an evaluation of the reproductive and developmental toxicity of hydroxyurea conducted by a 13-member expert panel composed of scientists from the Federal Government, universities, and private organizations. CERHR invites the submission of public comments on this expert panel report.

DATES: The final hydroxyurea expert panel report will be available by March 5, 2007, and written public comments on this report should be received by April 18, 2007.

ADDRESSES: Public comments and any other correspondence should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

Hydroxyurea is used in the treatment of cancer, sickle cell disease, and thalassemia. It is the only treatment for sickle cell disease used in children aside from blood transfusion. Hydroxyurea may be used in the treatment of children and adults with sickle cell disease for an extended period of time or for repeated cycles of therapy. Treatment with hydroxyurea may be associated with cytotoxic and myelosuppressive effects and hydroxyurea is mutagenic. Hydroxyurea is FDA-approved for reducing the frequency of painful crises and the need for blood transfusions in adults with sickle cell anemia who experience recurrent moderate to severe crises. CERHR selected hydroxyurea for expert panel evaluation because of (1) increasing use in the treatment of sickle cell disease in children and adults, (2)

knowledge that it inhibits DNA synthesis and is cytotoxic, and (3) published evidence of reproductive and developmental toxicity in rodents.

The CERHR convened an expert panel on January 24–26, 2007, to review and revise the draft expert panel report and reach conclusions regarding whether exposure to hydroxyurea is a hazard to human development or reproduction. The expert panel also identified data gaps and research needs. Prior to the meeting, CERHR solicited public comment on the draft expert panel report (**Federal Register** Vol. 71, No. 199 pp. 60746–60748).

Following receipt of public comments on the hydroxyurea expert panel report, CERHR staff will prepare the NTP–CERHR monograph. NTP–CERHR monographs are divided into four major sections: (1) The NTP Brief which provides the NTP's interpretation of the potential for the chemical to cause adverse reproductive and/or developmental effects in exposed humans, (2) a roster of expert panel members, (3) the final expert panel report, and (4) public comments received on that report. The NTP Brief is based on the expert panel report, public comments on that report, public and peer review comments on the draft NTP Brief, and any new information that became available after the expert panel meeting.

Request for Comments

CERHR invites written public comments on the hydroxyurea expert panel report. Written comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any). All comments received will be posted on the CERHR website and will be included in the NTP–CERHR monograph on hydroxyurea. The NTP will consider all public comments during preparation of the NTP Brief.

Background Information on CERHR

The NTP established CERHR in June 1998 [**Federal Register**, December 14, 1998 (Vol. 63, No. 239, pp. 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by CERHR in public forums.

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its Web site (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **ADDRESSES** above). CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (Vol. 66, No. 136, pp 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from CERHR.

Dated: February 12, 2007.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–3151 Filed 2–23–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–07–0274]

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 Joan Karr, CDC Acting 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

CDC Model Performance Evaluation Program (MPEP) (0920–0274)—Revision—National Center for Preparedness, Detection, and Control of Infectious Diseases (proposed) (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval of a revision to its data collection, the CDC Model Performance Evaluation Program (MPEP). CDC originally implemented MPEP in 1986 to evaluate the performance of laboratories conducting testing to detect human immunodeficiency virus type 1 (HIV–1) antibody (Ab). CDC is requesting a 3-year approval for this data collection.

In this program, respondents receive 2 shipments of specimens per year. Respondents test the specimens in their laboratory/testing site and report their results either using a report booklet or on-line. CDC provides the respondent with a report containing the analysis of the laboratory test results reported to CDC. Participation in this program is voluntary and provides the respondents an opportunity to (1) assure accurate tests are being provided by the laboratory/testing site through external quality assessment; (2) improve testing quality through self-evaluation in a nonregulatory environment; (3) test well characterized samples from a source outside the test kit manufacturer; (4) discover potential testing problems so that procedures can be adjusted to eliminate them; (5) compare of testing results with others at a national and international level; and (6) consult with CDC staff to discuss testing issues.

In this request, CDC proposes to make the following revisions to the currently approved data collection:

- Addition of a Name and Address change form to report changes for the MPEP manager and coordinator at the respondent laboratory;
- Inclusion of additional test kit manufacturers approved by the FDA since previous OMB approval; and
- Elimination of reporting HIV–1 RNA Viral Load and CD4+ T-cell determinations.

All respondents are MPEP affiliated laboratories.

There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents (type of form)	Number of respondents	Frequency of response	Average time per response	Annual burden (in hours)
New Enrollees	100	1	3/60	5
Laboratory Change Form	20	1	3/60	1
Laboratory Test Result Form	754	2	10/60	251
Total				257

Dated: February 20, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–3167 Filed 2–23–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Research Member Conflict Review, Program Announcement Number (PA) 04–038

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Meeting of the aforementioned committee:

Time and Date: 1 p.m.–4 p.m., March 14, 2007 (Closed).

Place: National Institute for Occupational Safety and Health, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of research grant applications in response to PA 04–038, ''Occupational Safety and Health Research Member Conflict Review.''

Contact Person for More Information: George Bockosh, Designated Federal Officer, National Institute for Occupational Safety and Health, 626 Cochrans Mill Road, Pittsburgh, PA 30333, telephone 412.386.6465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 20, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–3184 Filed 2–23–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Mentored Training Grant Applications (K series).

Date: February 26, 2007.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300. (301) 451–2020, *aes@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Epidemiology, Genetics and Data Analysis Grant Applications.

Date: March 22, 2007.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision research, National Institutes of Health, HHS.

Dated: February 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–831 Filed 2–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Biostatistical Training Program in Genetics and Public Health.

Date: March 9, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Minority Biomedical Research Support.

Date: March 9, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Brian R. Pike, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikebr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Minority Biomedical Research Support.

Date: March 12, 2007.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIH Pathway to Independence Awards.

Date: March 14–15, 2007.

Time: 7 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 815 14th Street, NW., Washington, DC 20005.

Contact Person: Meredith D. Temple-O'Connor, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: February 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–833 Filed 2–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: March 14, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities. There will be discussion of developments in gene transfer for inherited immunodeficiency disorders.

Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 10, Bethesda, MD 20892.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838, *lewallla@od.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual program for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–832 Filed 2–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chondroprotection and Chrondrocyte Biology.

Date: February 26, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Health Scientist Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–594–6376, *ansaria@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Atherosclerosis.

Date: March 14, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095J, MSC 7822, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology Member Conflicts Special Emphasis Panel.

Date: March 15–16, 2007.

Time: 8 a.m. to 11:59 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health Literacy.

Date: March 15–16, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Behavioral and Social HIV/AIDS Applications.

Date: March 16, 2007.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SCORS.

Date: March 22–23, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Diversity Predoctoral Fellowship for DCPS.

Date: March 22–23, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Cell Biology.

Date: March 22–23, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jonathan Arias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

Date: March 22, 2007.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemotaxis Modeling.

Date: March 22, 2007.

Time: 11 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Analysis of Complex Traits.

Date: March 22, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara J. Thomas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2220, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Imaging.

Date: March 22, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biostatistical Methods and Research Design Member Conflicts.

Date: March 22, 2007.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sandra L. Melnick, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnicks@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Roadmap Initiative for Membrane Proteins.

Date: March 23, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myocardial Ischemia and Reperfusion.

Date: March 23, 2007.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Organ Systems.

Date: March 26–27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Haverford, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301–435–2365, *abdelouahaba@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Physiology and Pathology of Organ Systems.

Date: March 26–27, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bukhtiar H. Shah, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4213, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small GTPase Activation.

Date: March 27–29, 2007.

Time: 6 a.m. to 6 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS Fellowship Applications.

Date: March 27–29, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 435–2211, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroinformatics and Neuorimaging Special Emphasis Panel.

Date: March 28–30, 2007.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliottro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gerontology.

Date: March 28, 2007.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040Q, MSC 7843, Bethesda, MD 20892, 301–435–1019, *bollerf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nutrition.

Date: March 29, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant application.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral, Dental and Craniofacial Sciences.

Date: March 29, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301–435–1781, *th88q@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 16, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–834 Filed 2–23–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Arthritis, Connective Tissue and Skin Sciences.

Date: March 5, 2007.

Time: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Arthritis, Connective Tissue and Skin Sciences.

Date: March 5, 2007.

Time: 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Prokaryotic Biology.

Date: March 8, 2007.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Ethical, Legal and Social Implications of Human Genetics Study Sections.

Date: March 9, 2007.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Humoral Immunity and Pathogenesis in AIDS.

Date: March 12, 2007.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NAED Reviewer Conflicts.

Date: March 12, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Psychopathology and Developmental Disorders.

Date: March 13, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; LCMI Member Conflict Applications.

Date: March 14, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Receptors and G-Proteins in Cardiovascular System.

Date: March 14, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Risk and Prevention Fellowships.

Date: March 15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Helix Hotel, 1430 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR/STTR Cell Biology.

Date: March 15–16, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RIBT Member Conflicts.

Date: March 15, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: March 16, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cognition, Perception and Language Fellowships.

Date: March 16, 2007.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular, Cellular and Developmental Neurobiological Small Business Applications.

Date: March 16, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jury's Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20032.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiac Arrhythmia.

Date: March 16, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HSOD Member Conflict Review.

Date: March 16, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gertrude K. McFarland, FAAN, RN, DNSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: March 19, 2007.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology Fellowships.

Date: March 19–20, 2007.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Regulation of Axonal Growth and Synaptic Plasticity.

Date: March 19, 2007.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurogenesis and Stem Cells.

Date: March 19, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fugii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–06–389: Basic and Translational Research Opportunities in the Social Neuroscience of Mental Health.

Date: March 20–21, 2007.

Time: 6 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gobv.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–06–473 Translational Research on the Relationship of Anxiety and Depression (R21).

Date: March 20–21, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Maribeth Champouxs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neural System.

Date: March 20, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Heart Failure.

Date: March 20, 2007.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Social Sciences.

Date: March 21, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognition.

Date: March 21, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BGES Special Emphasis Panel Study Section–HOP E 02 M.

Date: March 21, 2007.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–835 Filed 2–23–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Recombinant Yeast Expressing CEA for the Prevention and Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive

patent license to practice the inventions embodied in U.S. Patent 6,756,038 and PCT Application Serial No. PCT/US98/19794 and foreign equivalents thereof, entitled ''Agonist and Antagonist Peptides of Carcinoembryonic Antigen (CEA)'' (E–099–1996/0) and U.S. Patent 6,969,582 and PCT Application Serial No. PCT/US99/26866 and foreign equivalents thereof, entitled ''A Recombinant Vector Expressing Multiple Costimulatory Molecules and Uses Thereof'' (E–256–1998/0), to GlobeImmune Inc., which is located in Louisville, Colorado. The patent rights in these inventions have been assigned to the United States of America. The prospective exclusive license territory may be worldwide and the field of use may be limited to the use recombinant Saccharomyces cerevisiae expressing CEA for the prevention and treatment of cancer.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 27, 2007 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Michelle A. Booden, PhD., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; E-mail: *boodenm@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The technology describes the composition and use of nucleic acid sequences that encode agonist and one antagonist peptide variants of the human carcinoembryonic antigen (CEA) peptide, including but not limited to CAP–1. CEA is an antigen, which is expressed on the surface of various types of cancer cells. It is capable of stimulating a specific cytolytic T cell response, as is CAP–1, which is a highly immunogenic epitope of CEA. Therefore, CAP–1 agonists which are capable of eliciting a CEA-specific cytolytic T cell response, such as those identified by the inventors, may represent potential immunogens for use as therapeutic agents or vaccines against various cancers, and possibly also for use against autoimmune diseases. In fact, at least one of the agonist peptides appears to be more immunogenic than the native CAP–1 peptide. CAP–1 antagonists which are capable of reducing or eliminating this T cell response, such as the antagonist peptide variant identified by the inventors, may represent potential agents for use against autoimmune responses to CEA or to agonist peptide variants thereof.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 16, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–3153 Filed 2–23–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences 2008–2012 Strategic Plan

ACTION: Notice with request for comments.

SUMMARY: NIGMS is initiating a strategic planning process that will culminate in the NIGMS Strategic Plan for 2008–2012. To assist with this process, NIGMS requests input from scientists, scientific organizations, and other interested parties. The goal of this strategic planning process is to identify Institute priorities and guide decision-making over the next five years. Information about NIGMS can be found at *http://www.nigms.nih.gov/*.

DATES: In order to ensure full consideration, responses must be submitted by 12 midnight EDT on March 20, 2007.

ADDRESSES: Interested individuals and organizations should submit their responses to *http://www.nigms.nih.gov/About/StrategicPlan/Input.htm*.

SUPPLEMENTARY INFORMATION:

Background

The mission of the National Institute of General Medical Sciences (NIGMS) is to support basic research whose results lay the foundation for the diagnosis, treatment, and prevention of disease. NIGMS-funded researchers seek to answer important questions in fields such as cell biology, biophysics, genetics, developmental biology, pharmacology, physiology, biochemistry, chemistry, bioinformatics, and computational biology, and in selected cross-cutting clinical areas that affect multiple organ systems. NIGMS also provides leadership in promoting the diversity of the scientific workforce and in training the next generation of scientists to assure the vitality and continued productivity of basic research.

NIGMS has embarked on a strategic planning process to identify Institute priorities to guide decision-making over the next five years. To assure the broadest possible input, NIGMS is inviting the scientists, scientific organizations, and other interested parties to respond electronically to a series of questions, listed below.

- What factors should NIGMS consider in deciding how to set its priorities with respect to new and existing areas of support?
- What factors should NIGMS consider in deciding how to set its priorities with respect to research training?
- What new or emerging areas, approaches, or technologies in basic biomedical research should NIGMS pursue?
- As part of its efforts to maintain a balanced research portfolio, how can NIGMS best encourage and support research that is highly innovative and/or risky?
- Are there areas of current NIGMS research activity that should receive less emphasis?
- How can NIGMS enhance its communication with the scientific community and the public?
- How can NIGMS more effectively promote and encourage greater diversity in the biomedical research workforce?

You may also submit other comments relevant to NIGMS that are not specifically addressed in these questions.

Responses will be limited to approximately 500 words per question. All information provided will be processed and analyzed with strict anonymity.

Contact Person: Judith H. Greenberg, PhD., National Institute of General Medical Sciences, National Institutes of

Health, Building 45, Room 2AS25, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892–6200; 301–594–0943; *greenbej@nigms.nih.gov.*

Dated: February 16, 2007.

Jeremy M. Berg,

Director, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. E7–3152 Filed 2–23–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment and Receipt of an Application for Amendment to an Incidental Take Permit for the Green Diamond Resource Company Habitat Conservation Plan for the Northern Spotted Owl, Del Norte and Humboldt Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Green Diamond Resource Company (Green Diamond) (previously Simpson Timber Company) has applied to the Fish and Wildlife Service (Service) to amend its existing incidental take permit (ITP) for the federally threatened northern spotted owl (*Strix occidentalis caurina*; ''NSO''). The existing ITP was issued in 1992, in association with a Habitat Conservation Plan (Plan) and Implementation Agreement (IA), pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended.

The proposed ITP amendment would authorize the take of eight additional owl pairs on Green Diamond's ownership in Humboldt and Del Norte counties, California. These additional takes would be authorized during the existing permit term expiring in 2022, and would provide Green Diamond operational flexibility while they and the Service further consider and evaluate the findings of a 10-year, comprehensive Plan review.

The application for permit amendment includes proposed amendments to the existing IA and Plan, which describe the proposed action and the measures that Green Diamond will undertake to minimize and mitigate take of the NSO.

DATES: Written comments must be received on or before April 27, 2007.

ADDRESSES: Send written comments to Ms. Amedee Brickey, ES Program Manager, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521. You also may send comments by facsimile to 707–822–8411.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Falxa, [see **ADDRESSES**] or call 707–822–7201.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the Arcata Fish and Wildlife Office [see **ADDRESSES**] and at each of the following libraries:

(1) Eureka Main Library, 1313 3rd Street, Eureka, CA; telephone: 707–269–1900.

(2) Fortuna Branch, Humboldt County Library, 775 14th Street, Fortuna, CA; telephone: 707–725–3460.

(3) Arcata Branch, Humboldt County Library, 500 7th Street, Arcata, CA; telephone: 707–822–5924.

(4) Del Norte County Library, 190 Price Mall, Crescent City, CA; telephone: 707–464–9793.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act to include ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The Service may, under limited circumstances, issue permits to authorize incidental take (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

On September 17, 1992, the Service issued an ITP to the Applicant authorizing take of up to 50 NSO pairs in accordance with conditions set forth in the Plan and an IA. The ITP was issued in response to a permit application with an associated Habitat Conservation Plan for timber harvesting on the firm's properties in Del Norte, Humboldt, Mendocino, and Trinity counties, California. The effects of the proposed ITP were analyzed and described in an Environmental Assessment (EA) prepared and issued by the Service (Notice of Availability, **Federal Register**, May 27, 1992).

Green Diamond is proposing to amend its ITP to authorize take of up to eight additional NSO pairs on that part of its ownership, currently about 416,533 acres, on the west slopes of the Klamath Mountains and the Coast Range in Humboldt and Del Norte counties, California. The Applicant anticipates that these takes would be in the form of displacement of NSO pairs, incidental to timber harvest activities in or near NSO nest sites or activity centers.

To mitigate take of eight additional owl pairs, Green Diamond proposes, in addition to measures in the existing Plan, to conduct new research on the habitat overlap and interaction between the NSO and barred owl (*Strix varia*), and to re-establish, through year 2012, a special management area of about 20,310 acres on its ownership, within which Green Diamond would not take owls.

The Service's EA considers the environmental consequences of three alternatives, including: (1) The Proposed Project Alternative, which consists of issuance of an amended ITP and implementation of the additional Plan measures; (2) an alternative that provides for the take of eight additional owl pairs (similar to the Proposed Action), plus release for harvest entry of three set-aside areas that are otherwise not available for timber harvest during the term of the ITP; and (3) the No Action Alternative, which provides for continued implementation of measures contained in the existing Plan and associated IA, and the level of incidental take authorized in the existing 1992 ITP.

National Environmental Policy Act

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA). Accordingly, as the NEPA lead agency, the Service is providing this notice of the availability and is making the EA available for public review.

Public Review

The Service invites the public to review the EA and amendments to the Plan and IA during a 60-day public comment period [see **DATES**]. Written comments from interested parties are welcome to ensure that the issues of public concern related to the proposed action are identified. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the office listed in the **ADDRESSES** section of this notice. All materials received will become part of the administrative record. Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents,

available for public review. Individual respondents may request that we withhold their names and/or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

This notice is provided pursuant to section 10(a) of the Act and the regulations for implementing NEPA, as amended (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue an amended permit to the Green Diamond. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: February 20, 2007.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. E7–3176 Filed 2–23–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Multistate Conservation Grant Program; Priority List for Conservation Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt of priority list.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce the FY 2007 priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (AFWA). As required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, each year AFWA submits a list of projects to us for consideration of funding by the Multistate Conservation Grant Program. We then review and award grants from this list.

ADDRESSES: John C. Stremple, Multistate Conservation Grants Program Coordinator, Division of Federal Assistance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4020, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: John C. Stremple, (703) 358–2156 (phone) or *John_Stremple@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate Conservation Grant Program. The Improvement Act authorizes us to award grants of up to $3 million annually from funds available under each of the Restoration Acts, for a total of up to $6 million annually. We may award grants from a list of priority projects recommended to us by AFWA. The FWS Director, exercising the authority of the Secretary of the Interior, need not fund all AFWA-recommended projects, but may fund recommended projects on the list only.

Grantees under this program may use funds for sport fisheries and wildlife management and research projects, boating access development, hunter safety and education, aquatic education, fish and wildlife habitat improvements and other purposes consistent with the enabling legislation.

To be eligible for funding, a project must benefit fish and/or wildlife conservation in at least 26 States, or in a majority of the States in any one FWS region, or it must benefit a regional association of State fish and wildlife agencies. We may award grants to a State, a group of States, or one or more nongovernmental organizations. For the purpose of carrying out the National Survey of Fishing, Hunting and Wildlife-Associated Recreation, we may award grants to the FWS, if requested by AFWA, or to a State or a group of States. Also, AFWA requires all project proposals to address its National Conservation Needs, which are announced annually by AFWA at the same time as its request for proposals. Further, applicants must provide certification that no activities conducted under a Multistate Conservation Grant will promote or encourage opposition to the regulated hunting or trapping of wildlife or to the regulated angling for or taking of fish.

Eligible project proposals are reviewed and ranked by AFWA Committees and interested nongovernmental organizations that represent conservation organizations, sportsmen's organizations, and industries that support or promote fishing, hunting, trapping, recreational shooting, bow hunting, or archery. AFWA's Committee on National Grants recommends a final list of priority projects to the directors of State fish and wildlife agencies for their approval by majority vote. By statute, AFWA then must transmit the final, approved list to the FWS for funding under the Multistate Conservation Grant Program by October 1.

This year, we received a list of 11 recommended projects. They are recommended for funding in 2007, contingent on the Multistate Conservation Grant Program receiving additional funds as specified in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (Pub. L. 109–059) passed in August 2005. AFWA's recommended list follows:

BILLING CODE 4310–55–P

2007 AFWA Recommended Multistate Conservation Grant List

ID	Project Title	Submitter	WR/SFR	2007 WR	2007 SFR	2008 WR	2008 SFR	2009 WR	2009 SFR	Total Grant Request
07-003	Conservation Leaders for Tomorrow: Exposing University Wildlife and Other Natural Resource Students to Hunting and the Hunter's Role in Conservation	Wildlife Management Institute	100% WR	32,000	0	90,000	0	90,000	0	212,000
07-004	Property Tax Incentives for Access to Private Lands	Wildlife Management Institute	75/25	19,687.50	6,562.50	57,675	19,225	45,975	15,325	164,450
07-005	Hunting Heritage Action Plan	Wildlife Management Institute	100% WR	20,000	0	100,000	0	100,000	0	220,000
07-007	Economic Impacts of Hunting (2006)	Association of Fish and Wildlife Agencies	100% WR	63,910	0	0	0	0	0	63,910
07-008	Evaluation of Methodologies for the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation	Association of Fish and Wildlife Agencies	50/50	39,600	39,600	3,300	3,300	0	0	85,800
07-009	The Trailblazer Adventure Program	U.S. Sportsmen's Alliance Foundation	50/50	80,000	80,000	80,000	80,000	0	0	320,000
07-010	Economic Impacts of Sportfishing, 2006	American Sportfishing Association	100% SFR	0	69,551	0	0	0	0	69,551
07-013	Best Practices in Hunting and Shooting Sports Recruitment & Retention	National Shooting Sports Foundation	100% WR	75,200	0	140,400	0	0	0	215,600
07-015	National Hunting & Fishing Day Initiative	Wonders of Wildlife	50/50	33,000	33,000	34,375	34,375	0	0	134,750
07-021	Disease Training for Wildlife Biologists	University of Georgia	100% WR	51,762	0	195,956	0	197,422	0	445,140
07-022	National Youth Partnerships: Building on the Success of Hooked on Fishing Not on Drugs®	Future Fisherman Foundation	100% SFR	0	60,000	0	0	0	0	60,000
				$415,159.50	$288,713.50	$701,706.00	$136,900.00	$433,397.00	$15,325.00	$1,991,201.00

SFR=Sport Fish Restoration
WR=Wildlife Restoration

Dated: January 21, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 07–830 Filed 2–23–07; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting Announcements: North American Wetlands Conservation Council; Neotropical Migratory Bird Conservation Act Advisory Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public. The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) will hold its third meeting. This meeting is open to the public, and interested persons may present oral or written statements.

DATES: *Council:* March 13, 2007, 1–3 p.m. *Advisory Group:* March 14, 2007, 11–4:30 p.m., March 15, 2007, 9–3 p.m.

ADDRESSES: Both meetings will be held at the Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington DC 20005. For further information, contact Mike Johnson, Acting Council Coordinator, at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mike Johnson, Acting Council Coordinator, (703) 358–1784 or *dbhc@fws.gov*.

SUPPLEMENTARY INFORMATION: *Council:* In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://birdhabitat.fws.gov*. Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider Canadian and U.S. Small Grant grant proposals at the meeting. The tentative date for the Commission meeting is June 13, 2007.

Advisory Group: The Advisory Group, named by the Secretary of the Interior under NMBCA (Pub. L. 106–247, 114 Stat. 593, July 20, 2000), will hold its third meeting. The Group advises the Director, Fish and Wildlife Service, on the strategic direction and management of the program. Proposal due dates, application instructions, and eligibility requirements are available on the NMBCA Web site at *http://birdhabitat.fws.gov.*

Dated: February 5, 2007.

Paul Schmidt,

Assistant Director—Migratory Birds.

[FR Doc. E7–3192 Filed 2–23–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

USGS–CCSP Committee for Synthesis and Assessment Product 3.4: Abrupt Climate Change

ACTION: Notice of meeting.

Summary: The USGS–CCSP Committee for Synthesis and Assessment Product 3.4: Abrupt Climate Change will meet at the Hyatt Regency hotel in Reston, Virginia on March 26–28, 2007.

Agenda: The goal of the workshop is to produce a detailed outline of topics for consideration in the Synthesis and Assessment Product and establish writing assignments. The agenda will focus on the state of the science regarding the topic of ''abrupt climate change.'' Discussion will include, but is not limited to, rapid hydrologic change; abrupt changes to meridional overturning circulation; rapid Arctic and Antarctic ice sheet mass balance; and rapid methane release from hydrates. The workshop is open to the public during the times listed below. Pre-registration is required to attend. Contact the Designated Federal Officer (DFO) at the address below by March 21, 2007 to pre-register and to receive a copy of the workshop agenda. Public involvement with the workshop is encouraged. Prepared statements may be presented orally to the Committee on Monday March 26, 2007 between 11 a.m. and 12 p.m. Public statements will be limited to 3 minutes per person. For scheduling reasons, intent to make a public statement must be established at the time of pre-registration. A written copy of the oral statement must be left with the Committee's DFO at the workshop as a matter of public record. Open discussions will accompany each formal session of the workshop. Short public comments/questions will be allowed if time permits. Seating will be available on a first come, first served basis. Please check the Synthesis and Assessment Product 3.4 Web page at CCSP (*http://www.climatescience.gov/Library/sap/sap3–4/default.php*) for any last minute changes to the workshop time, date, location or agenda.

Workshop Dates and Times

Monday March 26, 2007: 11 a.m.–12 p.m. (public comments); 1:15 p.m.–5 p.m.

Tuesday March 27, 2007: 8:30 a.m.–12:15 p.m.; 1:30 p.m.–5:15 p.m.

Wednesday March 28, 2007: 8:30 a.m.–12:15 p.m.; 3:30 p.m.–5 p.m.

Workshop Address

Hyatt Regency Reston, 1800 President Street, Reston, VA 20190.

FOR FURTHER INFORMATION AND TO PRE-REGISTER CONTACT: John McGeehin (DFO), U.S. Geological Survey, 12201 Sunrise Valley Drive, M.S. 926A, Reston, VA 20192, (703) 648–5349, *mcgeehin@usgs.gov.*

Rama Kotra,

Acting Associate Director for Geology, U.S. Geological Survey.

[FR Doc. 07–840 Filed 2–23–07; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on March 8, 2007, in Phoenix, Arizona, at the Bureau of Land Management (BLM) Arizona State Office located at One North Central Avenue, 8th floor. It will begin at 8 a.m. and conclude at 4:30 p.m. The morning agenda items to be covered include: Review of the December 7, 2006, Meeting Minutes, BLM State Director's Update on Statewide Issues; Presentations on the Rails to Trails Project and the Arizona Strip Cooperative Rangeland Monitoring Program; RAC Questions on written reports from BLM Field Managers; Field

Office Rangeland Resource Team Proposals; and, Reports by the Standards and Guidelines, Recreation, Off-Highway Vehicle Use, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups. A public comment period will be provided at 11:30 a.m. on March 8, 2007, for any interested publics who wish to address the Council on BLM programs and business. Under the Federal Recreation Enhancement Act, the BLM Arizona RAC has been designated the Recreation Resource Advisory Council (RRAC), and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The afternoon meeting agenda on March 8 will be devoted to presenting the Recreation Enhancement Act (REA) Working Group Report, and reviewing one FS, and three BLM fee proposals in Arizona:

(1) Sycamore Cabin (Prescott National Forest) Less than a 20-minute drive from Phoenix, Flagstaff and Prescott, this historic Prescott National Ranger house is currently available for nightly rental. The fee proposal will consider an increase from $100 to $125 per night (excluding $9 reservation fee). An additional $25 per night will be charged if a Recreational Vehicle is brought to the site.

(2) Coyote Buttes Special Management Area (BLM Arizona Strip District) Just south of the Utah-Arizona border, with access located midway between Page, Arizona and Kanab, Utah on U.S. Highway 89. Visitors may hike in scenic Coyote Buttes by obtaining an online permit on a first-come, first-served basis. The existing permit fee is $5 per person, per day. The fee proposal will consider the inclusion of an online lottery for hiking permits and a $5 per application lottery fee.

(3) Amenity Fee Site Proposals, Annual Recreation Pass, and Long-Term Visitor Areas (BLM Yuma Field Office). Changes to the recreation fee schedules are proposed, including an increase from $140 to $180 for a 7-month permit, and from $30 to $40 for a 14-day permit at the Field Office's two Long-Term Visitor Areas. In addition, BLM also maintains seven other developed recreation fee sites, six of which are located on the lower Colorado River. The annual pass honored at all seven of these recreation sites is proposed to increase from $50 to $75. At the six Colorado River recreation sites, BLM is proposing to establish a $10 day-use fee and a $15 overnight fee. At the seventh site, the Ehrenberg Sandbowl Off-Highway Vehicle Area, BLM is proposing to establish a $5 day-use fee and a $10 overnight fee.

(4) Amenity Fee Site Proposals and Annual Recreation Pass (BLM Lake Havasu Field Office). The Annual Recreation Pass fee is proposed to increase from $50 to $100 per year, the first increase since the program began in 2002. The Annual Pass is used in lieu of paying daily permit fees (typically $4 to $20 each) for an unlimited number of overnight and day-use visits at Lake Havasu shoreline campsites and Parker Strip recreation sites. An increase in Daily Permit Fees is also proposed for the Parker Strip, from $3 to $4 to $5 for day use, and from $4 to $10 to $5 to $10 for overnight. In addition, fees proposed for the Empire Landing Campground (upon its reopening in 2008) would be $25 to $30 per day.

Following the FS and BLM proposals, the RRAC will open the meeting to public comments on the fee proposals. After completing their RRAC business, the BLM RAC will reconvene to provide recommendations to the RAC Designated Federal Official on the fee proposals and discuss future RAC meetings and locations.

DATES: *Effective Date:* February 21, 2007.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427; 602–417–9215.

Elaine Y. Zielinski,

State Director.

[FR Doc. 07–818 Filed 2–23–07; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Construction of New Utah Museum of Natural History, Final Environmental Impact Statement, Salt Lake County, UT

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Construction and Operation of a Proposed New Utah Museum of Natural History at the University of Utah.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service and the University of Utah announce the availability of a Final Environmental Impact Statement for the Construction and Operation of a Proposed New Utah Museum of Natural History at the University of Utah, Salt Lake County, Utah.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at *http://www.umnh.utah.edu*, (click on About UMNH, New Building Updates, Environmental Impact Statement), at the Utah Museum of Natural History, 1390 E. President's Circle, Salt Lake City, Utah 84112, phone 801–581–4889, and at Salt Lake City Public Libraries.

FOR FURTHER INFORMATION CONTACT: Ralph Becker, 1584 South 500 West, Suite 201, Woods Cross, Utah 84010, 801–355–8816, e-mail *rbecker@bearwest.com*.

Dated: December 5, 2006.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. E7–3159 Filed 2–23–07; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notification of Termination of the Environmental Impact Statement for the Great Falls Historic District Special Resource Study in Paterson, NJ

AGENCY: National Park Service, Interior.

ACTION: Notification of Termination of the EIS process for the Great Falls Historic District Special Resource Study in Paterson, New Jersey.

SUMMARY: As directed by the U.S. Congress in Pub. L. 107–59, the National Park Service (NPS) undertook a special resource study (SRS) of the Great Falls Historic District in Paterson, New Jersey. In accordance with NPS policy, the Great Falls Historic District SRS was initially undertaken as an Environmental Impact Statement (EIS) process in compliance with the National Environmental Policy Act of 1969, as amended (NEPA). A Notice of Intent to Prepare an EIS was published in the **Federal Register** on September 15, 2003. The purpose of an SRS is to determine the degree and kind of federal actions that may be desirable for the management and protection of an area considered to have potential for addition to the national park system. The EIS assesses the impacts of the management alternatives examined in the SRS.

The SRS examines a site in terms of:

- significance of the resources

• determination of suitability of the site for inclusion within the national park system in comparison to other protected sites with similar resources or themes

• determination of feasibility for the NPS to own, manage or participate in conservation and interpretation in the study area

• need for NPS management measured against other alternatives

This SRS examined the resources in the existing Great Falls Historic District, which preserves the history of the beginnings of manufacturing and labor in the United States. All of the elements of the site are located within the City of Paterson, County of Passaic, in New Jersey, adjacent to the Passaic River. Determination of the need for NPS management is the final criterion for evaluating resources for potential designation as a unit in the national park system. The study concluded that the site is determined neither suitable nor feasible for potential designation as a unit of the national park system. As a result, there is no need for NPS management and no further Federal action. Therefore, the EIS process has been terminated.

DATES: The Great Falls Historic District Special Resource Study was made available for public review at: *http://parkplanning.nps.gov/* or: *http://www.nps.gov/nero/greatfalls/* starting November 27, 2006.

ADDRESSES: The document was also made available for public review at the Danforth (Main) Public Library, 250 Broadway, Paterson, New Jersey.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Planner, National Park Service, Northeast Region, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106.

SUPPLEMENTARY INFORMATION: Not applicable.

Dated: December 15, 2006.

Chrysandra L. Walter,

Acting Director, Northeast Region, National Park Service.

[FR Doc. 07–839 Filed 2–23–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 10, 2007.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 7, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

FLORIDA

Sarasota County

Nielsen, Lucienne, House, (Sarasota School of Architecture MPS), 3730 Sandspur Ln., Nokomis, 07000163

IDAHO

Canyon County

Nampa Neighborhood Historic District, Old, Roughly bounded by 4th Ave. S, 4th St. S, 11th Ave. S, and 9th Sts. S, Nampa, 07000164

LOUISIANA

St. Tammany Parish

Saint Joseph Abbey Church, 75376 River Rd., Saint Benedict, 07000165

Saint Joseph Abbey Refectory, 75376 River Rd., Saint Benedict, 07000166

MASSACHUSETTS

Middlesex County

Pawtucket Congregational Church, 15 Mammoth Rd., Lowell, 07000167

Plymouth County

Bethel African Methodist Episcopal Church and Parsonage, 6 Sever St., Plymouth, 07000168

MISSISSIPPI

Harrison County

Turkey Creek Community Historic District, Rippy Rd. and environs, Gulfport, 07000173

MISSOURI

Jackson County

Hesse Carriage Company Building, 1700 Oak St., Kansas City, 07000169

Western Newspaper Union Building, 304 W. 10th St., Kansas City, 07000170

St. Louis Independent City

American Brake Company Building, 1920 N. Broadway, St. Louis (Independent City), 07000172

Carondelet School, 8221 Minnesota, St. Louis (Independent City), 07000171

NEBRASKA

Box Butte County

Alliance Commercial Historic District, Roughly along Box Butte Ave., Alliance, 07000180

Douglas County

Broomfield Rowhouse, 2502–2504 Lake St., Omaha, 07000179

Douglas County

Penke, Carl, Farm, 10525 N. 168th St., Bennington, 07000178

Howard County

St. Peder's Dansk Evangelical Lutheran Kirke, 1796 7th Ave., Nysted, 07000177

Sarpy County

Patterson Site, (Archeological Resources of the Metro Omaha Management Unit MPS) Address Restricted, South Bend, 07000176

NORTH DAKOTA

Grand Forks County

Grand Forks Riverside Neighborhood Historic District, N of U.S. 2 (Gateway Dr. and W of the Red River, Grand Forks, 07000181

SOUTH CAROLINA

Aiken County

Aiken Colored Cemetery, Florence St. and Hampton Ave., Aiken, 07000182

Spartanburg County

Evans—Russell House, 716 Otis Blvd., Spartanburg, 07000183

TENNESSEE

Claiborne County

Claiborne County Jail, TN 33 at TN 25E, Tazewell, 07000175

Davidson County

Martin, Dr. Richard and Mrs. Margaret, House, 825 Kenall Dr., Nashville, 07000188

Gibson County

Oakland Cemetery, 800 Brownsville St., Trenton, 07000186

Hamblen County

Leeper Farm, 5878 Leepers Ferry Rd., White Pine, 07000174

Macon County

Belview School, (Education Related Properties of Macon County MPS) Underwood Rd. near Akersville Rd., Underwood, 07000189

Montgomery County

Clarksville Foundry and Machine Works (Boundary Decrease), Commerce St., Clarksville, 07000198

Polk County

Knoxville Southern Railroad Historic District, Former Knoxville Southern Railroad from near Reliance to near Farner, Reliance, 07000187

Sevier County

Settlement School Dormitories and Dwellings Historic District, (Pi Beta Phi Settlement

School MPS) 556 Parkway, Gatlinburg, 07000185

Sullivan County

Washington, George, School, 205 E. Sevier Ave., Kingsport, 07000184

VERMONT

Lamoille County

Morrisville Historic District, Portland, Lower Main, Upper Main, Railroad and Foundry Sts., Morristown, 07000196

VIRGINIA

Fauquier County

Marshall Historic District, Inc. parts of Anderson R., Emerald Ln., Frost St., Main St., Rosstown Rd. Wild Aster Ct. and Winchester Rd., Marshall, 07000191

Paris Historic District Area Inc. Federal St. and parts of Republican St. and Gap Run Rd., Paris, 07000192

Hampton Independent City

Chamberlin Hotel, #2 Fenwick Rd., Fort Monroe, Hampton (Independent City), 07000190

Isle Of Wight County

Tynes, Robert, House, 13060 Courthouse Hwy., Smithfield, 07000194

Nelson County

Schuyler Historic District, Crossroads of Schuyler Rd., Salem Rd. and Rockfish River Rd., Schuyler, 07000195

Suffolk Independent City

Mount Sinai Baptist Church, 6100 Holy Neck Rd., Suffolk (Independent City), 07000193

WISCONSIN

Manitowoc County

ROUSE SIMMONS (Shipwreck), (Great Lakes Shipwreck Sites of Wisconsin MPS) 6 mi. off Point Veach, Lake Michigan, 07000197

A request for REMOVAL has been made for the following resource:

TENNESSEE

Meigs County

Meigs County High School Gymnasium, (Meigs County, Tennessee MRA), Brown St., Decatur, 82004005

[FR Doc. E7–3261 Filed 2–23–07; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–487 (Remand)]

In the Matter of Certain Agricultural Vehicles and Components Thereof; Notice of Commission Decision To Review in Part the Administrative Law Judge's Initial Determination on Remand; Schedule for Written Submissions on the Issues Under Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's (''ALJ'') final initial determination on remand in the above-captioned investigation, including part of Order No. 55.

FOR FURTHER INFORMATION CONTACT: Jonathan Engler, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 13, 2003, based on a complaint filed by Deere & Company (''Deere'') of Moline, Illinois. 68 FR 7388 (February 13, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademarks Nos. 1,254,339; 1,502,576; 1,503,576, and 91,860.

Twenty-four respondents were named in the Commission's notice of investigation. Most of the respondents were terminated from the investigation on the basis of consent orders, or found in default. Of the remaining respondents, Erntetechnik Franz Becker; Sunova Implement Company; Bourdeau Bros., Inc. and OK Enterprises (collectively, ''the Bourdeau respondents''); Fitzpatrick Farms; Stanley Farms; J&T Farms; and Co-Ag LLC (collectively, ''the Fitzpatrick Farms respondents''); and Agrideal participated in the investigation. On January 13, 2004, the ALJ issued his final initial determination (''ID'') finding a violation of section 337. He also recommended the issuance of remedial orders. The Bourdeau respondents and Fitzpatrick Farms respondents petitioned for review of the ID.

On March 30, 2004, the Commission determined not to review the ID. The Commission then issued its final determination, together with a general exclusion order, two limited exclusion orders, and cease and desist orders, on May 14, 2004.

The Bourdeau respondents appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit (the ''Federal Circuit''). On March 30, 2006, the Federal Circuit vacated and remanded the Commission's final determination as it related to Deere European-version self-propelled forage harvesters. *Bourdeau Bros.* v. *International Trade Commission,* 444 F.3d 1317 (Fed. Cir. 2006).

On June 20, 2006, the Commission issued notice that it had rescinded the general exclusion order and certain cease and desist orders, and had remanded the investigation to the presiding ALJ for proceedings consistent with the Federal Circuit's decision in Bourdeau. The ALJ issued his final ID on remand (''Remand ID'') on December 20, 2006. He found that Deere did not authorize the sale of Deere European-version self-propelled forage harvesters in the United States and that all or substantially all of the Deere self-propelled forage harvesters sold in the United States were North American versions. The Bourdeau respondents have petitioned for review of the remand ID, including Order No. 55 and Order No. 59. Deere and the Commission investigative attorney oppose the petition.

The Commission has determined to review in part Order No. 55 and the Remand ID. The Commission requests briefing by the parties (1) On the standard for authorization that was applied in Order No. 55 and how that standard was applied in light of the burden of proof; (2) on the issue of

Deere's alleged financing of certain EVSPFHs; (3) with respect to the ALJ's application of the ''all or substantially all'' standard, including a statement of the type and number of sales relied on and the basis for reliance on those sales, especially the basis for including used sales of North American-version harvesters in the assessment of whether that standard has been met by Deere; and (4) on whether all or substantially all of Deere's sales of SPFHs were of North American versions of these machines. The Commission has determined not to review Order No. 59.

Schedule for Written Submissions: Written submissions on the issues under review are limited to the parties and must be filed by March 6, 2007. Reply submissions must be filed by March 13, 2007.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: February 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–3139 Filed 2–23–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–585]

In the Matter of Certain Engines, Components Thereof, and Products Containing the Same; Notice of Commission Determination Not To Review ALJ Order No. 7 Granting Complainant's Motion To Add a Claim to the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') (Order No. 7) granting complainant's motion to add a claim to the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 19, 2006, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by American Honda Motor Company, Inc. of Torrance, California, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain engines, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 5,706,769 (''the '769 patent'') and 6,250,273. 71 FR 61799 (Oct. 19, 2006). The complainant named Wuxi Kipor Power Co., Ltd. of Jiangsu, China as a respondent.

On January 30, 2007, the ALJ issued Order No. 7 granting complainant's motion to add dependent claim 6 of the '769 patent to the complaint and the notice of investigation. No party petitioned for review of Order No. 7, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: February 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–3249 Filed 2–23–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0007]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Grantees from the Legal Assistance for Victims Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 243, page 75984 on December 19, 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 March 28, 2007. 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:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Legal Assistance for Victims Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0007. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000 and again in 2005, Congress statutorily authorized the LAV Program. 42 U.S.C. 3796gg–6. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(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 it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: February 21, 2007.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E7–3183 Filed 2–23–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Mobile Alliance

Notice is hereby given that, on January 18, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Open Mobile Alliance (''OMA'') filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 2–800 Mobiles Inc., New York, NY; Ad Vitam, Olivet, FRANCE; Advanced Strategies Corp., Garden City, NY; Along Mobile Technologies, Inc., Xi'an City, Shaanxi Province, PEOPLE'S REPUBLIC OF CHINA; Alox Co., Ltd., Kangnam-gu, Seoul REPUBLIC OF KOREA; Anyka (Guangzhou) Software Technology Co., Ltd., Guangzhou, Guangdong, PEOPLE'S REPUBLIC OF CHINA; ATIO Corporation, Coombe Place, Rivonia, SOUTH AFRICA; CA Inc., Islandia, NY; Calton Hill, Edinburgh, UNITED KINGDOM; Cell Guide, Rehorot, ISRAEL; Ceno Technologies, Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; China Telecommunications Corporation, Beijing, PEOPLE'S REPUBLIC OF CHINA; Cyberlink Corporation, Hsin-Tien City, Taipei Hsien, TAIWAN; Datang Mobile Communication Equipment Co. Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; DGIST, Deoksan-Dong, Daegu, REPUBLIC OF KOREA; Digital Connect PTE Ltd., Singapore, SINGAPORE; DKI Technology Inc., Seoul, REPUBLIC OF KOREA; Elcoteq SE, Salo, FINLAND; Estacado Systems, LLC, Dallas, TX; Frost & Sullivan China, Beijing, PEOPLE'S REPUBLIC OF CHINA; GaeaSoft Corporation, Seoul, REPUBLIC OF KOREA; Gemalto N.V., Amsterdam, NETHERLANDS; GMV Soluciones Globales Internet, S.A., Madrid, SPAIN; Hanmaro Co. Ltd., Seoul, REPUBLIC OF KOREA; IfEN GmbH, Poing, GERMANY; Marvell International Ltd., Hamilton, BERMUDA; Miyowa, Marseille, FRANCE; Mobiletop Co., Ltd. Seoul, REPUBLIC OF KOREA; Monotype Imaging Inc., Woburn, MA; MOSSEC—Mobile Security Software, Madrid, SPAIN; Motive, Inc., Austin, TX; Movell Software, Santa Clara, CA; MStar Semiconductor, Inc., Hsinchu Hsien, TAIWAN; NineOne Co., Ltd., Kyongsan, Kyong-Buk, REPUBLIC OF KOREA; NOW Wireless Ltd., Croydon, UNITED KINGDOM; NXP Semiconductors, Eindhoven, NETHERLANDS; Perlego Systems, Inc., Gig Harbor, WA; Pointsec Wireless Solutions, Stockholm, SWEDEN; Protect Software GmbH, Dortmund, GERMANY; Purple Labs S.A., Le Bourget Du Lac, FRANCE; SIRF Technologies, San Joe, CA; Smith Micro Software, Inc., Aliso Viejo, CA; Sonus Networks, Inc., Chelmsford, MA; Square Enix, Inc., El Segundo, CA; Synkia Sp. z.o.o., Krolewska, NORWAY; TechnoCom Corporation, Carlsbad, CA; Telefonica S.A., Madrid, SPAIN; TeleworX Group, Inc., McLean, VA; Trademobile Limited, Wakatipu, New Zealand; Trango Systems, Grenoble, FRANCE; U-blox AG, Thalwil, SWITZERLAND; Unichal Inc., Seoul, REPUBLIC OF KOREA Virtual Logix, Monigny-le-Bretonneux, FRANCE; Visa International Services Association, Foster City, CA; Vodaphone IT Hizmetleri A.S., Istanbul, Turkey; W2bi, Inc., Union, NJ; Webmessenger Inc., Tujunga, Ca; WINIT, Daejeon, REPUBLIC OF KOREA; and WISEWIRES Inc., Seoul, REPUBLIC OF KOREA, have been added as parties to this venture.

Also, Axalto S.A., Meudon Cedex, FRANCE; BDR Customer Management Ltd., Wooburn Green, Buckinghamshire, UNITED KINGDOM; Cognizant Technology Solutions Ltd., London, UNITED KINGDOM; Gemplus S.A., Cedex, La Ciotat, FRANCE; and JRD Communication Inc., Shanghai, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

Also, Vantrix Corporation has changed its name to VoiceAge Networks, Montreal, Quebec, CANADA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on July 13, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2006 (71 FR 45580).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–837 Filed 2–23–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on January 12, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Synplicity, Inc., Sunnyvale, CA; and Altera Corp., San Jose, CA have been added as parties to this venture. Also, Toshiba Corp., Kawasaki, JAPAN; FZI—Forschungszentrum Informatick and der University, Karlsruhe, GERMANY; LTRIM Technologies, Inc., Laval, Quebec, CANADA; and Hewlett-Packard Company, Palo Alto, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notifications disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 23, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 22, 2006 (71 FR 67643).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–836 Filed 2–23–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 20, 2007.

The Department of Labor (DOL) has submitted the following public information collection requests (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 each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), 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: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Ventilation Plans, Tests and Examinations in Underground Coal Mines.

OMB Number: 1219–0088.

Type of Response: Recordkeeping and Reporting.

Affected Public: Private Sector: Business or other for-profit.

Number of Respondents: 612.

Estimated Number of Annual Responses: 1,848,393.

Average Response Time: varies by task and size of mine.

Estimated Annual Burden Hours: 1,824,456.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $160,203.

Description: Section 303 of the Federal Mine Safety and Health Act of 1977 requires that all coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

Underground coal mines usually present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and explosions.

An underground mine is a maze of tunnels that must be adequately

ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and noxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air must be provided to maintain the level of respirable dust at or below 2 milligrams per cubic meter of air and air quality must be maintained in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. Ground conditions are subject to frequent changes, thus sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination, reporting and recordkeeping requirements of §§ 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically caused numerous fatalities if not properly maintained and operated.

The records give notice to mine management and the miners on the oncoming shift of mine conditions, identify hazards on working sections during the previous shift, and verify that proper ventilation is being maintained. The information is available to all interested persons at the mine to assure them that the integrity of the ventilation system is being provided for the miners. MSHA inspectors use the records to determine that tests and examinations, required by the standards, are made.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–3141 Filed 2–23–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''Veterans Supplement to the Current Population Survey (CPS),'' to be conducted in August 2007. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 27, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for 67 years. Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. The Veterans supplement provides information on the labor force status of veterans with a service-connected disability, combat veterans, National Guard and Reserve veterans and recently discharged veterans. Data are provided by period of service and a range of demographic characteristics. The supplement also provides information on veterans' participation in various transitioning and employment and training programs. The data collected through this supplement will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the needs of our Nation's veteran population.

II. Current Action

Office of Management and Budget clearance is being sought for the Veterans Supplement to the CPS. The August 2007 questionnaire includes some revisions made since the August 2005 supplement. Questions were added about Reserve or National Guard status, branch of Armed Forces in which a veteran last served on active duty, and combat exposure (for all service periods). Questions that identified which Vietnam veterans served in the Vietnam theater were deleted. A question about campaign or expeditionary medals awarded was also deleted. Two questions about transition workshops were combined.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Affected Public: Households.

Total Respondents: 12,000.

Frequency: Biennially.

Total Responses: 12,000.

Average Time per Response: Approximately 2 minutes.

Estimated Total Burden Hours: 400 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 16th day of February, 2007.

Kimberley Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–3143 Filed 2–23–07; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''Current Population Survey (CPS) Volunteer Supplement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 27, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The September 2007 CPS Volunteer Supplement will be conducted at the request of the Corporation for National and Community Service. The Volunteer Supplement will provide information on the total number of individuals in the U.S. involved in unpaid volunteer activities, measures of the frequency or intensity with which individuals volunteer, types of organizations for which they volunteer, the activities in which volunteers participate, and the prevalence of volunteering more than 120 miles from home or abroad. It will also provide information on civic engagement.

Because the Volunteer Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available about respondents to the supplement. Thus, comparisons of volunteer activities will be possible across respondent characteristics including sex, race, age, and educational attainment. It is intended that the supplement will be conducted annually, if resources permit, in order to gauge changes in volunteerism.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS Volunteer Supplement. The September 2007 instrument includes some revisions made since the September 2006 instrument. The question specifically probing whether a person had volunteered through a religious organization was deleted. A question asking whether the respondent had done any volunteer work more than 120 miles from home but within the United States was added; for those who say ''yes,'' follow up questions were added to determine what share of their volunteering it comprised and in what State or States it took place. Response categories to the question about time spent volunteering abroad were changed to reflect a share of the person's volunteer activity rather than a number of weeks.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: CPS Volunteer Supplement.

OMB Number: 1220–0176.

Affected Public: Individuals.

Total Respondents: 63,000.

Frequency: Annually.

Total Responses: 106,000.

Average Time per Response: 3 minutes.

Estimated Total Burden Hours: 5,300 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 20th day of February, 2007.

Kimberley Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–3144 Filed 2–23–07; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 28, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–837–2861; E-mail:_*OCIOmail@ncua.gov*.

OMB Reviewer: NCUA Desk Officer, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0167.

Form Number: N/A.

Type of Review: Revision to a currently approved collection.

Title: 12 CFR Part 741.11 of NCUA's Rules and Regulations, Foreign Branching.

Description: Part 741.11 contains a provision that any insured credit union must apply for and receive approval from the regional director before establishing a credit union branch outside the United States unless the foreign branch is located on a United States military institution or embassy outside the United States. The application must include (1) a business plan, (2) written approval by the state supervisory agency if the applicant is a state-chartered credit union, and (3) documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement actions, to include conservatorship and liquidation actions.

Estimated No. of Respondents/ Recordkeepers: 2.

Estimated Burden Hours Per Response: 16 hours.

Frequency of Response: Reporting and other (one time only).

Estimated Total Annual Burden Hours: 32.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on February 20, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7–3154 Filed 2–23–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Friday, February 23, 2007.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. Personnel Matter. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, *Telephone:* 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 07–890 Filed 2–22–07; 3:24 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2590/803–190]

Gates Capital Partners, LLC/Bear Creek Inc.; Notice of Application

February 16, 2007.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

Applicants: Gates Capital Partners, LLC (''GCP'') and Bear Creek Inc. (''Bear Creek'').

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

Summary of Application: GCP and Bear Creek (collectively, the ''Applicants'') request that the SEC issue an order declaring them and their employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11), which defines the term ''investment adviser. ''

Filing Dates: The application was filed on December 21, 2005, and was amended and restated on May 23, 2006, and on January 25, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 13, 2007 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, Gates Capital Partners, LLC, 3575 Cherry Creek North Drive, Denver, Colorado 80209. Applicant, Bear Creek Inc., P.O. Box 4742, Jackson, Wyoming 83001.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, or David Blass, Assistant Director, at (202) 551–6787 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. GCP was formed in September 2005 to provide investment advice to the Gates family by advising and managing Evergreen 37, LLC (''Evergreen''), a Wyoming limited liability company recently formed by the Family to facilitate the Family's investments, and by advising individual Family members and trusts.

For purposes of this application, ''Family'' means:

- The lineal descendants of Charles C. Gates and Hazel R. Gates and the spouses of such descendants;
- Trusts established by and for the sole benefit of individual Family members;
- Charitable trusts established by Charles C. Gates and Hazel R. Gates or individual Family members;
- Companies wholly owned by such trusts or individual Family members; and
- Future Family Investment Pools (investment pools that are exempt from the definition of ''investment company'' under section 3(c)(1) and section 3(c)(7) of the Investment Company Act of 1940 (''Investment Company Act'') and that are wholly owned by the Family but for the limited non-voting interest owned

by a small number of senior level employees of GCP or Bear Creek who regularly provide investment advice on behalf of GCP or Bear Creek to such investment pools).

2. GCP represents that Evergreen is exempt from the definition of ''investment company'' under section 3(c)(1) of the Investment Company Act and is wholly owned by the Family, except for potential limited employee ownership of nonvoting interests by senior level employees of GCP.

3. GCP represents that it will act as investment adviser and sole manager of Evergreen, and its compensation will be limited to reimbursement from Evergreen of reasonable fees and out-of-pocket expenses in performing its obligations to Evergreen.

4. GCP represents that a small number of senior level employees of GCP who regularly provide investment advice on behalf of GCP to Evergreen may participate in the ownership of non-voting membership interests in Evergreen, as well as other Future Family Investment Pools. GCP represents that upon the termination of their employment, such employees may be permitted to retain their interest in Evergreen or Future Family Investment Pools but their interest would be limited to their investment at the time of termination plus any accretion or distribution on their investment.

5. Bear Creek was organized as a Wyoming corporation in 1998 to serve as trustee of trusts then in existence as well as of those to be formed in the future, created by and for the sole benefit of the Family.

6. Bear Creek previously applied for, and received in 2001, an order of the SEC pursuant to section 202(a)(11)(F) of the Advisers Act declaring that Bear Creek is a person not within the intent of the Advisers Act (Bear Creek Inc., Investment Advisers Act Release No. 1931 (March 9, 2001)).

7. Bear Creek requests additional exemptive relief in the event that it provides investment advice to Future Family Investment Pools. Bear Creek represents that a small number of its senior level employees who regularly provide investment advice on behalf of Bear Creek to Future Family Investment Pools may participate in the ownership of nonvoting membership interests in Future Family Investment Pools. Bear Creek represents that, upon the termination of their employment, such employees may be permitted to retain their interest in Future Family Investment Pools but their interest would be limited to their investment at the time of termination plus any accretion or distribution on their investment.

8. The Applicants represent that they do not hold themselves out to the public as investment advisers and do not engage in any advertising, attend any investment-related conferences as vendors, or conduct any marketing activities. Neither GCP nor Bear Creek is listed in any phone book or other directory as an investment adviser.

9. The Applicants represent that their sole clients are, and will continue to be, the Family.

Applicants' Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. * * *'' Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11).

2. Section 203(b) of the Advisers Act provides several exemptions from registration under section 203(a) of the Advisers Act. GCP asserts that it does not qualify for any of the exemptions provided by section 203(b). GCP also asserts that it is not prohibited from registering with the SEC under section 203A of the Advisers Act.

3. GCP requests that the SEC declare it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11). GCP states that there is no public interest in requiring that they be registered under the Advisers Act because it will offer its services only to the Family. In addition, the Applicants request that the SEC provide exemptive relief under section 202(a)(11)(F) to them and their employees acting within the scope of their employment if, in the future, they manage or provide investment advice to any Future Family Investment Pools.

For the SEC, by the Division of Investment Management, under delegated authority.

Florence E. Harman,

Deputy Secretary.

[FR Doc. E7–3173 Filed 2–23–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55292; File No. SR–Amex–2006–86]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to the Listing and Trading of Shares of the PowerShares DB U.S. Dollar Index Bullish Fund and the PowerShares DB U.S. Dollar Index Bearish Fund

February 14, 2007.

I. Introduction

On September 13, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] On November 17, 2006, Amex filed Amendment No. 1 to the proposed rule change. On December 19, 2006, Amex filed Amendment No. 2 to the proposed rule change. On January 12, 2007, Amex filed Amendment No. 3 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 24, 2007 for a 15-day comment period.[3] The Commission received no comments on the proposal. This Order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal

Pursuant to Commentary .07 of Amex Rule 1202, the Exchange proposes to list and trade shares of the PowerShares DB U.S. Dollar Index Bullish Fund (the ''Bullish Fund'') and the PowerShares DB U.S. Dollar Index Bearish Fund (the ''Bearish Fund,'' and together with the Bullish Fund, the ''Funds''), each of which represents a series of the DB U.S. Dollar Index Trust (the ''Trust''). The shares of each of the Funds (the ''Shares'') represent beneficial ownership interests in the corresponding common units of beneficial interests of the DB U.S. Dollar Index Master Bullish Fund (the ''Master Bullish Fund'') and the DB U.S. Dollar Index Master Bearish Fund (the ''Master Bearish Fund,'' and together with the Master Bullish Fund, the ''Master

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55110 (January 16, 2007), 72 FR 3171 (''Notice'').

Funds''), respectively. Each of the Funds and each of the Master Funds are commodity pools operated by DB Commodity Services LLC (the ''Managing Owner''). The Trust and the Funds will not be subject to registration and regulation under the Investment Company Act of 1940.

In its proposal, the Exchange provided detailed descriptions regarding the overall investment objectives of the Funds, the calculation methodology and components of the underlying indexes, the structure and operation of the Funds, and the listing and trading of the Shares. Key features of the proposal are noted below.

The Underlying Indexes. The overall investment objective of each of the Funds and the Master Funds is to reflect the performance of their respective benchmark index, *less* expenses, *plus* the excess, if any, of the corresponding Master Fund's interest income from its holdings of U.S. Treasury and other high-credit-quality, short-term fixed income securities over its expenses. The Bullish Fund will seek to track the ''Long Index'' by investing in long positions in futures contracts (''DX Contracts'') on the U.S. Dollar Index® (''USDX''), and the Bearish Fund will seek to track the ''Short Index'' by investing in short positions in DX Contracts on the USDX. Both the Long Index and Short Index (collectively, the ''Indexes'') are designed to reflect the return from investing in the first-to-expire DX Contract. DX Contracts are traded through the FINEX currency markets of the New York Board of Trade (''NYBOT''). As discussed more fully in the Notice, the USDX is composed of six underlying foreign currencies (the ''Index Currencies''), and the value of the USDX reflects a general indication of the international value of the USD by averaging the exchange rates between the U.S. Dollar (''USD'') and the Index Currencies.

The use of a long position in a DX Contract in the construction of the Long Index would cause the Long Index level to rise as a result of any upward price movement in the DX Contract. Conversely, the use of a short position in a DX Contract in the construction of the Short Index would cause the Short Index level to rise as a result of any downward price movement in the DX Contract. As a result, the performance of the Long Index and Short Index would reflect any rise or fall of the USD versus the underlying basket of Index Currencies.

Creation and Redemption of Shares. Issuances of the Shares will be made only in one or more blocks of 200,000 Shares (each such block, a ''Basket''). Each of the Funds will issue and redeem Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'') with the Managing Owner at the net asset value (''NAV'') per Share next determined after an order to purchase a Basket is received in proper form. A Basket will be issued in exchange for a cash amount equal to the NAV per Share times 200,000 Shares (the ''Cash Deposit Amount''). The Bank of New York (the ''Administrator'') will determine the Cash Deposit Amount on each business day. An Authorized Participant that wishes to purchase a Basket must transfer the Cash Deposit Amount to the Administrator. Authorized Participants that wish to redeem a Basket will receive cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket.

Availability of Information. As set forth in the Notice, information regarding the Shares will be available through Exchange, the Index Sponsor, and various independent sources. Deutsche Bank AG London (the ''Index Sponsor'') will calculate the values of the Indexes during the trading day and such values will be disseminated at least every 15 seconds through major market data vendors and the Index Sponsor's Web site.[4] The Exchange will also disseminate for each of the Funds on a per-Share basis an updated ''Indicative Fund Value,'' which reflects the cash required for creations and redemptions for each Fund, adjusted to reflect the price changes of the DX Contracts and the holdings of U.S. Treasury securities and other high-credit-quality, short-term fixed income securities, at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time (''ET''). Shortly after 4 p.m. ET each business day, the Administrator will determine the NAV for each of the Funds, and the NAV per Share for each of the Funds will be disseminated to all market participants at the same time.[5]

On each business day, the Administrator will make available immediately prior to the opening of trading on Amex the most recent Cash Deposit Amount for the creation of a Basket, and the Exchange will disseminate the current value of the Cash Deposit Amount on a per-Share basis at least every 15 seconds throughout the trading day. The daily settlement prices of the DX Contracts, specific contract specifications, and delayed futures contract information on current and past trading sessions, including futures quotes and last sale information, are publicly available on NYBOT's Web site and on the Web sites of various market data vendors, news publications, automated quotation systems, or other financial information services.

The Exchange also intends to disseminate on a daily basis for each of the Funds information with respect to the daily trading volume of each of the Shares, the number of Shares outstanding, the closing prices of each Fund's Shares, the corresponding NAV, and a hyperlink on its Web site to the Index Sponsor's Web site. The Web site for each of the Funds and/or the Exchange will also contain the following information: (1) The current NAV per Share daily, the prior business day's NAV, and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (3) the calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus; and (6) other applicable quantitative information.

The Exchange further states that each of the Funds is subject to the criteria in Commentary .07 of Amex Rule 1202, and for purposes of the initial and continued listing requirements, the Shares would be in compliance with Section 803 of the Amex *Company Guide* and Rule 10A–3 under the Act.[6] Because the Shares would trade as equity securities, the Shares would be subject to applicable Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders; specialist responsibilities; account opening; and customer suitability (Amex Rule 411).

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent

[4] Amex has represented that the Managing Owner would seek to arrange to have each Index calculated and disseminated at least every 15 seconds on a daily basis through a third party if the Index Sponsor ceases to calculate and disseminate an Index. If, however, the Managing Owner is unable to arrange the calculation and dissemination of any Index value, the Exchange will undertake to delist the Shares related to such Index.

[5] The Exchange stated that if the NAV per Share for any Fund is not disseminated to all market participants at the same time, it would halt trading in the Shares of such Fund.

[6] 17 CFR 240.10A–3.

with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission notes that these Funds are substantially similar to other funds, the listing and trading of shares of which have previously been approved by the Commission. Such shares are currently trading pursuant to Commentary .07 to Amex Rule 1202.[9]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[10] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Key information will be disseminated at least every 15 seconds throughout the trading day, including the value of each Index [11] and the Indicative Fund Value on a per-Share basis for each Fund. The NAV of each of the Funds will be calculated once each trading day and disseminated to all market participants at the same time. In addition, daily settlement prices, futures quotes, and last-sale information for the DX Contracts will be disseminated through a variety of major market data vendors, and complete real-time data for such futures are available by subscription from such vendors. The Exchange's Web site will also disclose information regarding the Shares, including among other things, the current value of the Cash Deposit Amount for the creation of a Basket, daily trading volume, the closing price, and the number of Shares outstanding.

In support of this proposal, the Exchange has made the following representations:

(1) Amex would rely on its existing surveillance procedures, which are adequate to monitor the trading of the Shares and to deter and detect violations of applicable rules. Specifically, the Exchange will rely on its surveillance procedures applicable to trust-issued receipts, portfolio depository receipts, and index fund shares and will incorporate and rely upon existing Amex surveillance procedures governing options and equities. In addition, Amex has in place an information sharing agreement with NYBOT, which is a member of the Intermarket Surveillance Group.

(2) The Index Sponsor has in place procedures to prevent the improper sharing of information between different affiliates, departments, and employees of the Index Sponsor. Specifically, an information barrier exists between the personnel of the Index Sponsor that calculate and reconstitute the Indexes and other personnel of the Index Sponsor, including, without limitation, the Managing Owner, employees involved in sales and trading activities, internal and external fund managers, and certain bank personnel.

(3) Amex will distribute an Information Circular to its members providing guidance with regard to the special characteristics and risks of trading this type of security, the creation and redemption procedures, applicable Amex rules, the various fees and expenses, and the prospectus delivery requirements applicable to the Funds.

This Order is conditioned on Amex's adherence to the foregoing representations.

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, prior to the thirtieth day after publication for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[12] The Shares are similar to certain trust-issued receipts, the listing and trading of which have previously been approved by the Commission, and do not appear to present any new regulatory concerns.[13] Furthermore, the Commission did not receive any comments on the proposal. Accelerating approval will allow the Shares to trade on Amex without undue delay and should generate additional competition in the market for such products.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2006–86), as modified by Amendment Nos. 1, 2, and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E7–3158 Filed 2–23–07; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See e.g.*, Securities Exchange Act Release Nos. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR–Amex–2006–76) (DB Multi-Sector Commodity Trust); 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR–Amex–2006–44) (PowerShares DB G10 Harvest Fund, formerly known as DB Currency Index Value Fund); and 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex–2005–059) (DB Commodity Index Tracking Fund).

[10] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[11] A number of independent sources verify both the intraday and closing Index values. *See* Notice, 72 FR at 3173, note 13.

[12] 15 U.S.C. 78s(b)(2).

[13] *See supra* note 9.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55311; File No. SR–ISE–2007–15]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Period to Increase Position Limits and Exercise Limits for Equity Options and Options on the Nasdaq-100 Tracking Stock

February 16, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2007, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to extend the time period for Exchange Rule 412 and Rule 414 position and exercise limits pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

program for equity option contracts and options on the Nasdaq-100 Index Tracking Stock (''QQQQ'') (''Pilot Program''). The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program provides for an increase to the standard position and exercise limits for equity option contracts and for options on QQQQs.[5] The Pilot Program, after being extended on prior occasions,[6] is set to expire on March 1, 2007.[7] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ to the following levels:

Current equity option contract limit [8]	Pilot program equity option contract limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ option contract limit	**Pilot program QQQQ option contract limit**
300,000 contracts	900,000 contracts

[8] Except when the Pilot Program is in effect.

The purpose of the proposed rule change is to extend the Pilot Program for an additional six-month period, until September 1, 2007. The Exchange believes that extending the Pilot Program for this additional period is warranted due to the positive feedback from members and for the reasons cited in the original rule filing that proposed the adoption of the Pilot Program.[9] Additionally, the Exchange represents that it has not experienced any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program until September 1, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objective of Section 6(b)(5) of the Act [11] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[14] However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

[5] *See* Securities Exchange Act Release No. 51295 (March 2, 2005), 70 FR 11292 (March 8, 2005) (SR–ISE–2005–14) (''Pilot Program Notice'').

[6] *See* Securities Exchange Act Release Nos. 53345 (February 22, 2006), 71 FR 10579 (March 1, 2006) (SR–ISE–2006–10); and 52265 (August 15, 2005), 70 FR 48996 (August 22, 2005) (SR–ISE–2005–39).

[7] *See* Securities Exchange Act Release No. 54335 (August 18, 2006), 71 FR 50954 (August 28, 2006) (SR–ISE–2006–47).

[9] *See* Pilot Program Notice, *supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. ISE has satisfied the five-day pre-filing requirement.

[15] *Id.*

[16] For the purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2007–15 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 No. SR–ISE–2007–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2007–15 and should be submitted on or before March 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–3157 Filed 2–23–07; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 28, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Alternative Creditworthiness Assessment.

No's: 2294.

Frequency: On Occasion.

Description of Respondents: Personnel that assist in the processing of loan application and disbursement of loan funds to victims of Hurricanes Katrina, Rita and Wilma.

Responses: 1,849.

Annual Burden: 8.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–3150 Filed 2–23–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 28, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Form of Detached Assignment for U.S. Small Business Administration Loan Poll or Guaranteed Interest Certificate.

No: 1088.

Frequency: On Occasion.

Description of Respondents: Secondary Market Participants.

Responses: 6,500.

Annual Burden: 9,750.

Title: Training Program Evaluation.

No: 20.

Frequency: On Occasion.

Description of Respondents: Small Business Clients.

Responses: 200,000.

Annual Burden: 40,000.

Title: SBDC Program & Financial Reports.

No: SF–269 and SF–272.

Frequency: On Occasion.

Description of Respondents: SBDC Directors.

Responses: 114.

Annual Burden: 7,524.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–3161 Filed 2–23–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 5701]

60-Day Notice of Proposed Information Collection: Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62, the Exchange Visitor Program—Student and Exchange Visitor Information System (SEVIS); Forms DS–3036, DS–3037, DS–7000 (SEVIS); OMB No. 1405–0147

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62, the Exchange Visitor Program—Student and Exchange Visitor Information System (SEVIS).
- *OMB Control Number:* OMB No. 1405–0147.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Office of Exchange Coordination and Designation—ECA/EC/AG and ECA/EC/PS.
- *Form Number:* Form DS–3036, DS–3037, DS–7000 (SEVIS).
- *Respondents:* U.S. government, and public and private organizations wishing to become designated sponsors and Department of State designated sponsors.
- *Estimated Number of Respondents:* 190,200.
- *Estimated Number of Responses:* 1,620,375.
- *Average Hours Per Response:* 7 hours.
- *Total Estimated Burden:* 1,321,087 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 26, 2007.

ADDRESSES: You may submit comments identified by any of the following methods:

- *Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov web site at: http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, Office of Exchange Coordination and Designation, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547.
- *E-mail: jexchanges@state.gov*

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The forms have been revised to include the addition of a new category of Intern.

Methodology:

Access to Forms DS–3036 and DS–3037 are found in the Student and Exchange Visitor Information System (SEVIS), *http://www.ice.gov/sevis/.*

Dated: February 8, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination & Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–3210 Filed 2–23–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 5700]

30-Day Notice of Proposed Information Collection: DS–2028, Overseas Schools Grant Status Report, OMB 1405–0033

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Overseas Schools Grant Status Report.
- *OMB Control Number:* OMB 1405–0033.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, A/OPR/OS.
- *Form Number:* DS–2028.
- *Respondents:* overseas school grantees.
- *Estimated Number of Respondents:* 185.
- *Estimated Number of Responses:* 185.
- *Average Hours Per Response:* 15 minutes.
- *Total Estimated Burden:* 46 hours.
- *Frequency:* annually.
- *Obligation to Respond:* required to obtain or retain a benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 26, 2007.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Keith Miller, Department of State, Office of Overseas Schools, A/OPR/OS, Room H328, SA–1,

Washington, DC 20522–0132, who may be reached on 202–261–8200 or *millerkd2@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

Abstract of proposed collection:

The Office of Overseas Schools of the Department of State (A/OPR/OS) is responsible for determining that adequate educational opportunities exist at Foreign Service Posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The information gathered provides the technical and professional staff of A/OPR/OS the means by which obligations, expenditures and reimbursements of the grant funds are monitored to ensure the grantee is in compliance with the terms of the grant.

Methodology:

Information is collected via electronic and paper submission.

Dated: February 7, 2007.

Peggy Philbin,

Executive Director, Bureau of Administration, Department of State.

[FR Doc. E7–3212 Filed 2–23–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise-Exposure Map Notice: Receipt of Noise-Compatibility Program and Request for Review for Great Falls International Airport, Great Falls, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise-exposure maps (NEM) submitted by the Director of Aviation for Great Falls International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150, are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise-compatibility program, submitted for Great Falls International Airport under Part 150, in conjunction with the noise-exposure map. This program will be approved or disapproved on or before August 9, 2007.

DATES: *Effective Dates:* The effective data of the FAA's determination on the noise-exposure maps and of the start of its review of the associated noise-compatibility program is February 13, 2007. The public comment period ends April 13, 2007.

FOR FURTHER INFORMATION CONTACT: Gary Gates, Federal Aviation Administration, Helena Airports District Office, 2725 Skyway Drive, Suite 2, Helena MT 59602, telephone 406–449–5271. Comments on the proposed noise-compatibility program also should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces the FAA's finding that the noise-exposure maps submitted for Great Falls International Airport are in compliance with applicable requirements of Part 150, effective February 13, 2007. Further, the FAA is reviewing that airport's proposed noise-compatibility program, which will be approved or disapproved on or before August 13, 2007. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise-exposure maps that meet applicable regulations and depict non-compatible land uses, as of the date of submission of such maps; a description of projected aircraft operations; and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise-exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), Part 150, promulgated pursuant to the Act, may submit to the FAA for approval a noise-compatibility program that sets forth measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Director of Aviation for the Great Falls International Airport submitted to the FAA on February 2, 2007, noise-exposure maps, descriptions and other documentation, produced during the Great Falls International Airport FAR Part 150 Study, dated September 2006. It was requested that the FAA review this material as the noise-exposure maps, as described in section 47503 of the Act, and that the noise-mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise-compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise-exposure maps and related descriptions submitted by the Director of Aviation for the Great Falls International Airport. The specific documentation determined to constitute the noise-exposure maps includes the following from the *Great Falls International Airport Part 150 Noise-compatibility Study Update:*

• Supplemental Chapter (pages xxi–xxv) describes updates to Forecasts of Aviation Activity.

• B Section describes prior forecasts of Aviation Activity.

• Section C describes the input data used to develop the existing and future contours.

• Section D describes Land Use Analysis.

• Section F describes the noise abatement alternative evaluation.

• Page F.16 includes revisions to Land Use and Noise Contour Map Analysis.

• Figure F.7, page F.19—Existing (2005) Existing Noise-exposure Map.

• Figure G–1, page G.3—Future (2016) Noise-exposure Map.

• Section G summarizes Actions and Recommendations.

• Section H—Public and Airport User Consultation Summary.

• Appendix 2—Public Hearing Comments and Responses.

• Appendix 5—Comments Outside the Public Hearing Comment Period.

The FAA has determined that these maps for Great Falls International Airport are in compliance with applicable requirements. This determination is effective on February 13, 2007. The FAA's determination on an airport operator's noise-exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise-compatibility

program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise-exposure contours depicted on a noise-exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise-exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise-exposure maps. Therefore, the responsibility for the detailed overlaying of noise-exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise-compatibility program for Great Falls International Airport, also effective on February 13, 2007. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise-compatibility programs, but requires further review prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 13, 2007.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. The FAA will consider, to the extent practicable, all comments, other than those properly addressed to local land-use authorities. Copies of the noise-exposure maps, the FAA's evaluation of the maps, and the proposed noise-compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 1601 Lind Avenue, SW.; Suite 315, Renton, Washington 98057–3356.

Federal Aviation Administration, Helena Airports District Office, 2725 Skyway Drive, Suite 2, Helena, MT 59602.

Great Falls International Airport, 2800 Terminal Drive, Great Falls, MT 59404.

Issued in Renton, Washington, on February 13, 2007.

Donna P. Taylor,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 07–861 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–27281]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Request for Extension of Currently Approved Information Collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 27, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2007–27281 by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Chung Eng, 202–366–8043, Office of Transportation Operations, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Work Zone Safety and Mobility.

OMB Control #: 2125–0600.

Background: As amended on September 9, 2004, 23 CFR 630, Subpart J ''Work Zone Safety and Mobility'' requires State and local transportation agencies that receive Federal-aid highway funding to use available work zone information and data to assess and manage the work zone impacts of highway projects. While this Rule does not require the reporting or submission of work zone data, it does:

- Require agencies to use work zone data at both the project and process levels to manage and improve work zone safety and mobility;
- At the project level, require agencies to use field observations, available work zone crash data, and operational information to manage the work zone impacts of individual projects;
- At the process level, require agencies to analyze work zone crash and operational data from multiple projects to improve agency processes and procedures, and continually pursue the improvement of overall work zone safety and mobility; and
- Recommend that agencies maintain elements of the data and information resources that are necessary to support the use of work zone data for the activities above.

Most of the data needed to conduct work zone performance monitoring during project implementation as well as post-implementation assessments should be readily available from pre-existing sources. However, data collection or data storage and retrieval systems may need to be altered to take full advantage of available information resources.

Respondents: The State Departments of Transportation (or equivalent) in the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Continuous.

Estimated Total Annual Burden Hours: The estimated total annual burden for all respondents is 83,200 hours. This involves responses from 52 State Departments of Transportation or equivalent with an estimated average time of 1,600 hours per respondent over the course of a year. This estimate only includes the burden on the respondents to provide information that is not usually and customarily collected.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 20, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–3196 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–26843]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 24, 2006. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 28, 2007.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–26843.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FHWA Motorcycle Crash Causation Study, please contact Carol Tan, Ph.D, Office of Safety Research and Development (HRDS), at (202) 493–3315, Turner-Fairbank Highway Research Center, Federal Highway Administration, 6300 Georgetown Pike, McLean, VA 22101, between 9 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays. For questions concerning the Pilot Motorcycle Crash Causes and Outcomes Study, please contact Paul J. Tremont, Ph.D, Office of Behavioral Safety Research, NTI–131, at (202) 366–5588, National Highway Traffic Safety Administration (NHTSA), 400 Seventh Street, SW., Washington, DC 20590, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Motorcycle Crash Causation Study and Pilot Motorcycle Crash Causes and Outcomes Study.

Background: In 2005, 4,553 motorcyclists were killed and 87,000 were injured in traffic crashes in the United States, increases of 13 percent, and 14 percent respectively from 2004. Per vehicle mile traveled in 2004, motorcyclists were about 34 times more likely to die, and 8 times more likely to be injured in a motor vehicle crash than were passenger car occupants. Per 100 million miles traveled, in 2004, motorcyclist fatalities were 77 percent higher than they were in 1994. This compares with a decrease of 22 percent in fatality rates for occupants in passenger vehicles over the same period. These data show that the motorcycle crash problem is becoming more severe.[1]

Congress has recognized this problem and directed the DOT to conduct research that will provide a better understanding of the causes of motorcycle crashes. Specifically, in Section 5511 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) Pub. L. 109–59, Congress directed the Secretary of Transportation to provide grants to the Oklahoma Transportation Center (OTC) for the purpose of conducting a comprehensive, in-depth motorcycle crash causation study that employs the common international methodology for in-depth motorcycle crash investigation developed by the Organization for Economic Cooperation and Development (OECD).[2] SAFETEA–LU authorized $1,408,000 for each of fiscal years 2006 and 2007, but provided for an equal match by the Grantee (Sections 5511 and 5101). The Secretary delegated authority to FHWA for the Motorcycle Crash Causation Grants under Section 5511 (71 FR 30831).

Coordination of FHWA Main Study and NHTSA Pilot Study

Prior to the SAFETEA–LU directive by Congress to administer a full-scale study of motorcycle crash causes, NHTSA awarded a contract to conduct a pilot study of Motorcycle Crash Causes and Outcomes. The intent of this pilot study is to examine appropriate applications of the OECD methodology to motorcycle crashes in the United States. This pilot test is needed before any full-scale study could be conducted because the OECD methodology has not previously been implemented in the United States, and also because this methodology incorporates some options for collecting crash and control sample data that are affected by logistical and budget constraints.

The authorization of funds by Congress for a full-scale motorcycle crash study provided an opportunity for the NHTSA pilot study to become closely coordinated with the FHWA full-scale study. As a result, the pilot study will test the procedures FHWA will consider using as it implements the OECD methodology. Additionally, it may be possible for the pilot study to transition directly into the main study, thereby allowing the main study to avoid many startup costs (e.g., site selection, training, coding manual development, data form development, etc.) that it otherwise would have incurred. This will allow the main study to capture a larger sample of crashes with the available funding. Recognizing these advantages, the DOT intends to submit a single request to OMB for approval of both of these studies. This notice is the first step in that combined approval request.

Project Working Group Guidance

A project working group consisting of representatives from the motorcycle industry and from the motorcycle community was formed to provide input into the study design. A working group meeting was held in Denver on June 15–16, 2006. At this meeting, consensus was reached that all the relevant OECD variables would be captured in both the

[1] More detailed information on motorcycle crashes can be found in Traffic Safety Facts—Motorcycles, published by NHTSA and available on its Web site at: *http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2005/MotorcyclesTSF05.pdf.*

[2] The OECD methodology may be obtained by sending a request to *jtrc.contact@oecd.org.*

NHTSA pilot and FHWA full-scale studies, that some of these variables would need to be modified to conform to U.S. requirements, and that other variables would need to be added to provide necessary data related to the U.S. roadway environment.

Proposed Data Acquisition Methodology

Use of Parallel and Complementary Procedures

The OECD describes two complementary procedures to be performed for acquiring the data needed to understand the causes of motorcycle crashes. The first of these is the traditional in-depth crash investigation that focuses on the sequence of events leading up to the crash, and on the motorcycle, rider, and environmental characteristics that may have been relevant to the crash. The second procedure, known as the case-control procedure, complements the first. It requires the acquisition of matched control data to allow for a determination of the extent to which rider and driver characteristics, and pre-crash factors observed in the crash vehicles, are present in similarly-at-risk control vehicles.

Such a dual approach offers specific advantages to the understanding of crashes and the development of countermeasures. The in-depth study of the crash by itself allows for analysis of the events antecedent to the crash, some of which, if removed or altered, could result in a change in subsequent events that would have led to a non-crash, or reduced crash severity outcome. For example, an in-depth crash investigation may reveal that an automobile approaching an intersection was in a lane designated for straight through traffic only, but the motorist proceeded to make a left turn from that lane into the path of an oncoming motorcycle. That finding can, by itself, be used to develop countermeasures, and does not require matched control data. However, acquiring matched control data from similarly-at-risk riders and drivers provides additional critical information about crash causes that cannot be obtained if only crashes are examined. The main purpose of acquiring matched data is to allow for inferences to be made regarding risk factors for crash causes. A brief explanation is provided here so that those less familiar with case-control procedures will understand the advantage of acquiring controls.[3]

Consider a hypothetical situation where it is observed that the proportion of motorcycle riders involved in crashes that have a positive Blood Alcohol Content (BAC) is the same as the proportion of matched (similarly-at-risk) control motorcycle riders not involved in crashes. And assume that the proportion of passenger-vehicle motorists who crash with motorcycles at a positive BAC is greater than matched control passenger-vehicle motorists. These data considered together would suggest that for crashes involving passenger vehicles and motorcycles, alcohol is a bigger risk factor for passenger vehicle drivers than it is for motorcycle riders. That is, the relative risk of crash involvement attributable to alcohol in motorcycle-automobile crashes is greater for passenger-vehicle motorists than for motorcyclists. Other risk factors for crashes (i.e., age, gender, riding and driving experience, fatigue level) for both motorcyclists and motorists can also be examined in this manner. If scaled interval measurements of risk factor levels are obtained (for example, if the level of alcohol is measured, not just its presence or absence), then it becomes possible to calculate functions showing how risk changes with changes in the variable of interest. Such risk functions are highly useful in the development of countermeasures.[4]

Issues Related to Sampling

Characteristics of the Crash Sample

To properly acquire in-depth crash data, it is necessary to find a location in the country that experiences the full range of motorcycle crash types that occur under a wide range of conditions and with a wide range of motorcycle rider characteristics. The location must also have a sufficiently high frequency of motorcycle crashes to allow acquisition of the crash data in a reasonable amount of time. It is anticipated that it will be possible to find a single location meeting these requirements.

It is not necessary that the crash types observed (or other composite indices or parameters of interest) be drawn from a nationally representative sample, because it is not the intent of FHWA to make projections of the national incidence of the causes of crashes involving motorcycles from this study. Rather, the focus will be on identifying the antecedents and risk factors associated with motorcycle crashes. If it is deemed necessary, FHWA and NHTSA may utilize their alternative databases that incorporate certain of the key variables that will be acquired in this study, and those databases could be used in conjunction with this study's data to make national estimates of population parameters of interest.[5]

In addition, the crash investigations will be conducted on-scene, while the involved operators and vehicles are still in place. To accomplish this safely, it is understood that the controlling police agency would need to first secure the crash scene, and gather any evidence and data for their own investigation. One way for this project to capture its on-scene data, would be for researchers to accompany early police responders to the scene, and under police guidance, acquire those OECD data elements not captured by the police. If this procedure imposes additional costs on the police agency having jurisdiction over the crash, then the project would consider compensation to the police agency for those costs in accordance with a prearranged agreement. This on-scene collection approach provides access to physical data that is less disturbed by rescue and clean up activities. It also facilitates the collection of interview data while memories are unaffected. This quick-response approach is most effective when a census of applicable crashes is selected for inclusion.

Characteristics of the Control Sample

While the occurrence of a crash involving a motorcycle in the study site is sufficient for it to be selected into the study, selecting the similarly-at-risk controls is not as straightforward. The OECD recommends several options for acquiring matched controls; including interviewing motorcyclists who may be filling up at nearby gas stations, taking videos of motorcyclists who pass the

[3] This being a study of crashes involving motorcycles, data will be acquired from both crash-involved motorcycles and also motor vehicles involved in those crashes as countermeasures may be developed separately for each that could lead to a reduction in crashes involving motorcycles. Similarly, when control data are acquired, data from similarly-at-risk motorcycle rider controls and similarly-at-risk automobile driver controls will also be acquired. This way a balanced picture of the causes of crashes involving motorcycles and other vehicles will emerge.

[4] Certainly other outcomes besides the one presented are possible, and other comparisons are of interest. For example it would be useful to compare crash-involved motorcyclists to non-crash involved motorcyclists and crash-involved passenger vehicle motorists to non-crash involved passenger-vehicle motorists. These comparisons would allow for estimates of changes in relative risks for riders and drivers independently.

[5] There is a lengthy precedent for studying crashes using case-control methods including the Grand Rapids study, (Borkenstein, R.F., Crowther, F.R., Shumate, R.P., Ziel, W.B. & Zylman, R. (1974). The Role of the Drinking Driver in Traffic Accidents (The Grand Rapids Study). Blutalkohol, 11, Supplement 1), and of course the Hurt study, (Hurt, H.H., Jr., Ouellet, J.V., and Thom, D.R. (1981). Motorcycle Accident Cause Factors and Identification of Countermeasures Volume I: Technical Report).

crash scenes, and interviewing motorcyclists at the location of the crash location at the same time of day, same day of week, and same direction of travel. The first of these methods suffers from the shortcoming that a rider or motorist filling his fuel tank is not presented with the same risks, in the same setting, as is the crash-involved rider and motorist. To illustrate, consider a motorcycle rider who is hit from the rear by a passenger vehicle motorist on a Friday at 1 a.m.. There is a reasonable chance that alcohol is involved in this crash, but to estimate the relative risk it will not help to measure the BAC of passenger vehicle motorists (and motorcyclists) at a nearby gas station. Passenger-vehicle motorists and motorcyclists will need to be sampled at the location of the crash on the same day of the week, at the same hour, and from the same travel direction. Even if the suspected risk factor is not alcohol, but some other variable (e.g., distraction associated with cell phone use), it is still highly advantageous to acquire the comparison data at the crash locations (matched on time and direction), rather than somewhere else.

Using the second method mentioned above, acquiring the risk sample by taking video at the crash scenes provides a similarly-at-risk pool, and it also allows for many controls to be acquired at low cost. Its chief disadvantage is that it does not allow capture of some of the key risk factors for crashes (*e.g.*, BAC), while others (*e.g.*, fatigue) may be very difficult to capture. However, some risk factors could be acquired later by contacting the riders and drivers if license tag numbers are recorded, and so this method could be used to supplement the safety zone interview (described below).

The final method, the voluntary safety research interview, involves setting up a safety zone at the crash location, one week later at the same time of day, and asking those drivers and motorcyclists who pass through to volunteer in a study. With this method, Certificates of Confidentiality are presented to each interviewed driver and rider and immunity is provided from arrest. The main advantage of this method is that the key variables that are thought to affect relative crash risk can be acquired from drivers and riders who are truly similarly-at-risk. A final decision on the means of acquiring control data has not been made.

Information Proposed for Collection

The OECD protocol includes the following number of variables for each aspect of the investigation:

Administrative log	28
Accident typology/configuration	9
Environmental factors	35
Motorcycle mechanical factors	146
Motorcycle dynamics	32
Other vehicle mechanical factors	9
Other vehicle dynamics	18
Human factors	51
Personal protective equipment	34
Contributing environmental factors	8
Contributing vehicle factors	13
Contributing motorcycle factors	57
Contributing human factors	50
Contributing overall factors	2

Note that multiple copies of various data forms will be completed as the data on each crash-involved vehicle and person and each control vehicle and person are acquired. This increases the number of variables above the sum of what is presented above. There are also diagrams and photographs that are essential elements of each investigation that are entered into the database. In prior OECD implementations, about 2,000 data elements in total were recorded for each crash.

Estimated Burden Hours for Information Collection

Frequency: This is a one-time study.

Respondents: This study will be based on all crashes occurring within the sampling area; however, this burden estimate is based on what we know about fatal crashes. The plan calls for data to be captured from up to 1200 crashes with motorcycle involvement, and for all surviving crash-involved riders and drivers to be interviewed. Two control riders will be interviewed for each crash-involved motorcyclist, and one rider and one driver will be interviewed for each rider and motorist in multi-vehicle crashes. Passengers accompanying crash-involved riders and passenger-vehicle drivers will also be interviewed. The final crash sample size will depend on the rate at which crashes can be acquired in the selected site(s) and other matters related to logistics and the final budget. However, the study will acquire crashes on a sample size that exceeds the requirements of the OECD methodology, and will be of sufficient size to meet the goals of the study.

The following table shows the sampling plan and estimated number of interviews assuming 1200 crashes are investigated.

A maximum total number of crashes to be investigated is 1200.

Crash Interviews:	
Single vehicle motorcycle crashes =	540
Multi-vehicle (2-vehicle) motorcycle crashes (660*2) =	1320
Passenger interviews motorcycle (.10*540 + .10*660) =	120
Passenger interviews cars (.68*660) =	449
Total Crash Interviews (540 + 1320 + 120 + 449) =	2429
Control interviews:	
Controls for single vehicle motorcycle crashes (2*540) =	1080
Controls for multi-vehicle motorcycle crashes (1*660 + 1*660) =	1320
Passenger Interviews =	0
Total Control Interviews =	2400
Grand Total Crash plus Control Interviews (2429 + 2400) =	4829

Estimated Average Burden per Interviewee: Crash interviews are estimated to require about 25 minutes per individual interviewed. To the extent possible, crash interviews will be collected at the scene, although it is likely that some follow-ups will be needed to get completed interviews from crash involved individuals. Control individuals' interviews will be completed in a single session and are also expected to require about 25 minutes per individual.

Estimated Total Annual Burden Hours: Burden hours estimates are based on the total of 2,429 crash interviews to be conducted at an average

length of 25 minutes each and 2,400 control interviews to be conducted at an average length of 25 minutes each for a total one-time burden on the public of 120,725 minutes or 2012 hours. It should be noted that this burden estimate is increased from the estimate appearing in the 60-day notice because a trial interview showed the need for more time to capture all of the OECD required elements.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*, 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 20, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–26653]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 28 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before March 28, 2007.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2006–26653 using any of the following methods:

- *Web Site: http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 28 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Michael W. Anderson

Mr. Anderson, age 48, has loss of vision in his left eye due to a retinal detachment in 1998. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2006, his ophthalmologist noted, ''In my opinion, Mr. Anderson's vision is stable and is probably sufficient for driving tasks required to operate a commercial vehicle.'' Mr. Anderson reported that he has driven straight trucks for 25 years, accumulating 715,000 miles. He holds a Class A Commercial Driver's License (CDL) from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Manassah E. Baker

Mr. Baker, 54, has a prosthetic right eye due to a traumatic injury sustained as a child. The visual acuity in his left eye is 20/20. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Baker reported that he has driven straight trucks for 2 years, accumulating 50,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.1 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas H. Barnhart, Jr.

Mr. Barnhart, 59, has a corneal scar in his right eye due to a traumatic injury. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''Mr. Barnhart appears to have sufficient visual acuity and visual fields to operate a commercial vehicle.'' Mr. Barnhart reported that he has driven straight trucks for 40 years, accumulating 4 million miles, tractor-trailer

combinations for 18 years, accumulating 1.1 million miles, and buses for 3 years, accumulating 30,000 miles. He holds a Class A CDL from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael R. Bradford

Mr. Bradford, 49, has loss of vision in his right eye due to exotropia with associated amblyopia since childhood. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''I certify that since Mr. Bradford has exhibited competent driving by having a perfect driving record and since his vision has not changed in at least 7 years that he has been a patient of mine, Mr. Bradford has sufficient vision to operate a commercial vehicle.'' Mr. Bradford reported that he has driven straight trucks for 14 years, accumulating 245,000 miles, and tractor-trailer combinations for 14 years, accumulating 805,000 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeanpierre Brefort

Mr. Brefort, 55, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is hand-movement vision and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''It is my opinion that Mr. Brefort has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle based on stated requirements.'' Mr. Brefort reported that he has driven tractor-trailer combinations for 6 years, accumulating 60,000 miles. He holds a Class A CDL from Connecticut.

His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John J. Caricola, Jr.

Mr. Caricola, 53, has aphakia and maculopathy in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/15 and in the left, 20/400. Following an examination in 2006, his optometrist noted, ''In my medical opinion, I certify that Mr. Caricola does not have a visual impairment that compromises his ability to operate a commercial motor vehicle.'' Mr. Caricola reported that he has driven tractor-trailer combinations for 32 years, accumulating 4 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in CMV, failure to obey a traffic sign.

Paul W. Caulfield

Mr. Caulfield, 44, has loss of vision in his right eye due to a traumatic injury sustained 23 years ago. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''I feel that William has sufficient vision to drive a commercial vehicle.'' Mr. Caulfield reported that he has driven straight trucks for 10 years, accumulating 150,000 miles. He holds a Class D operator's license from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Denice M. Engle

Ms. Engle, 40, has a prosthetic right eye due to a traumatic injury sustained in 2003. The visual acuity in her left eye is 20/15. Following an examination in 2006, her ophthalmologist noted, ''In my medical opinion, she has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Ms. Engle reported that she has driven straight trucks for 3 years, accumulating 68,640 miles, and tractor-trailer combinations for 3 years, accumulating 10,800 miles. She holds a Class A CDL from Georgia. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John B. Gregory

Mr. Gregory, 67, has complete loss of vision in his right eye due to a traumatic injury sustained at age 5. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, Mr. Gregory does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gregory reported that he has driven straight trucks for 50 years, accumulating 2.5 million miles, and tractor-trailer combinations for 33 years, accumulating 5.8 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary D. Hallman

Mr. Hallman, 44, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2006, his optometrist noted, ''Vision is sufficient to operate a commercial vehicle.'' Mr. Hallman reported that he has driven straight trucks for 10 years, accumulating 500,000 miles, and tractor-trailer combinations for 8 years, accumulating 400,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wade M. Hillmer

Mr. Hillmer, 25, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/80. Following an examination in 2006, his optometrist noted, ''Therefore, it is my medical opinion, that Wade has sufficient vision in both eyes to perform driving tasks required to operate a commercial vehicle.'' Mr. Hillmer reported that he has driven straight trucks for 4 years, accumulating 12,000 miles, and tractor-trailer combinations for 4 years, accumulating 3,200 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael W. Jensen

Mr. Jensen, 45, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/60. Following an examination in 2006, his ophthalmologist noted, ''From my evaluation, Michael Jensen has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Jensen reported that he has driven straight trucks for 24 years, accumulating 110,400 miles. He holds a Class C operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jorge Lopez

Mr. Lopez, 55, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/60 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''Mr. Lopez, in my medical opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lopez reported that he has driven straight trucks for 29 years, accumulating 406,000 miles, and tractor-trailer combinations for 5 years, accumulating 300,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no

crashes and no convictions for moving violations in a CMV.

Albert E. Marbut

Mr. Marbut, 61, has had complete loss of vision in his right eye due to an opaque cornea caused by neovascularization since 1991. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2006, his optometrist noted, ''It is in my medical opinion that Mr. Marbut has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Marbut reported that he has driven straight trucks for 12 years, accumulating 240,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.2 million miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael J. McGregan

Mr. McGregan, 39, has loss of vision in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''Mr. McGregan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. McGregan reported that he has driven straight trucks for 21 years, accumulating 163,800 miles, and tractor-trailer combinations for 21 years, accumulating 163,800 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Willie E. Nichols

Mr. Nichols, 53, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, count-finger vision. Following an examination in 2006, his ophthalmologist noted, ''It is my medical impression, that Mr. Nichols can operate a commercial vehicle without visual difficulties.'' Mr. Nichols reported that he has driven straight trucks for 5 years, accumulating 150,000 miles, and tractor-trailer combinations for 26 years, accumulating 3.9 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John P. Perez

Mr. Perez, 48, has macular scarring in his left eye due to a traumatic injury sustained in 1978. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2006, his ophthalmologist noted, ''Mr. Perez has adequate vision to drive a commercial vehicle.'' Mr. Perez reported that he has driven straight trucks for 10 years, accumulating 250,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.1 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert M. Pickett II

Mr. Pickett, 31, has macular scarring in his left eye due to a traumatic injury sustained 16 years ago. The visual acuity in his right eye is 20/20 and in the left, count-finger vision. Following an examination in 2006, his ophthalmologist noted, ''Yes, I believe, Mr. Pickett has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Pickett reported that he has driven straight trucks for 10 years, accumulating 400,000 miles. He holds a Class B CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey W. Pike, Jr.

Mr. Pike, 30, has a cataract in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''In my medical opinion, he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Pike reported that he has driven straight trucks for 12 years, accumulating 480,000 miles, and tractor-trailer combinations for 8 years, accumulating 180,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald V. Ports

Mr. Ports, 38, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/25. Following an examination in 2006, his ophthalmologist noted, ''I believe Mr. Ports has sufficient vision to operate a commercial vehicle.'' Mr. Ports reported that he has driven straight trucks for 17 years, accumulating 510,000 miles. He holds a Class C operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert A. Reyna

Mr. Reyna, 44, has complete loss of vision in his right eye due to an optic nerve injury sustained during a cornea transplant procedure. The visual acuity in his right eye is light perception and in the left, 20/15. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, Mr. Reyna has sufficient vision required to operate a commercial vehicle.'' Mr. Reyna reported that he has driven straight trucks for 6 months, accumulating 1,200 miles, and tractor-trailer combinations for 3 years, accumulating 56,250 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scott K. Richardson

Mr. Richardson, 40, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2006, his optometrist noted, ''Mr. Richardson has sufficient central and peripheral vision with both eyes to perform the driving tasks to operate a commercial vehicle and has done so in the state of Ohio for the past 20 years.'' Mr. Richardson reported that he has driven straight trucks for 20 years, accumulating 1.4 million miles, and tractor-trailer combinations for 5 months, accumulating 27,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kyle C. Shover

Mr. Shover, 20, has a prosthetic left eye due to a congenital malformation called persistent hyperplastic primary vitreous. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2006, his ophthalmologist noted, ''It is my opinion that Mr. Shover has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Shover reported that he has driven straight trucks for 3 years, accumulating 60,000 miles. He holds a Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles H. Smith

Mr. Smith, 65, has a prosthetic left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2006, his

optometrist noted, ''It is my medical opinion that Mr. Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 24 years, accumulating 324,000 miles. He holds a Chauffeur's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert G. Springer

Mr. Springer, 69, has loss of vision in his left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20 and in the left, count-finger vision. Following an examination in 2006, his ophthalmologist noted, ''I believe Robert Springer has the required visual acuity, and the required peripheral vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Springer reported that he has driven straight trucks for 53 years, accumulating 265,000 miles, and tractor-trailer combinations for 49 years, accumulating 1.7 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for a moving violation in a CMV.

Harry J. Stoever, Jr.

Mr. Stoever, 42, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''In my opinion, that Mr. Stoever has sufficient visual function to operate a commercial vehicle.'' Mr. Stoever reported that he has driven straight trucks for 22 years, accumulating 121,000 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scott A. Taylor

Mr. Taylor, 35, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/60. Following an examination in 2006, his optometrist noted, ''I, Dr. Eddie Pendergast, certify that in my medical opinion, Scott Taylor has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Taylor reported that he has driven straight trucks for 7 years, accumulating 280,000 miles, and tractor-trailer combinations for 11 years, accumulating approximately 1.6 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and two convictions for moving violations, speeding in a CMV. He exceeded the speed limit by 10 miles mph on two occasions.

John E. Terrell

Mr. Terrell, 52, has had amblyopia in his right eye since birth. The best-corrected visual acuity in his right eye is 20/400 and in the left, 20/15. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, this patient has sufficient vision to perform driving tasks for a commercial vehicle.'' Mr. Terrell reported that he has driven straight trucks for 6 years, accumulating 165,000 miles. He holds a Class B CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 28, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: February 13, 2007.

Larry W. Minor,

Office Director, Bus and Truck Standards and Operations.

[FR Doc. E7–3189 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 28, 2006 [68 FR 68887–68888].

DATES: Comments must be submitted on or before March 28, 2007.

FOR FURTHER INFORMATION CONTACT: Kevin Ball at the National Highway Traffic Safety Administration, Office of the Chief Information Officer, (NPO–400), 202–366–5649, 400 Seventh Street, SW., Room 6132, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: Air Bag Deactivation.

OMB Number: 2127–0588.

Type of Request: Extension of a currently approved information collection.

Abstract: If a private individual or lessee wants to install an air bag on-off switch to turn-off either or both frontal air bags, they must complete HS Form 603 which is approved under OMB 2127–0588 to certify certain statements regarding use of the switch. The dealer or business must, in turn, submit the completed forms to NHTSA within seven days. The submission of the completed forms by the dealers and repair business to NHTSA, as required, will serve the agency several purposes. They will aid the agency in monitoring the number of authorization requests submitted and the pattern in claims of risk groups membership. The completed forms will enable the agency to determine whether the dealers and repair business are complying with the terms of the exemption, which include a requirement that the dealers and repair businesses accept only fully completed forms. Finally, submission of the completed forms to the agency will promote honesty and accuracy in the filling out of the forms by vehicle owners. The air bag on-off switches are installed only in vehicles in which the risk of harm needs to be minimized on a case-by-case basis.

Affected Public: Private individuals, fleet owners and lessees, motor vehicle dealers, repair business.

Estimated Total Annual Burden: 7,500 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 21, 2007.

Kevin Mahoney,

Director, Corporate Customer Services.

[FR Doc. E7–3248 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–27181 (Notice No. 07–1)]

Information Collection Activities

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before April 27, 2007.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001. Comments should identify the Docket Number PHMSA–2007–27181 (Notice No. 07–1) and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on ''Help & Information'' to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket Number PHMSA–2007–27181 (Notice No. 07–1).

The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address. Public dockets may be reviewed at the address above between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays. In addition, the Notice and all comments can be reviewed on the Internet by accessing the Hazmat Safety Homepage at *http://dms.dot.gov*.

Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections PHMSA is submitting to OMB for renewal and extension. These collections are contained in 49 CFR Parts 110 and 130 and the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180. PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Requirements for Cargo Tanks.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in parts 178 and 180 of the HMR involving the manufacture, qualification, maintenance and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) *Registration Statements:* Cargo tank manufacturers and repairers, and cargo tank motor vehicle assemblers are required to be registered with DOT by furnishing information relative to their qualifications to perform the functions in accordance with the HMR. The registration statements are used to identify these persons in order for DOT to ensure that they possess the knowledge and skills necessary to perform the required functions and they are performing the specified functions in accordance with the applicable regulations.

(2) *Requalification and maintenance reports:* These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained and are in proper condition for the transportation of hazardous materials.

(3) *Manufacturers' data reports, certificates and related papers:* These reports are prepared by cargo tank manufacturers and certifiers, and are used by cargo tank owners, operators, users and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 102,021.

Frequency of Collection: Periodically.

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection consolidates provisions for documenting qualifications, inspections, tests and approvals

pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions of the Hazardous Materials Regulations (49 CFR Parts 171–180). It is necessary to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected, and retested in accordance with the HMR. The information is used to verify that certain portable tanks and intermediate bulk containers meet required performance standards prior to their being authorized for use, and to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials.

Applicable sections include, but are not limited to: § 173.32—requirements for the use of portable tanks; § 173.38—hazardous materials in intermediate bulk containers; § 178.273—approval of specification IM portable tanks and UN portable tanks; § 178.801—general requirements for intermediate bulk containers; § 180.352—requirements for retest and inspection of intermediate bulk containers; and § 180.605—requirements for periodic testing, inspection and repair of portable tanks.

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 8,770.

Total Annual Responses: 86,100.

Total Annual Burden Hours: 66,390.

Frequency of collection: On occasion.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Summary: This collection is applicable upon occurrence of incidents as prescribed in §§ 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation or closure of a main artery. Incidents meeting criteria in § 171.15 also require a telephonic report. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

Affected Public: Shippers and carriers of hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 1,781.

Total Annual Responses: 17,810.

Total Annual Burden Hours: 23,746.

Frequency of collection: On occasion.

Title: Flammable Cryogenic Liquids.

OMB Control Number: 2137–0542.

Summary: Provisions in § 177.840 specify certain safety procedures and documentation requirements for drivers of motor vehicles transporting flammable cryogenic liquids. This information allows the driver to take appropriate remedial actions to prevent a catastrophic release of the flammable cryogenics should the temperature of the material begin to rise excessively or if the travel time will exceed the safe travel time. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability and high compression ratio when in a liquid state.

Affected Public: Carriers of cryogenic materials.

Annual Reporting and Recordkeeping Burden:

Total Respondents: 65.

Total Annual Responses: 18,200.

Total Annual Burden Hours: 1,213.

Frequency of collection: On occasion.

Title: Container Certification Statement.

OMB Control Number: 2137–0582.

Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement is intended to ensure an adequate level of safety for transport of explosives aboard vessel and ensure consistency with similar requirements in international standards.

Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 650.

Annual Responses: 890,000 HM Containers & 4,400 Explosive Containers.

Annual Burden Hours: 14,908.

Frequency of collection: On occasion.

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Summary: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, and reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 66.

Annual Responses: 66.

Annual Burden Hours: 4,080.

Frequency of collection: On occasion.

Title: Response Plans for Shipments of Oil.

OMB Control Number: 2137–0591.

Summary: In recent years, several major oil discharges damaged the marine environment of the United States. Under authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, PHMSA issued regulations in 49 CFR Part 130 that require preparation of written spill response plans.

Affected Public: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 8,000.

Annual Responses: 8,000.

Annual Burden Hours: 10,560.

Frequency of collection: On occasion.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

OMB Control Number: 2137–0595.

Summary: These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection, repair, maintenance, and operation of certain DOT specification and non-specification cargo tank motor vehicles used to transport liquefied compressed gases. These requirements are intended to ensure certain cargo tank motor vehicles used to transport liquefied compressed gases are operated safely, and to minimize the potential for catastrophic releases during unloading and loading operations. They include: (1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry the operating procedures on each vehicle; (2) inspection, maintenance, marking, and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied

compressed gases that must be installed and certified by a Registered Inspector. (See sections 173.315(n); 177.840(l); 180.405; 180.407(h); and 180.416(b), (d) and (f))

Affected Public: Carriers in liquefied compressed gas service, manufacturers and repairers.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 6,958.

Annual Responses: 920,530.

Annual Burden Hours: 200,615.

Frequency of collection: On occasion.

Issued in Washington, DC, on February 20, 2007.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. E7–3198 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34994]

Tri City Railroad Company, L.L.C.—Acquisition and Operation Exemption—in Olympia, WA

Tri City Railroad Company, L.L.C. (Tri City), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease, pursuant to an agreement with Union Pacific Railroad Company, and operate a 7.29-mile line of railroad, known as the Olympia Industrial Lead, extending from milepost 0.00 at East Olympia, WA (including wye and house tracks at East Olympia), to milepost 7.29 at Olympia, WA.

Tri City certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The earliest this transaction may be consummated is the March 14, 2007 effective date of the exemption (30 days after the exemption was filed).[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than March 7, 2007 (at least 7 days before the exemption becomes effective).

[1] In its notice of exemption, Tri City indicated a consummation date of March 1, 2007. Tri City has been informed by a Board staff member that consummation may not take place until March 14, 2007.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34994, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Filings made on or after March 5, 2007, should be sent to the Board's new address: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Randolph Peterson, Tri City Railroad Company, L.L.C., 2579 Stevens Drive, Richland, WA 99352.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 16, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–3250 Filed 2–23–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 16, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 28, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1556.

Type of Review: Extension.

Title: REG–251985–96 (Final) Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases.

Form: 13614–NR.

Description: The information requested in section 1.863–3(f)(6) is necessary for the Service to audit taxpayers' return to ensure taxpayers are properly determining the source of their income.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–2030.

Type of Review: Extension.

Title: REG–120509–06 (Temp. and NPRM), 1.882–5: Adjusted U.S. Booked Liability Method—30-Day Published LIBOR Election.

Description: The collection of information is needed to simplify administration for examiners of a binding annual election provided by the Regulations. The information will be used by taxpayers to determine the amount of excess interest expense allocable to effectively connected income under an elective allocation method in 1.882.5. The respondents are only regulated foreign banking corporations that elect to use the adjusted U.S. booked liability method for allocating interest expense to effectively connected income.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 38 hours.

OMB Number: 1545–1981.

Title: Alternative Fuel Vehicle Refueling Property Credit.

Form: 8911.

Type of Review: Extension.

Description: IRC section 30C allows a credit for alternative fuel vehicle refueling property. Form 8911, Alternative Fuel Vehicle Refueling Property Credit, will be used by taxpayers to claim the credit.

Respondents: Businesses and other for-profit institutions, Farms.

Estimated Total Burden Hours: 2,112 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–3236 Filed 2–23–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entity Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Secretary of the Treasury of the entity identified in this notice, pursuant to Executive Order 13224, is effective on February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On February 20, 2007, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security, the Attorney General, and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The additional designee is as follows:

JIHAD AL-BINA (a.k.a. CONSTRUCTION FOR THE SAKE OF THE HOLY STRUGGLE; a.k.a. CONSTRUCTION JIHAD; a.k.a. HOLY CONSTRUCTION FOUNDATION; a.k.a. JIHAD AL BINAA; a.k.a. JIHAD CONSTRUCTION; a.k.a. JIHAD CONSTRUCTION FOUNDATION; a.k.a. JIHAD CONSTRUCTION INSTITUTION; a.k.a. JIHAD-AL-BINAA ASSOCIATION; a.k.a. JIHADU-I-BINAA; a.k.a. STRUGGLE FOR RECONSTRUCTION), Bekaa Valley, Lebanon; Southern Lebanon, Lebanon; Beirut, Lebanon.

Dated: February 20, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–3239 Filed 2–23–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Securities Offering Disclosures

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before April 27, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Gary Jeffers, Senior Attorney, Business Transactions Division, (202) 906–6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Securities Offering Disclosures.

OMB Number: 1550–0035.

Form Number: SEC Forms S–1, S–3, S–4, S–8, SB–1, SB–2, and 144; OTS Forms OC and G–12.

Regulation requirement: 12 CFR Part 563g.

Description: OTS collects information for disclosure in securities offerings by savings associations related directly to U.S. Securities and Exchange Commission requirements for providing information to potential securities purchasers.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 3.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 38 hours.

Estimated Total Burden: 718 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: February 21, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–3193 Filed 2–23–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–10: OTS Nos. 19027, H–4310, and H–4359]

People's Bank, People's Mutual Holdings, and Peoples' United Financial, Inc., Bridgeport, CT; Approval of Conversion Application

Notice is hereby given that on February 14, 2007, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of People's Mutual Holdings and People's Bank, Bridgeport, Connecticut, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW, Washington, DC 20552, and OTS Northeast Regional Office,. Harborside Financial Center Plaza Five, Suite 1600, Jersey City, NJ 07311.

Dated: February 21, 2007.

By the Office of Thrift Supervision,

Sandra E. Evans,

Legal Information Assistant.

[FR Doc. 07–845 Filed 2–23–07; 8:45 am]

BILLING CODE 6720–07–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on OIF/OEF Veterans and Families; Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs hereby gives notice of the establishment of the Department of Veterans Affairs (VA) Advisory Committee on OIF/OEF Veterans and Families. The Secretary of Veterans Affairs has determined that establishing the Committee is both necessary and in the public interest.

The Committee will provide advice to the Secretary of Veterans Affairs on the full spectrum of health care, benefits delivery and related family support issues that confront servicemembers during their transition from active duty to veterans' status and during their post-service years. The Committee will focus on the concerns of all men and women with active military service in Operation Iraqi Freedom and/or Operation Enduring Freedom, but will pay particular attention to severely disabled veterans and their families.

Committee members shall be appointed by the Secretary of Veterans Affairs and shall serve as objective advisors, and not as representatives of any organizations for whom they may otherwise be serving. The Committee shall report regularly to the Secretary of Veterans Affairs on its major activities and recommendations.

Dated: February 15, 2007.

By Direction of Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–863 Filed 2–23–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
February 26, 2007

Part II

Environmental Protection Agency

40 CFR Parts 59, 80, 85, and 86

Control of Hazardous Air Pollutants From Mobile Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 59, 80, 85, and 86

[EPA–HQ–OAR–2005–0036; FRL–8278–4]

RIN 2060–AK70

Control of Hazardous Air Pollutants From Mobile Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adopting controls on gasoline, passenger vehicles, and portable fuel containers (primarily gas cans) that will significantly reduce emissions of benzene and other hazardous air pollutants (''mobile source air toxics''). Benzene is a known human carcinogen, and mobile sources are responsible for the majority of benzene emissions. The other mobile source air toxics are known or suspected to cause cancer or other serious health effects. We are limiting the benzene content of gasoline to an annual refinery average of 0.62% by volume, beginning in 2011. In addition, for gasoline, we are establishing a maximum average standard for refineries of 1.3% by volume beginning on July 1, 2012, which acts as an upper limit on gasoline benzene content when credits are used to meet the 0.62 volume % standard. We are also limiting exhaust emissions of hydrocarbons from passenger vehicles when they are operated at cold temperatures. This standard will be phased in from 2010 to 2015. For passenger vehicles, we are also adopting evaporative emissions standards that are equivalent to those currently in effect in California. Finally, we are adopting a hydrocarbon emissions standard for portable fuel containers beginning in 2009, which will reduce evaporation and spillage of gasoline from these containers. These controls will significantly reduce emissions of benzene and other mobile source air toxics such as 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and naphthalene. There will be additional substantial benefits to public health and welfare because of significant reductions in emissions of particulate matter from passenger vehicles.

DATES: This rule is effective on April 27, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–2005–0036. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Lieske, U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4584; fax number: (734) 214–4816; e-mail address: *lieske.christopher@epa.gov,* or Assessment and Standards Division Hotline; telephone number: (734) 214–4636; e-mail address: *asdinfo@epa.gov*.

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

Entities potentially affected by this action are those that produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It will also affect you if you produce gasoline motor fuel or manufacture portable gasoline containers. Regulated categories include:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially affected entities
Industry	336111	3711	Motor vehicle manufacturers.
Industry	335312	3621	Alternative fuel vehicle converters.
	424720	5172	
	811198	7539	
	.....	7549	
Industry	811111	7538	Independent commercial importers.
	811112	7533	
	811198	7549	
Industry	324110	2911	Gasoline fuel refiners.
Industry	326199	3089	Portable fuel container manufacturers.
	332431	3411	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

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 EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in 40 CFR parts 59, 80, 85, and 86. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Summary

Mobile sources emit air toxics (also known as ''hazardous air pollutants'') that can cause cancer and other serious health effects. Mobile sources contribute significantly to the nationwide risk from breathing outdoor sources of air toxics. Mobile sources were responsible for about 44% of outdoor toxic emissions, almost 50% of the cancer risk, and 74% of the noncancer risk according to EPA's National-Scale Air Toxics Assessment (NATA) for 1999. In addition, people who live or work near major roads or live in homes with attached garages are likely to have higher exposures and risk, which are not reflected in NATA.

According to NATA for 1999, there are a few mobile source air toxics that pose the greatest risk based on current information about ambient levels and exposure. These include benzene, 1,3-butadiene, formaldehyde, acrolein, naphthalene, and polycyclic organic matter (POM). All of these compounds are gas-phase hydrocarbons except POM, which appears in the gas and particle phases. Benzene is the most significant contributor to cancer risk from all outdoor air toxics, according to NATA for 1999. NATA does not include a quantitative estimate of cancer risk for diesel exhaust, but it concludes that diesel exhaust is a mixture of pollutants that collectively poses one of the greatest relative cancer risks when compared with the other individual pollutants assessed. Although we expect significant reductions in mobile source air toxics in the future, cancer and noncancer health risks will remain a public health concern, and exposure to benzene will remain the largest contributor to this risk.

In this rule, we are finalizing standards for passenger vehicles, gasoline, and portable fuel containers (typically gas cans). Specifically, we are finalizing standards for:

- exhaust hydrocarbon emissions from passenger vehicles during cold temperature operation;
- evaporative hydrocarbon emissions from passenger vehicles;
- the benzene content of gasoline; and
- hydrocarbon emissions from portable fuel containers that would reduce evaporation, permeation, and spillage from these containers.

These standards will significantly reduce emissions of the many air toxics that are hydrocarbons, including benzene, 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and naphthalene. The fuel benzene standards and hydrocarbon standards for vehicles and portable fuel containers will together reduce total emissions of air toxics by 330,000 tons in 2030, including 61,000 tons of benzene. As a result of this final rule, in 2030 passenger vehicles will emit 45% less benzene, gas cans will emit almost 80% less benzene, and gasoline will have 38% less benzene overall. Mobile sources were responsible for over 70% of benzene emissions in 1999.

The reductions in mobile source air toxics emissions will reduce exposure and predicted risk of cancer and noncancer health effects, including in environments where exposure and risk may be highest, such as near roads, in vehicles, and in homes with attached garages. Nationwide, the cancer risk attributable to total MSATs emitted by all mobile sources will be reduced by 30%, and the risk from mobile source benzene will be reduced by 37%. At 2030 exposure levels, the highway vehicle contribution to MSAT cancer risk will be reduced on average 36% across the U.S., and the highway vehicle contribution to benzene cancer risk will be reduced on average by 43% across the U.S. Nationwide, the mobile source contribution to the respiratory hazard index will be reduced by 23%. In addition, the hydrocarbon reductions from the vehicle and gas can standards will reduce VOC emissions (which are precursors to ozone and $PM_{2.5}$) by over 1.1 million tons in 2030. The vehicle standards will reduce direct $PM_{2.5}$ emissions by over 19,000 tons in 2030 and will also reduce secondary formation of $PM_{2.5}$. Although ozone and $PM_{2.5}$ are considered criteria pollutants rather than ''air toxics,'' reductions in ozone and $PM_{2.5}$ are nevertheless important co-benefits of this proposal.

Section I.B.2 of this preamble provides more discussion of the public health and environmental impacts of mobile source air toxics, ozone, and PM. Details on health effects, emissions, exposure, and cancer risks are also located in Chapters 1–3 of the Regulatory Impact Analysis (RIA) for this rule.

We estimate that the benefits of this rule will be about $6 billion in 2030, based on the direct $PM_{2.5}$ reductions from the vehicle standards, plus unquantified benefits from reductions in mobile source air toxics and VOC. We estimate that the annual net social costs of this rule will be about $400 million

in 2030 (expressed in 2003 dollars). These net social costs include the value of fuel savings from the proposed gas can standards, which will be worth about $92 million in 2030.

The rule will have an average cost of 0.27 cents per gallon of gasoline, less than $1 per vehicle, and less than $2 per gas can. The reduced evaporation from gas cans will result in fuel savings that will more than offset the increased cost for the gas can. In 2030, the long-term cost per ton of the standards (in combination, and including fuel savings) will be $1,100 per ton of total mobile source air toxics reduced; $5,900 per ton of benzene reduced; and no cost for the hydrocarbon and PM reductions (because we expect the vehicle standards will have no cost in 2020 and beyond). Section VIII of the preamble and Chapters 8–13 of the RIA provide more details on the costs, benefits, and economic impacts of the standards. The impacts on small entities and the flexibilities we are finalizing are discussed in section X of this preamble and Chapter 14 of the RIA.

II. Overview of Final Rule

A. Light-Duty Vehicle Emission Standards

As described in more detail in section V, we are adopting new standards for both exhaust and evaporative emissions from passenger vehicles. The new exhaust emissions standards will significantly reduce non-methane hydrocarbon (NMHC) emissions from passenger vehicles at cold temperatures. These hydrocarbons include many mobile source air toxics (including benzene), as well as VOC.

As we discussed in the proposal, current vehicle emission standards are based on testing of NMHC that is generally performed at 75 °F. Recent research and analysis indicates that these standards are not resulting in robust control of NMHC at lower temperatures. We believe that cold temperature NMHC control can be substantially improved using the same technological approaches that are generally already being used in the Tier 2 vehicle fleet to meet the stringent standards at 75 °F. These cold-temperature NMHC controls will also result in lower direct PM emissions at cold temperatures.

Accordingly, consistent with the proposal, we are adopting a new NMHC exhaust emissions standard at 20 °F for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles. Vehicles at or below 6,000 pounds gross vehicle weight rating (GVWR) will be subject to a sales-weighted fleet average NMHC level of 0.3 grams/mile. Vehicles between 6,000 and 8,500 pounds GVWR and medium-duty passenger vehicles will be subject to a sales-weighted fleet average NMHC level of 0.5 grams/mile. For lighter vehicles, the standard will phase in between 2010 and 2013. For heavier vehicles, the new standards will phase in between 2012 and 2015. The standards include a credit program and other provisions designed to provide flexibility to manufacturers, especially during the phase-in periods. These provisions are designed to allow the earliest possible phase-in of standards and help minimize costs and ease the transition to new standards. These standards in combination are expected to lead to emissions control over a wide range of in-use temperatures, and not just at 20 °F and 75 °F.

We are also establishing, as proposed, a set of nominally more stringent evaporative emission standards for all light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles. The standards are equivalent to California's Low Emission Vehicle II (LEV II) standards, and they reflect the evaporative emissions levels that are already being achieved nationwide. The standards codify the approach that most manufacturers are already taking for 50-state evaporative systems, and thus prevent backsliding in the future. The evaporative emission standards will take effect in 2009 for lighter vehicles and in 2010 for the heavier vehicles.

Section V of this preamble provides details on the exhaust and evaporative vehicle standards.

B. Gasoline Fuel Standards

As we proposed, we are limiting the benzene content of all gasoline, both reformulated and conventional. Beginning January 1, 2011, refiners must meet a refinery average gasoline benzene content standard of 0.62% by volume on all their gasoline. The program is described in more detail in section VI of this preamble. The standard does not apply to gasoline produced and/or sold for use in California because such gasoline is already covered under California's Phase 3 Reformulated Gasoline (Ca3RFG) program.

The benzene content standard, in combination with the existing gasoline sulfur standard, will result in air toxics emissions reductions that are greater than required under all existing gasoline toxics programs. As a result, upon full implementation in 2011, the regulatory provisions for the benzene control program will become the regulatory mechanism used to implement the reformulated gasoline (RFG) and Anti-dumping annual average toxics performance and benzene content requirements. The current RFG and Anti-dumping annual average provisions thus will be replaced by this benzene control program. This benzene control program will also replace the requirements of the 2001 MSAT rule (''MSAT1''). In addition, the program will satisfy certain fuel MSAT conditions of the Energy Policy Act of 2005 and obviate the need to revise toxics baselines for reformulated gasoline otherwise required by that Act. In all of these ways, the existing national fuel-related MSAT regulatory program will be significantly consolidated and simplified.

We are finalizing a nationwide ABT program that allows refiners and importers to choose the most economical compliance strategy (investment in technology, credits, or both) for meeting the 0.62 vol% annual average standard. From 2007–2010, refiners can generate ''early credits'' by making qualifying benzene reductions earlier than required. Beginning in 2011 and continuing indefinitely, refiners and importers can generate ''standard credits'' by producing/importing gasoline with benzene levels below 0.62 volume percent (vol%) on an annual average basis. Credits may be used interchangeably towards company compliance with the 0.62 vol% standard, ''banked'' for future use, and/or transferred nationwide to other refiners/importers subject to the standard. In addition to the 0.62 vol% standard, refiners and importers must also meet a 1.3 vol% maximum average benzene standard beginning July 1, 2012. To comply with the maximum average standard, gasoline produced by a refinery or imported by an importer may not exceed 1.3 vol% benzene on an annual average basis.

The ABT program allows us to set a numerically more stringent benzene standard than would otherwise be achievable (within the meaning of Clean Air Act section 202(l)(2)). The ABT program also allows implementation to occur earlier. Under this benzene content standard and ABT program, gasoline in all areas of the country will have lower benzene levels than they have today. Overall benzene levels will be 38% lower. This will reduce benzene emissions and exposure nationwide.

The program includes special provisions for refiners facing hardship. Refiners approved as ''small refiners'' are eligible for certain temporary relief provisions. In addition, any refiner facing extreme unforeseen circumstances or extreme hardship

circumstances can apply for similar temporary relief.

C. Portable Fuel Container (PFC) Controls

Portable fuel containers, such as gas cans and diesel and kerosene containers, are consumer products used to refuel a wide variety of equipment, including lawn and garden equipment, recreational equipment, and passenger vehicles that have run out of gas. As described in section VII, we are adopting standards for these containers that would reduce hydrocarbon emissions from evaporation, permeation, and spillage. The program we are finalizing is consistent with the proposal, except that instead of applying only to gasoline containers, it will also apply to diesel and kerosene containers. These standards will significantly reduce emissions of benzene and other gaseous toxics, as well as VOC. VOC is an ozone precursor, and certain aromatic species are believed to contribute to secondary organic $PM_{2.5}$.

We are finalizing a performance-based standard of 0.3 grams per gallon per day of hydrocarbons, determined based on the emissions from the can over a diurnal test cycle specified in the rule. The standard applies to containers manufactured on or after January 1, 2009. We are also establishing test procedures and a certification and compliance program, in order to ensure that containers meet the emission standard over a range of in-use conditions. The standards are based on the performance of best available control technologies, such as durable permeation barriers, automatically closing spouts, and cans that are well-sealed, and the standards will result in the use of these control technologies.

California implemented an emissions control program for gas cans in 2001, and since then, several other states have adopted the program. Last year, California adopted a revised program, which will take effect July 1, 2007. The revised California program is very similar to the program we are finalizing. Although a few aspects of the programs are different, we believe manufacturers will be able to meet both EPA and California requirements with the same container designs, resulting in equivalent emission reductions.

III. Why Is EPA Taking This Action?

People experience elevated risk of cancer and other noncancer health effects from exposure to air toxics. Mobile sources are responsible for a significant portion of this risk. For example, benzene is the most significant contributor to cancer risk from all outdoor air toxics [1], and most of the nation's benzene emissions come from mobile sources. These risks vary depending on where people live and work and the kinds of activities in which they engage. People who live or work near major roads, people that spend a large amount of time in vehicles or work with motorized equipment, and people living in homes with attached garages are likely to have higher exposures and higher risks. Although we expect significant reductions in mobile source air toxics in the future, predicted cancer and noncancer health risks are likely to remain a public health concern. Benzene will likely remain the largest contributor to this risk. In addition, some mobile source air toxics contribute to the formation of ozone and $PM_{2.5}$, which contribute to serious public health problems. Section III.B of this preamble discusses the risks posed by outdoor toxics now and in the future. Sections III.C and III.D discuss the health and welfare effects of ozone and PM, respectively. The controls in this rule will significantly reduce exposure to emissions of mobile source air toxics (and reduce exposure to ozone and $PM_{2.5}$ as well), thus reducing these public health concerns.

A. Statutory Requirements

1. Clean Air Act Section 202(l)

Section 202(l)(2) of the Clean Air Act requires EPA to set standards to control hazardous air pollutants (''air toxics'') from motor vehicles [2], motor vehicle fuels, or both. These standards must reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the motor vehicle standards established under section 202(a) of the Act, the availability and cost of the technology, and noise, energy and safety factors, and lead time. The standards are to be set under Clean Air Act sections 202(a)(1) or 211(c)(1), and they are to apply, at a minimum, to benzene and formaldehyde emissions.

Section 202(a)(1) of the Clean Air Act directs EPA to set standards for new motor vehicles or new motor vehicle engines which EPA judges to cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. We are issuing the vehicle emissions standards under this authority in conjunction with section 202(l)(2).

Section 211(c)(1)(A) of the Clean Air Act authorizes EPA (among other things) to control the manufacture of fuel if any emission product of such fuel causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare. We are issuing the benzene standard for gasoline under this authority in conjunction with section 202(l)(2).

Clean Air Act section 202(l)(2) also requires EPA to revise its regulations controlling hazardous air pollutants from motor vehicles and fuels, ''from time to time.'' EPA's first rule under Clean Air Act section 202(l) was published on March 29, 2001, entitled, ''Control of Emissions of Hazardous Air Pollutants from Mobile Sources'' (66 FR 17230). That rule committed to additional rulemaking that would evaluate the need for and feasibility of additional controls. Today's final rule fulfills that commitment.

2. Clean Air Act Section 183(e)

Clean Air Act section 183(e)(3) requires EPA to list categories of consumer or commercial products that the Administrator determines, based on an EPA study of VOC emissions from such products, contribute at least 80 percent of the VOC emissions from such products in areas violating the national ambient air quality standard for ozone. EPA promulgated this list at 60 FR 15264 (March 23, 1995), but it did not consider or list portable fuel containers. After analyzing these containers' emissions inventory impacts, we recently published a **Federal Register** notice that added portable fuel containers to the list of consumer products to be regulated.[3] EPA is required to develop rules reflecting ''best available controls'' to reduce VOC emissions from the listed products. ''Best available controls'' are defined in section 183(e)(1)(A) as follows:

> The term ''best available controls'' means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems, or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

Section 183(e)(4) also allows these standards to be implemented by means

[1] Based on quantitative estimates of risk, which do not include risks associated with diesel particulate matter and diesel exhaust organic gases.

[2] ''Motor vehicles'' is a term of art, defined in Clean Air Act section 216(2) as ''any self-propelled vehicle designed for transporting persons or property on a street or highway.''

[3] 71 FR 28320, May 16, 2006, ''Consumer and Commercial Products: Schedule for Regulation''.

of ''any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting * * * concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.'' We are issuing a hydrocarbon standard for portable fuel containers under the authority of section 183(e).

3. Energy Policy Act

Section 1504(b) of the Energy Policy Act of 2005 requires EPA to adjust the toxics emissions baselines for individual refineries for reformulated gasoline to reflect 2001–2002 fuel qualities. However, the Act provides that this action becomes unnecessary if EPA takes action which results in greater overall reductions of toxics emissions from vehicles in areas with reformulated gasoline. As described in section VI of this preamble, we believe the benzene content standard we are finalizing today will in fact result in greater overall reductions than would be achieved by adjusting the individual baselines under the Energy Policy Act. Accordingly, under the provisions of the Energy Policy Act, this rule obviates the need for readjusting emissions baselines for reformulated gasoline.

B. Public Health Impacts of Mobile Source Air Toxics (MSATs)

1. What Are MSATs?

Section 202(l) refers to ''hazardous air pollutants from motor vehicles and motor vehicle fuels.'' We use the term ''mobile source air toxics (MSATs)'' to refer to compounds that are emitted by mobile sources and have the potential for serious adverse health effects. Some MSATs are known or suspected to cause cancer. Some of these pollutants are also known to have adverse health effects on people's respiratory, cardiovascular, neurological, immune, reproductive, or other organ systems, and they may also have developmental effects. Some may pose particular hazards to more susceptible and sensitive populations, such as pregnant women, children, the elderly, or people with pre-existing illnesses.

Some MSATs of particular concern include benzene, 1,3-butadiene, formaldehyde, acrolein, naphthalene, polycyclic organic matter, and diesel particulate matter and diesel exhaust organic gases. These are compounds that EPA's National-Scale Air Toxics Assessment (NATA) for 1999 [4] identifies as the most significant contributors to cancer and noncancer health risk from breathing outdoor air toxics, and that have a significant contribution from mobile sources. Our understanding of what compounds pose the greatest risk will evolve over time, based on our understanding of the ambient levels and health effects associated with the compounds.

EPA has compiled a Master List of Compounds Emitted by Mobile Sources, based on an extensive review of the literature on exhaust and evaporative emissions from onroad and nonroad equipment. The list currently includes approximately 1,000 compounds, and it is available in the public docket for this rule and on the Web (*http://www.epa.gov/otaq/toxics.htm*). Chapter 1 of the RIA provides a detailed discussion of information sources for identifying those compounds that have the potential for serious adverse health effects (i.e., could be considered ''MSATs''). This discussion includes a list of those compounds that are emitted by mobile sources and listed in EPA's Integrated Risk Information System (IRIS).

MSATs are emitted by motor vehicles, nonroad engines (such as lawn and garden equipment, farming and construction equipment, locomotives, and ships), aircraft, and their fuels. MSATs are emitted as a result of various processes. Some MSATs are present in fuel or fuel additives and are emitted to the air when the fuel evaporates or passes through the engine. Some MSATs are formed through engine combustion processes. Some compounds, like formaldehyde and acetaldehyde, are also formed through a secondary process when other mobile source pollutants undergo chemical reactions in the atmosphere. Finally, some air toxics, such as metals, result from engine wear or from impurities in oil or fuel.

There are other sources of air toxics, including stationary sources, such as power plants, factories, oil refineries, dry cleaners, gas stations, and small manufacturers. They can also be produced by combustion of wood and other organic materials. There are also indoor sources of air toxics, such as solvent evaporation and outgassing from furniture and building materials.

2. Health Risk Associated With MSATs

EPA's National-Scale Air Toxics Assessment (NATA) for 1999 provides some perspective on the average risk of cancer and noncancer health effects associated with breathing air toxics from outdoor sources, and the contribution of mobile sources to these risks.[5, 6] NATA assessed 177 pollutants. It is worth noting that NATA does not include indoor sources of air toxics. Also, it assumes uniform outdoor concentrations within a census tract, and therefore does not reflect elevated concentrations and exposures near roadways or other sources within a census tract. Additional limitations and uncertainties associated with NATA are discussed in Section 3.2.1.3 of the RIA. Nevertheless, its findings are useful in providing a perspective on the magnitude of risks posed by outdoor sources of air toxics generally, and in identifying what pollutants and sources are important contributors to these health risks. Some of NATA's findings are discussed in the paragraphs below.

For this rule, EPA also performed a national-scale assessment for 1999 and future years using the same modeling tools and approach as the 1999 NATA, but with updated emissions inventories and an updated exposure model. The exposure model accounts for higher toxics concentrations near roads. This updated national-scale analysis examined only those toxics that are emitted by mobile sources (i.e., a subset of the 177 pollutants included in NATA). However, the analysis includes all sources of those pollutants, including mobile, stationary, and area sources. The analysis is discussed in detail in Chapter 3 of the RIA, and some highlights of the findings are discussed immediately below.

In addition to national-scale analysis, we have also evaluated more refined local-scale modeling, measured ambient concentrations, personal exposure measurements, and other data. This information is discussed in detail in Chapter 3 of the RIA. These data collectively show that while levels of air toxics are decreasing, potential public health risks remain a concern, and ambient levels and personal exposure vary significantly. These data indicate that concentrations of benzene and other air toxics can be higher near high-traffic roads, inside vehicles, and in homes with attached garages.

a. National Cancer Risk

According to NATA, the average national cancer risk in 1999 from all outdoor sources of air toxics was estimated to be 42 in a million. That is, 42 out of one million people would be

[4] *http://www.epa.gov/ttn/atw/nata1999/.*

[5] *http://www.epa.gov/ttn/atw/nata1999/.*

[6] NATA does not include a quantitative estimate of cancer risk for diesel particulate matter and diesel exhaust organic gases. EPA has concluded that while diesel exhaust is likely to be a human carcinogen, available data are not sufficient to develop a confident estimate of cancer unit risk.

expected to contract cancer from a lifetime of breathing air toxics at 1999 levels. Mobile sources were responsible for 44% of outdoor toxic emissions and almost 50% of the cancer risk. Benzene is the largest contributor to cancer risk of all 133 pollutants quantitatively assessed in the 1999 NATA, and mobile sources are the single largest source of ambient benzene.

According to the national-scale analysis performed for this rule, the national average cancer risk in 1999 from breathing outdoor sources of MSATs was about 25 in a million.[7] Over 224 million people in 1999 were exposed to a risk level above 10 in a million due to chronic inhalation exposure to MSATs. About 130 million people in 1999 were exposed to a risk level above 10 in a million due to chronic inhalation exposure to benzene alone. Mobile sources were responsible for over 70% of benzene emissions in 1999.

Although air toxics emissions are projected to decline in the future as a result of standards EPA has previously adopted, cancer risk will continue to be a public health concern. Without additional controls, the predicted national average cancer risk from MSATs in 2030 is predicted to be above 20 in a million. In fact, in 2030 there will be more people exposed to levels of MSATs that result in the highest levels of risk. For instance, the number of Americans above the 10 in a million cancer risk level from exposure to MSATs is projected to increase from 223 million in 1999 to 272 million in 2030. Mobile sources will continue to be a significant contributor to risk in the future, accounting for 43% of total air toxic emissions in 2020, and 55% of benzene emissions.

b. National Risk of Noncancer Health Effects

According to national-scale modeling for 1999 done for this rule, nearly the entire U.S. population was exposed to an average level of air toxics that has the potential for adverse respiratory health effects (noncancer).[8] We estimated this will continue to be the case in 2030, even though toxics levels will be lower.

Mobile sources were responsible for 74% of the noncancer (respiratory) risk from outdoor air toxics in the 1999 NATA. The majority of this risk was from acrolein, and formaldehyde also contributed to the risk of respiratory health effects.[9]

Although not included in NATA's estimates of noncancer risk, PM from gasoline and diesel mobile sources contributes significantly to the health effects associated with ambient PM, for which EPA has established National Ambient Air Quality Standards. There are extensive human data showing a wide spectrum of adverse health effects associated with exposure to ambient PM.[10]

c. Exposure Near Roads

A substantial number of modeling assessment and air quality monitoring studies show elevated concentrations of multiple MSATs in close proximity to major roads. Exposure studies also indicate that populations spending time near major roadways likely experience elevated personal exposures to motor vehicle-related pollutants. In addition, these populations may experience exposures to differing physical and chemical compositions of certain air toxic pollutants depending on the amount of time spent in close proximity to motor vehicle emissions. Chapter 3.1 of the RIA provides a detailed discussion of air quality monitoring, personal exposure monitoring, and modeling assessments near major roadways.

As part of the analyses underlying the final rule, we employed a new version of the Hazardous Air Pollutant Exposure Model (HAPEM), the exposure model used in NATA. HAPEM6 explicitly accounts for the gradient in outdoor concentrations that occurs near major roads, and the fraction of the population living near major roads.[11] The HAPEM6 analysis highlights the fact that residence near a major road is a substantial contributor to overall differences in exposure to directly-emitted MSATs. As an example, while the average of within-tract median annual census tract exposure concentrations nationally is 1.4 $\mu g/m^3$, the average 90th percentile of within-tract exposure concentration nationally is over 2 $\mu g/m^3$.

The potential population exposed to elevated concentrations near major roadways is large. A study of the populations nationally indicated that more than half of the population lives within 200 meters of a major road.[12] It should be noted that this analysis relied on the Census Bureau definition of a major road, which is not based on traffic volume. Thus, some of the roads designated as ''major'' may carry a low volume of traffic. This estimate is consistent with other studies that have examined the proximity of population to major roads. These studies are discussed in Section 3.5 of the RIA. In addition, analysis of data from the Census Bureau's American Housing Survey suggests that approximately 37 million people live within 300 feet (~100 meters) of a 4-or-more lane highway, railroad, or airport.[13] American Housing Survey statistics, as well as epidemiology studies, indicate that those houses located near major transportation sources are more likely to be lower in income or have minority residents than houses not located near major transportation sources. These data are also discussed in detail in Section 3.5 of the RIA.

Other population studies also indicate that a significant fraction of the population resides in locations near major roads. At present, the available studies use different indicators of ''major road'' and of ''proximity,'' but the estimates range from 12.4% of student enrollment in California attending schools within 150 meters of roads with 25,000 vehicles per day or more, to 13% of Massachusetts veterans living within 50 meters of a road with at least 10,000 vehicles per day.[14, 15] Using a more general definition of a ''major road,'' between 22% and 51% of different study populations live near such roads.

d. Exposure From Attached Garages

People living in homes with attached garages are potentially exposed to substantially higher overall

[7] This includes emissions from mobile and stationary sources of these pollutants.

[8] That is, the respiratory hazard index exceeded 1. See section III.B.3.a for more information.

[9] Acrolein was assigned an overall confidence level of ''lower'' based on consideration of the combined uncertainties from the modeling estimates. In contrast, formaldehyde was assigned an overall confidence level of ''medium.''

[10] U.S. Environmental Protection Agency (2004) Air Quality Criteria for Particulate Matter. Research Triangle Park, NC: National Center for Environmental Assessment—RTP Office; Report No. EPA/600/P–99/002aF, p. 8–318.

[11] U.S. EPA. 2007. The HAPEM6 User's Guide. Prepared for Ted Palma, Office of Air Quality Planning and Standards, Research Triangle Park, NC, by Arlene Rosenbaum and Michael Huang, ICF International, January 2007. This document is available in Docket EPA–HQ–OAR–2005–0036. *http://www.epa.gov/ttn/fera/human_hapem.html.*

[12] Major roads are defined as those roads defined by the U.S. Census as one of the following: ''limited access highway,'' ''highway,'' ''major road (primary, secondary and connecting roads),'' or ''ramp.''

[13] United States Census Bureau. (2004) American Housing Survey web page. [Online at *http://www.census.gov/hhes/www/housing/ahs/ahs03/ahs03.html*] Table IA–6.

[14] Green, R.S.; Smorodinsky, S.; Kim, J.J.; McLaughlin, R.; Ostro, B. (2004) Proximity of California public schools to busy roads. Environ. Health Perspect. 112: 61–66.

[15] Garshick, E.; Laden, F.; Hart, J.E.; Caron, A. (2003) Residence near a major road and respiratory symptoms in U.S. veterans. Epidemiol. 14: 728–736.

concentrations of benzene, toluene, and other VOCs from mobile source-related emissions. EPA has conducted a modeling analysis to examine the influence of attached garages on personal exposure to benzene (see Appendix 3A of RIA). Compared to national average exposure concentrations modeled in 1999 NATA, which does not account for emissions originating in attached garages, average exposure concentrations for people with attached garages could more than double. Other recent studies also emphasize the substantial role of attached garages in exposure to MSATs. Chapter 3 of the RIA discusses measurements of concentrations and exposure associated with attached garages and EPA's modeling analysis.

3. What Are the Health Effects of Air Toxics?

a. Overview of Potential Cancer and Noncancer Health Effects

Air toxics can cause of variety of cancer and noncancer health effects. Inhalation cancer risks are usually estimated by EPA as ''unit risks,'' which represent the excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 mu g/m^3 in air. Some air toxics are known to be carcinogenic in animals but lack data in humans. Many of these have been assumed to be human carcinogens. Also, in the absence of evidence of a nonlinear dose-response curve, EPA assumes these relationships between exposure and probability of cancer are linear. These unit risks are typically upper bound estimates. Upper bound estimates are more likely to overestimate than underestimate risk. Where there are strong epidemiological data, a maximum likelihood estimate (MLE) may be developed. An MLE is a best scientific estimate of risk. The benzene unit risk is an MLE. A discussion of the confidence in a quantitative cancer risk estimate is provided in the IRIS file for each compound. The discussion of the confidence in the cancer risk estimate includes an assessment of the source of the data (human or animal), uncertainties in dose estimates, choice of the model used to fit the exposure and response data and how uncertainties and potential confounders are handled.

Potential noncancer chronic inhalation health risks are quantified using reference concentrations (RfCs) and noncancer chronic ingestion and dermal health risks are quantified using reference doses (RfDs). The RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. Sources of uncertainty in the development of the RfCs and RfDs include interspecies extrapolation (animal to human) and intraspecies extrapolation (average human to sensitive human). Additional sources of uncertainty can include the use of a lowest observed adverse effect level in place of a no observed adverse effect level, and other data deficiencies. A statement regarding the confidence in the RfC and/or RfD is developed to reflect the confidence in the principal study or studies on which the RfC or RfD are based and the confidence in the underlying database. Factors that affect the confidence in the principal study include how well the study was designed, conducted and reported. Factors that affect the confidence in the database include an assessment of the availability of information regarding identification of the critical effect, potentially susceptible populations and exposure scenarios relevant to assessment of risk.

The RfC may be used to estimate a hazard quotient, which is the environmental exposure to a substance divided by its RfC. A hazard quotient greater than one indicates adverse health effects are possible. The hazard quotient cannot be translated to a probability that adverse health effects will occur, and is unlikely to be proportional to risk. It is especially important to note that a hazard quotient exceeding one does not necessarily mean that adverse health effects will occur. In NATA, hazard quotients for different respiratory irritants were also combined into a hazard index (HI). A hazard index is the sum of hazard quotients for substances that affect the same target organ or organ system. Because different pollutants may cause similar adverse health effects, it is often appropriate to combine hazard quotients associated with different substances. However, the HI is only an approximation of a combined effect because substances may affect a target organ in different ways.

b. Health Effects of Key MSATs

i. Benzene

The EPA's IRIS database lists benzene, an aromatic hydrocarbon, as a known human carcinogen (causing leukemia) by all routes of exposure.[16] A number of adverse noncancer health effects including blood disorders and immunotoxicity have also been associated with long-term occupational exposure to benzene.[17]

Inhalation is the major source of human exposure to benzene in occupational and non-occupational settings. Long-term occupational inhalation exposure to benzene has been shown to cause cancers of the hematopoetic (blood cell) system in adults.[18] Among these are acute nonlymphocytic leukemia[19] and chronic lymphocytic leukemia.[20, 21] Leukemias, lymphomas, and other tumor types have been observed in experimental animals exposed to benzene by inhalation or oral administration. Exposure to benzene and/or its metabolites has also been linked with chromosomal changes in

[16] U.S. EPA (2000). Integrated Risk Information System File for Benzene. This material is available electronically at *http://www.epa.gov/iris/subst/0276.htm.*

[17] U.S. EPA (2002). Toxicological Review of Benzene (Noncancer Effects). National Center for Environmental Assessment, Washington, DC. Report No. EPA/635/R–02/001F. *http://www.epa.gov/iris/toxreviews/0276-tr.pdf.*

[18] U.S. EPA (1998) Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. EPA600-P–97–001F. Enter report number at the following search page, *http://yosemite.epa.gov/ncepihom/nsCatalog.nsf//SearchPubs?Openform.*

[19] Leukemia is a blood disease in which the white blood cells are abnormal in type or number. Leukemia may be divided into nonlymphocytic (granulocytic) leukemias and lymphocytic leukemias. Nonlymphocytic leukemia generally involves the types of white blood cells (leukocytes) that are involved in engulfing, killing, and digesting bacteria and other parasites (phagocytosis) as well as releasing chemicals involved in allergic and immune responses. This type of leukemia may also involve erythroblastic cell types (immature red blood cells). Lymphocytic leukemia involves the lymphocyte type of white blood cell that is responsible for antibody and cell-mediated immune responses. Both nonlymphocytic and lymphocytic leukemia may, in turn, be separated into acute (rapid and fatal) and chronic (lingering, lasting) forms. For example in acute myeloid leukemia there is diminished production of normal red blood cells (erythrocytes), granulocytes, and platelets (control clotting), which leads to death by anemia, infection, or hemorrhage. These events can be rapid. In chronic myeloid leukemia (CML) the leukemic cells retain the ability to differentiate (*i.e.*, be responsive to stimulatory factors) and perform function; later there is a loss of the ability to respond.

[20] U.S. EPA (1985) Environmental Protection Agency, Interim quantitative cancer unit risk estimates due to inhalation of benzene, prepared by the Office of Health and Environmental Assessment, Carcinogen Assessment Group, Washington, DC for the Office of Air Quality Planning and Standards, Washington, DC, 1985.

[21] U.S. EPA (1993) Motor Vehicle-Related Air Toxics Study. Office of Mobile Sources, Ann Arbor, MI. *http://www.epa.gov/otaq/regs/toxics/tox_archive.htm.*

humans and animals[22, 23] and increased proliferation of mouse bone marrow cells.[24, 25]

The latest assessment by EPA estimates the excess risk of developing leukemia from inhalation exposure to benzene at 2.2×10^{-6} to 7.8×10^{-6} per μg/m³. In other words, there is an estimated risk of about two to eight excess leukemia cases in one million people exposed to 1 μg/m³ of benzene over a lifetime.[26] This range of unit risks reflects the MLEs calculated from different exposure assumptions and dose-response models that are linear at low doses. At present, the true cancer risk from exposure to benzene cannot be ascertained, even though dose-response data are used in the quantitative cancer risk analysis, because of uncertainties in the low-dose exposure scenarios and lack of clear understanding of the mode of action. A range of estimates of risk is recommended, each having equal scientific plausibility. There are confidence intervals associated with the MLE range that reflect variation of the observed data used to develop dose-response values. For the upper end of the MLE range, the 5th and 95th percentile values are about a factor of 5 lower and higher than the best fit value. The upper end of the MLE range was used in NATA.

It should be noted that not enough information is known to determine the slope of the dose-response curve at environmental levels of exposure and to provide a sound scientific basis to choose any particular extrapolation/exposure model to estimate human cancer risk at low doses. EPA risk assessment guidelines suggest using an assumption of linearity of dose response when (1) there is an absence of sufficient information on modes of action or (2) the mode of action information indicates that the dose-response curve at low dose is or is expected to be linear.[27] Since the mode of action for benzene carcinogenicity is unknown, the current cancer unit risk estimate assumes linearity of the low-dose response. Data that were considered by EPA in its carcinogenic update suggested that the dose-response relationship at doses below those examined in the studies reviewed in EPA's most recent benzene assessment may be supralinear. Such a relationship could support the inference that cancer risks are as high or are higher than the estimates provided in the existing EPA assessment.[28] Data discussed in the EPA IRIS assessment suggest that genetic abnormalities occur at low exposure in humans, and the formation of toxic metabolites plateaus above 25 ppm (80,000 μ/m³).[29] More recent data on benzene adducts in humans, published after the most recent IRIS assessment, suggest that the enzymes involved in benzene metabolism start to saturate at exposure levels as low as 1 ppm.[30, 31, 32] These data highlight the importance of ambient exposure levels and their contribution to benzene-related adducts. Because there is a transition from linear to saturable metabolism below 1 ppm, the assumption of low-dose linearity extrapolated from much higher exposures could lead to substantial underestimation of leukemia risks. This is consistent with recent epidemiological data which also suggest a supralinear exposure-response relationship and which ''[extend] evidence for hematopoietic cancer risks to levels substantially lower than had previously been established.'' [33, 34, 35] These data are from the largest cohort studies done to date with individual worker exposure estimates. However, these data have not yet been formally evaluated by EPA as part of the IRIS review process, and it is not clear how they might influence low-dose risk estimates. A better understanding of the biological mechanism of benzene-induced leukemia is needed.

Children may represent a subpopulation at increased risk from benzene exposure, due to factors that could increase their susceptibility. Children may have a higher unit body weight exposure because of their heightened activity patterns which can increase their exposures, as well as different ventilation tidal volumes and frequencies, factors that influence uptake. This could entail a greater lifetime risk of leukemia and other toxic effects from exposures occurring during childhood, if children are exposed to benzene at similar levels as adults. There is limited information from two studies regarding an increased risk to children whose parents have been occupationally exposed to benzene.[36, 37] Data from animal studies have shown benzene exposures result in damage to the hematopoietic (blood cell formation) system during development.[38, 39, 40]

[22] International Agency for Research on Cancer (IARC) (1982) IARC monographs on the evaluation of carcinogenic risk of chemicals to humans, Volume 29, Some industrial chemicals and dyestuffs, International Agency for Research on Cancer, World Health Organization, Lyon, France, p. 345–389.

[23] U.S. EPA (1998) Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. EPA600-P–97–001F. Enter report number at the following search page, *http://yosemite.epa.gov/ncepihom/nsCatalog.nsf//SearchPubs?Openform.*

[24] Irons, R.D., W.S. Stillman, D.B. Colagiovanni, and V.A. Henry (1992) Synergistic action of the benzene metabolite hydroquinone on myelopoietic stimulating activity of granulocyte/macrophage colony-stimulating factor in vitro, Proc. Natl. Acad. Sci. 89:3691–3695.

[25] U.S. EPA (1998) Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. EPA600-P–97–001F. Enter report number at the following search page, *http://yosemite.epa.gov/ncepihom/nsCatalog.nsf//SearchPubs?Openform.*

[26] U.S. EPA (1998) Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. EPA600-P–97–001F. Enter report number at the following search page, *http://yosemite.epa.gov/ncepihom/nsCatalog.nsf//SearchPubs?Openform.*

[27] U.S. EPA (2005) Guidelines for Carcinogen Risk Assessment. Report No. EPA/630/P–03/001F. *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=116283.*

[28] U.S. EPA (1998) Carcinogenic Effects of Benzene: An Update. EPA/600/P–97/001F.

[29] Rothman, N; Li, GL; Dosemeci, M; et al. (1996) Hematotoxicity among Chinese workers heavily exposed to benzene. Am. J. Indust. Med. 29:236–246.

[30] Rappaport, S.M.; Waidyanatha, S.; Qu, Q.; Shore, R.; Jin, X.; Cohen, B.; Chen, L.; Melikian, A.; Li, G.; Yin, S.; Yan, H.; Xu, B.; Mu, R.; Li, Y.; Zhang, X.; and Li, K. (2002) Albumin adducts of benzene oxide and 1,4-benzoquinone as measures of human benzene metabolism. Cancer Research 62:1330–1337.

[31] Rappaport, S.M.; Waidyanatha, S.; Qu, Q.; Yeowell-O'Connell, K.; Rothman, N.; Smith M.T.; Zhang, L.; Qu, Q.; Shore, R.; Li, G.; Yin, S. (2005) Protein adducts as biomarkers of human enzene metabolism. Chem Biol Interact. 153–154:103–109.

[32] Lin, Y–S., Vermeulen, R., Tsai, C.H., Suramya, W., Lan, Q., Rothman, N., Smith, M.T., Zhang, L., Shen, M., Songnian, Y., Kim, S., Rappaport, S.M. (2006) Albumin adducts of electrophilic benzene metabolites in benzene-exposed and control workers. Environ Health Perspec.

[33] Hayes, R.B.; Yin, S.; Dosemeci, M.; Li, G.; Wacholder, S.; Travis, L.B.; Li, C.; Rothman, N.; Hoover, R.N.; and Linet, M.S. (1997) Benzene and the dose-related incidence of hematologic neoplasms in China. J. Nat. Cancer Inst. 89:1065–1071.

[34] Hayes, R.B.; Songnian, Y.; Dosemeci, M.; and Linet, M. (2001) Benzene and lymphohematopoietic malignancies in humans. Am. J. Indust. Med. 40:117–126.

[35] Lan, Q.; Zhang, L., Li, G., Vermeulen, R., et al. (2004). Hematotoxicity in Workers Exposed to Low Levels of Benzene. Science 306: 1774–1776.

[36] Shu, X.O.; Gao, Y.T.; Brinton, L.A.; et al. (1988) A population-based case-control study of childhood leukemia in Shanghai. Cancer 62:635–644.

[37] McKinney P.A.; Alexander, F.E.; Cartwright, R.A.; et al. (1991) Parental occupations of children with leukemia in west Cumbria, north Humberside, and Gateshead, Br. Med. J. 302:681–686.

[38] Keller, KA; Snyder, CA. (1986) Mice exposed in utero to low concentrations of benzene exhibit enduring changes in their colony forming hematopoietic cells. Toxicology 42:171–181.

[39] Keller, KA; Snyder, CA. (1988) Mice exposed in utero to 20 ppm benzene exhibit altered numbers of recognizable hematopoietic cells up to seven weeks after exposure. Fundam. Appl. Toxicol. 10:224–232.

[40] Corti, M; Snyder, CA. (1996) Influences of gender, development, pregnancy and ethanol consumption on the hematotoxicity of inhaled 10 ppm benzene. Arch. Toxicol. 70:209–217.

Also, key changes related to the development of childhood leukemia occur in the developing fetus.[41] Several studies have reported that genetic changes related to eventual leukemia development occur before birth. For example, there is one study of genetic changes in twins who developed T cell leukemia at 9 years of age.[42] An association between traffic volume, residential proximity to busy roads and occurrence of childhood leukemia has also been identified in some studies, although some studies show no association.

A number of adverse noncancer health effects, including blood disorders such as preleukemia and aplastic anemia, have also been associated with long-term exposure to benzene.[43, 44] People with long-term occupational exposure to benzene have experienced harmful effects on the blood-forming tissues, especially in the bone marrow. These effects can disrupt normal blood production and suppress the production of important blood components, such as red and white blood cells and blood platelets, leading to anemia (a reduction in the number of red blood cells), leukopenia (a reduction in the number of white blood cells), or thrombocytopenia (a reduction in the number of blood platelets, thus reducing the ability of blood to clot). Chronic inhalation exposure to benzene in humans and animals results in pancytopenia,[45] a condition characterized by decreased numbers of circulating erythrocytes (red blood cells), leukocytes (white blood cells), and thrombocytes (blood platelets).[46, 47] Individuals that develop pancytopenia and have continued exposure to benzene may develop aplastic anemia, whereas others exhibit both pancytopenia and bone marrow hyperplasia (excessive cell formation), a condition that may indicate a preleukemic state.[48, 49] The most sensitive noncancer effect observed in humans, based on current data, is the depression of the absolute lymphocyte count in blood.[50, 51]

EPA's inhalation reference concentration (RfC) for benzene is 30 μg/m^3, based on suppressed absolute lymphocyte counts as seen in humans under occupational exposure conditions. The overall confidence in this RfC is medium. Since development of this RfC, human reports of benzene's hematotoxic effects have been published in the literature that provides data suggesting a wide range of hematological endpoints that are affected at occupational exposures of less than 5 ppm (about 16 mg/m^3)[52] and at air levels of 1 ppm (about 3 mg/m^3) or less among genetically susceptible populations.[53] One recent study found benzene metabolites in mouse liver and bone marrow at environmental doses, indicating that even concentrations in urban air can elicit a biochemical response in rodents that indicates toxicity.[54] EPA has not formally evaluated these recent studies as part of the IRIS review process to determine whether or not they will lead to a change in the current RfC. EPA does not currently have an acute reference concentration for benzene. The Agency for Toxic Substances and Disease Registry Minimal Risk Level for acute exposure to benzene is 160 μg/m^3 for 1–14 days exposure.

ii. 1,3-Butadiene

EPA has characterized 1,3-butadiene, a hydrocarbon, as a leukemogen, carcinogenic to humans by inhalation.[55 56] The specific mechanisms of 1,3-butadiene-induced carcinogenesis are unknown; however, it is virtually certain that the carcinogenic effects are mediated by genotoxic metabolites of 1,3-butadiene. Animal data suggest that females may be more sensitive than males for cancer effects; nevertheless, there are insufficient data in humans from which to draw any conclusions on potentially sensitive subpopulations. The upper bound cancer unit risk estimate is 0.08 per ppm or 3×10^{-5} per μg/m^3 (based primarily on linear modeling and extrapolation of human data). In other words, it is estimated that approximately 30 persons in one million exposed to 1 μg/m^3 of 1,3-butadiene continuously for their lifetime would develop cancer as a result of this exposure. The human incremental lifetime unit cancer risk estimate is based on extrapolation from leukemias observed in an occupational epidemiologic study.[57 58] This estimate includes a two-fold adjustment to the epidemiologic-based unit cancer risk applied to reflect evidence from the rodent bioassays suggesting that the epidemiologic-based estimate (from males) may underestimate total cancer

[41] U.S. EPA. (2002). Toxicological Review of Benzene (Noncancer Effects). National Center for Environmental Assessment, Washington, DC. Report No. EPA/635/R–02/001F. *http://www.epa.gov/iris/toxreviews/0276-tr.pdf.*

[42] Ford, AM; Pombo-de-Oliveira, MS; McCarthy, KP; MacLean, JM; Carrico, KC; Vincent, RF; Greaves, M. (1997) Monoclonal origin of concordant T-cell malignancy in identical twins. Blood 89:281–285.

[43] Aksoy, M. (1989) Hematotoxicity and carcinogenicity of benzene. Environ. Health Perspect. 82:193–197.

[44] Goldstein, B.D. (1988) Benzene toxicity. Occupational medicine. State of the Art Reviews 3: 541–554.

[45] Pancytopenia is the reduction in the number of all three major types of blood cells (erythrocytes, or red blood cells, thrombocytes, or platelets, and leukocytes, or white blood cells). In adults, all three major types of blood cells are produced in the bone marrow of the skeletal system. The bone marrow contains immature cells, known as multipotent myeloid stem cells, that later differentiate into the various mature blood cells. Pancytopenia results from a reduction in the ability of the red bone marrow to produce adequate numbers of these mature blood cells.

[46] Aksoy, M. (1991) Hematotoxicity, leukemogenicity and carcinogenicity of chronic exposure to benzene. In: Arinc, E.; Schenkman, J.B.; Hodgson, E., Eds. Molecular Aspects of Monooxygenases and Bioactivation of Toxic Compounds. New York: Plenum Press, pp. 415–434.

[47] Goldstein, B.D. (1988) Benzene toxicity. Occupational medicine. State of the Art Reviews 3: 541–554.

[48] Aksoy, M., S. Erdem, and G. Dincol. (1974) Leukemia in shoe-workers exposed chronically to benzene. Blood 44:837.

[49] Aksoy, M. and K. Erdem. (1978) A follow-up study on the mortality and the development of leukemia in 44 pancytopenic patients associated with long-term exposure to benzene. Blood 52: 285–292.

[50] Rothman, N., G.L. Li, M. Dosemeci, W.E. Bechtold, G.E. Marti, Y.Z. Wang, M. Linet, L.Q. Xi, W. Lu, M.T. Smith, N. Titenko-Holland, L.P. Zhang, W. Blot, S.N. Yin, and R.B. Hayes (1996) Hematotoxicity among Chinese workers heavily exposed to benzene. Am. J. Ind. Med. 29: 236–246.

[51] EPA 2005 ''Full IRIS Summary for Benzene (CASRN 71–43–2)'' Environmental Protection Agency, Integrated Risk Information System (IRIS), Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH, *http://www.epa.gov/iris/subst/0276.htm.*

[52] Qu, Q., R. Shore, G. Li, X. Jin, L.C. Chen, B. Cohen, et al. (2002). Hematological changes among Chinese workers with a broad range of benzene exposures. Am. J. Industr. Med. 42: 275–285.

[53] Lan, Q.; Zhang, L., Li, G., Vermeulen, R., et al. (2004). Hematotoxicity in Workers Exposed to Low Levels of Benzene. Science 306: 1774–1776.

[54] Turtletaub, K.W. and Mani, C. (2003). Benzene metabolism in rodents at doses relevant to human exposure from Urban Air. Res Rep Health Effect Inst 113.

[55] U.S. EPA. (2002). Health Assessment of 1,3-Butadiene. Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington, DC. Report No. EPA600–P–98–001F. *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=54499.*

[56] EPA 2005 ''Full IRIS Summary for 1,3-butadiene (CASRN 106–99–0)'' Environmental Protection Agency, Integrated Risk Information System (IRIS), Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH, *http://www.epa.gov/iris/subst/0139.htm.*

[57] Delzell, E, N. Sathiakumar, M. Macaluso, et al. (1995). A follow-up study of synthetic rubber workers. Submitted to the International Institute of Synthetic Rubber Producers. University of Alabama at Birmingham. October 2, 1995.

[58] EPA 2005 ''Full IRIS Summary for 1,3-butadiene (CASRN 106–99–0)'' Environmental Protection Agency, Integrated Risk Information System (IRIS), Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH, *http://www.epa.gov/iris/subst/0139.htm.*

risk from 1,3-butadiene exposure in the general population, particularly for breast cancer in females. A recent study extended the investigation of 1,3-butadiene exposure and leukemia among synthetic rubber industry workers.[59] The results of this study strengthen the evidence for the relationship between 1,3-butadiene exposure and lymphohematopoietic cancer. This relationship was found to persist after controlling for exposure to other toxics in this work environment.

1,3-Butadiene also causes a variety of reproductive and developmental effects in mice; no human data on these effects are available. The most sensitive effect was ovarian atrophy observed in a lifetime bioassay of female mice.[60] Based on this critical effect and the benchmark concentration methodology, an RfC was calculated. This RfC for chronic health effects is 0.9 ppb, or about 2 μg/m$^{3.}$ Confidence in the inhalation RfC is medium.

iii. Formaldehyde

Since 1987, EPA has classified formaldehyde, a hydrocarbon, as a probable human carcinogen based on evidence in humans and in rats, mice, hamsters, and monkeys.[61] EPA's current IRIS summary provides an upper bound cancer unit risk estimate of 1.3×10^{-5} per μg/m^3.[62] In other words, there is an estimated risk of about thirteen excess leukemia cases in one million people exposed to 1 μg/m^3 of formaldehyde over a lifetime.

EPA is currently reviewing recently published epidemiological data. For instance, research conducted by the National Cancer Institute (NCI) found an increased risk of nasopharyngeal cancer and lymphohematopoietic malignancies such as leukemia among workers exposed to formaldehyde.[63] [64] NCI is currently performing an update of these studies. A recent National Institute of Occupational Safety and Health (NIOSH) study of garment workers also found increased risk of death due to leukemia among workers exposed to formaldehyde.[65] Extended follow-up of a cohort of British chemical workers did not find evidence of an increase in nasopharyngeal or lymphohematopoeitic cancers, but a continuing statistically significant excess in lung cancers was reported.[66]

Based on the developments of the last decade, in 2004, the working group of the International Agency for Research on Cancer concluded that formaldehyde is carcinogenic to humans (Group 1 classification) on the basis of sufficient evidence in humans and sufficient evidence in experimental animals—a higher classification than previous IARC evaluations. In addition, the National Institute of Environmental Health Sciences recently nominated formaldehyde for reconsideration as a known human carcinogen under the National Toxicology Program. Since 1981 it has been listed as a ''reasonably anticipated human carcinogen.'' Recently the German Federal Institute for Risk Assessment determined that formaldehyde is a known human carcinogen.[67]

In the past 15 years there has been substantial research on the inhalation dosimetry for formaldehyde in rodents and primates by the CIIT Centers for Health Research, with a focus on use of rodent data for refinement of the quantitative cancer dose-response assessment.[68] [69] [70] CIIT's risk assessment of formaldehyde incorporated mechanistic and dosimetric information on formaldehyde. The risk assessment analyzed carcinogenic risk from inhaled formaldehyde using approaches that were consistent with EPA's draft guidelines for carcinogenic risk assessment. In 2001, Environment Canada relied on this cancer dose-response assessment in their assessment of formaldehyde.[71] In 2004, EPA also relied on this cancer unit risk estimate during the development of the plywood and composite wood products national emissions standards for hazardous air pollutants (NESHAPs).[72] In these rules, EPA concluded that the CIIT work represented the best available application of the available mechanistic and dosimetric science on the dose-response for portal of entry cancers due to formaldehyde exposures. EPA is reviewing the recent work cited above from the NCI and NIOSH, as well as the analysis by the CIIT Centers for Health Research and other studies, as part of a reassessment of the human hazard and dose-response associated with formaldehyde.

Noncancer effects of formaldehyde have been observed in humans and several animal species and include irritation to eye, nose and throat tissues in conjunction with increased mucous secretions.

iv. Acetaldehyde

Acetaldehyde, a hydrocarbon, is classified in EPA's IRIS database as a probable human carcinogen and is considered toxic by inhalation.[73] Based on nasal tumors in rodents, the upper confidence limit estimate of a lifetime extra cancer risk from continuous acetaldehyde exposure is about 2.2×10^{-6} per μg/m^3. In other words, it is estimated that about 2 persons in one million exposed to 1 μg/m^3 acetaldehyde continuously for their lifetime (70 years) would develop cancer as a result of their exposure, although the risk could be as low as zero. In short-term (4 week) rat studies, compound-related histopathological changes were observed only in the respiratory system at various concentration levels of exposure.[74] [75]

[59] Delzell, E., Sathiakumar, N., Graff, J., Macaluso, M., Maldonado, G., Matthews, R. (2006) An updated study of mortality among North American synthetic rubber industry workers. Health Effects Institute Report Number 132.

[60] Bevan, C.; Stadler, J.C.; Elliot, G.S.; et al. (1996) Subchronic toxicity of 4-vinylcyclohexene in rats and mice by inhalation. Fundam. Appl. Toxicol. 32:1–10.

[61] U.S. EPA (1987). Assessment of Health Risks to Garment Workers and Certain Home Residents From Exposure to Formaldehyde, Office of Pesticides and Toxic Substances, April 1987.

[62] U.S. EPA (1989). Integrated Risk Information System File for Formaldehyde. This material is available electronically at *http://www.epa.gov/iris/subst/0419.htm.*

[63] Hauptmann, M.; Lubin, J. H.; Stewart, P. A.; Hayes, R. B.; Blair, A. 2003. Mortality from lymphohematopoietic malignancies among workers in formaldehyde industries. Journal of the National Cancer Institute 95: 1615–1623.

[64] Hauptmann, M..; Lubin, J. H.; Stewart, P. A.; Hayes, R. B.; Blair, A. 2004. Mortality from solid cancers among workers in formaldehyde industries. American Journal of Epidemiology 159: 1117–1130.

[65] Pinkerton, L. E. 2004. Mortality among a cohort of garment workers exposed to formaldehyde: an update. Occup. Environ. Med. 61: 193–200.

[66] Coggon, D, EC Harris, J Poole, KT Palmer. 2003. Extended follow-up of a cohort of British chemical workers exposed to formaldehyde. J National Cancer Inst. 95:1608–1615.

[67] Bundesinstitut für Risikobewertung (BfR) Toxicological Assessment of Formaldehyde. Opinion of BfR No. 023/2006 of 30 March 2006. *www.bfr.bund.de/cm/290/toxicological_assessment_of_formaldehyde.pdf.*

[68] Conolly, RB, JS Kimbell, D Janszen, PM Schlosser, D Kalisak, J Preston, and FJ Miller. 2003. Biologically motivated computational modeling of formaldehyde carcinogenicity in the F344 rat. Tox. Sci. 75: 432–447.

[69] Conolly, RB, JS Kimbell, D Janszen, PM Schlosser, D Kalisak, J Preston, and FJ Miller. 2004. Human respiratory tract cancer risks of inhaled formaldehyde: Dose-response predictions derived from biologically-motivated computational modeling of a combined rodent and human dataset. Tox. Sci. 82: 279–296.

[70] Chemical Industry Institute of Toxicology (CIIT). 1999. Formaldehyde: Hazard characterization and dose-response assessment for carcinogenicity by the route of inhalation. CIIT, September 28, 1999. Research Triangle Park, NC.

[71] Health Canada. 2001. Priority Substances List Assessment Report. Formaldehyde. Environment Canada, Health Canada, February 2001.

[72] U.S. EPA. 2004. National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products Manufacture: Final Rule. (69 FR 45943, 7/30/04).

[73] U.S. EPA. 1988. Integrated Risk Information System File of Acetaldehyde. This material is available electronically at *http://www.epa.gov/iris/subst/0290.htm.*

[74] Appleman, L. M., R. A. Woutersen, V. J. Feron, R. N. Hooftman, and W. R. F. Notten. (1986). Effects of the variable versus fixed exposure levels on the toxicity of acetaldehyde in rats. J. Appl. Toxicol. 6: 331–336.

Data from these studies showing degeneration of the olfactory epithelium were found to be sufficient for EPA to develop an RfC for acetaldehyde of 9 μg/m³. Confidence in the principal study is medium and confidence in the database is low, due to the lack of chronic data establishing a no observed adverse effect level and due to the lack of reproductive and developmental toxicity data. Therefore, there is low confidence in the RfC. The agency is currently conducting a reassessment of risk from inhalation exposure to acetaldehyde.

The primary acute effect of exposure to acetaldehyde vapors is irritation of the eyes, skin, and respiratory tract.[76] Some asthmatics have been shown to be a sensitive subpopulation to decrements in functional expiratory volume (FEV1 test) and bronchoconstriction upon acetaldehyde inhalation.[77]

v. Acrolein

Acrolein, a hydrocarbon, is intensely irritating to humans when inhaled, with acute exposure resulting in upper respiratory tract irritation and congestion. The Agency has developed an RfC for acrolein of 0.02 μg/m³.[78] The overall confidence in the RfC assessment is judged to be medium. The Agency is also currently in the process of conducting an assessment of acute health effects for acrolein. EPA determined in 2003 using the 1999 draft cancer guidelines that the human carcinogenic potential of acrolein could not be determined because the available data were inadequate. No information was available on the carcinogenic effects of acrolein in humans and the animal data provided inadequate evidence of carcinogenicity.

vi. Polycyclic Organic Matter (POM)

POM is generally defined as a large class of organic compounds which have multiple benzene rings and a boiling point greater than 100 degrees Celsius. Many of the compounds included in the class of compounds known as POM are classified by EPA as probable human carcinogens based on animal data. One of these compounds, naphthalene, is discussed separately below.

Polycyclic aromatic hydrocarbons (PAHs) are a chemical subset of POM. In particular, EPA frequently obtains data on 16 of these POM compounds. Recent studies have found that maternal exposures to PAHs in a population of pregnant women were associated with several adverse birth outcomes, including low birth weight and reduced length at birth, as well as impaired cognitive development at age three.[79, 80] These studies are discussed in the Regulatory Impact Analysis.

vii. Naphthalene

Naphthalene is a PAH compound consisting of two benzene rings fused together with two adjacent carbon atoms common to both rings. In 2004, EPA released an external review draft of a reassessment of the inhalation carcinogenicity of naphthalene.[81] The draft reassessment, External Review Draft, IRIS Reassessment of the Inhalation Carcinogenicity of Naphthalene, U.S. EPA, completed external peer review in 2004 by Oak Ridge Institute for Science and Education.[82] Based on external comments, additional analyses are being considered. California EPA has released a new risk assessment for naphthalene with a cancer unit risk estimate of 3×10^{-5} per μg/m³.[83] The California EPA value was used in the 1999 NATA and in the analyses done for this rule. In addition, IARC has reevaluated naphthalene and re-classified it as Group 2B: possibly carcinogenic to humans.[84] Current risk estimates for naphthalene are based on extrapolations from rodent studies conducted at higher doses. At present, human data are inadequate for developing estimates.

The current EPA IRIS assessment includes noncancer data on hyperplasia and metaplasia in nasal tissue that form the basis of an inhalation RfC of 3 μg/m³.[85] The principal study was given medium confidence because adequate numbers of animals were used, and the severity of nasal effects increased at the higher exposure concentration. However, the study produced high mortality and hematological evaluation was not conducted beyond 14 days. The database was given a low-to-medium confidence rating because there are no chronic or subchronic inhalation studies in other animal species, and there are no reproductive or developmental studies for inhalation exposure. In the absence of human or primate toxicity data, the assumption is made that nasal responses in mice to inhaled naphthalene are relevant to humans; however, it cannot be said with certainty that this RfC for naphthalene based on nasal effects will be protective for hemolytic anemia and cataracts, the more well-known human effects from naphthalene exposure. As a result, we have medium confidence in the RfC.

viii. Diesel Exhaust

In EPA's Diesel Health Assessment Document (HAD),[86] diesel exhaust was classified as likely to be carcinogenic to humans by inhalation at environmental exposures, in accordance with the revised draft 1996/1999 EPA cancer guidelines. A number of other agencies (National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, the World Health Organization, California EPA, and the U.S. Department of Health and Human Services) have made similar classifications. EPA concluded in the Diesel HAD that it is not possible currently to calculate a cancer unit risk for diesel exhaust due to a variety of factors that limit the current studies,

[75] Appleman, L.M., R.A. Woutersen, and V.J. Feron. (1982). Inhalation toxicity of acetaldehyde in rats. I. Acute and subacute studies. Toxicology. 23: 293–297.

[76] U.S. EPA (1988). Integrated Risk Information System File of Acetaldehyde. This material is available electronically at *http://www.epa.gov/iris/subst/0290.htm.*

[77] Myou, S.; Fujimura, M.; Nishi K.; Ohka, T.; and Matsuda, T. (1993) Aerosolized acetaldehyde induces histamine-mediated bronchoconstriction in asthmatics. Am. Rev. Respir. Dis.148(4 Pt 1): 940–3.

[78] U.S. Environmental Protection Agency (2003) Integrated Risk Information System (IRIS) on Acrolein. National Center for Environmental Assessment, Office of Research and Development, Washington, D.C. 2003. This material is available electronically at *http://www.epa.gov/iris/subst/0364.htm.*

[79] Perera, F.P.; Rauh, V.; Tsai, W-Y.; *et al.* (2002) Effect of transplacental exposure to environmental pollutants on birth outcomes in a multiethnic population. Environ Health Perspect. 111: 201–205.

[80] Perera, F.P.; Rauh, V.; Whyatt, R.M.; Tsai, W.Y.; Tang, D.; Diaz, D.; Hoepner, L.; Barr, D.; Tu, Y.H.; Camann, D.; Kinney, P. (2006) Effect of prenatal exposure to airborne polycyclic aromatic hydrocarbons on neurodevelopment in the first 3 years of life among inner-city children. Environ Health Perspect 114: 1287–1292.

[81] U.S. EPA (1998) Integrated Risk Information System (IRIS) summary on Naphthalene. National Center for Environmental Assessment, Office of Research and Development, Washington, D.C. 2003. This material is available electronically at *http://www.epa.gov/iris/subst/0436.htm.*

[82] Oak Ridge Institute for Science and Education. (2004) External Peer Review for the IRIS Reassessment of the Inhalation Carcinogenicity of Naphthalene. August 2004. *http://cfpub2.epa.gov/ncea/cfm/recordisplay.cfm?deid=86019.*

[83] California EPA. (2004) Long Term Health Effects of Exposure to Naphthalene. Office of Environmental Health Hazard Assessment. *http://www.oehha.ca.gov/air/toxic_contaminants/draftnaphth.html.*

[84] International Agency for Research on Cancer (IARC). (2002) Monographs on the Evaluation of the Carcinogenic Risk of Chemicals for Humans. Vol. 82. Lyon, France.

[85] EPA 2005 ''Full IRIS Summary for Naphthalene (CASRN 91–20–3)'' Environmental Protection Agency, Integrated Risk Information System (IRIS), Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH *http://www.epa.gov/iris/subst/0436.htm.*

[86] U.S. EPA (2002) Health Assessment Document for Diesel Engine Exhaust. EPA/600/8–90/057F Office of Research and Development, Washington, DC. This document is available electronically at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.*

such as limited quantitative exposure histories in occupational groups investigated for lung cancer.

However, in the absence of a cancer unit risk, the EPA Diesel HAD sought to provide additional insight into the significance of the cancer hazard by estimating possible ranges of risk that might be present in the population. An exploratory analysis was used to characterize a possible risk range by comparing a typical environmental exposure level for highway diesel sources to a selected range of occupational exposure levels. The occupationally observed risks were then proportionally scaled according to the exposure ratios to obtain an estimate of the possible environmental risk. A number of calculations are needed to accomplish this, and these can be seen in the EPA Diesel HAD. The outcome was that environmental risks from diesel exhaust exposure could range from a low of 10^{-4} to 10^{-5} to as high as 10^{-3}, reflecting the range of occupational exposures that could be associated with the relative and absolute risk levels observed in the occupational studies. Because of uncertainties, the analysis acknowledged that the risks could be lower than 10^{-4} or 10^{-5}, and a zero risk from diesel exhaust exposure was not ruled out.

Noncancer health effects of acute and chronic exposure to diesel exhaust emissions are also of concern to the Agency. EPA derived an RfC from consideration of four well-conducted chronic rat inhalation studies showing adverse pulmonary effects.[87 88 89 90] The RfC is 5 μg/m^3 for diesel exhaust as measured by diesel PM. This RfC does not consider allergenic effects such as those associated with asthma or immunologic effects. There is growing evidence, discussed in the Diesel HAD, that diesel exhaust can exacerbate these effects, but the exposure-response data are presently lacking to derive an RfC. The EPA Diesel HAD states, ''With DPM [diesel particulate matter] being a ubiquitous component of ambient PM, there is an uncertainty about the adequacy of the existing DE [diesel exhaust] noncancer database to identify all of the pertinent DE-caused noncancer health hazards'' (p. 9–19).

The Diesel HAD also briefly summarizes health effects associated with ambient PM and discusses the EPA's annual National Ambient Air Quality Standard (NAAQS) of 15 μg/m^3. There is a much more extensive body of human data showing a wide spectrum of adverse health effects associated with exposure to ambient PM, of which diesel exhaust is an important component. The $PM_{2.5}$ NAAQS is designed to provide protection from the noncancer and premature mortality effects of $PM_{2.5}$ as a whole, of which diesel PM is a constituent.

c. Gasoline PM

Beyond the specific areas of quantifiable risk discussed above in section III.C, EPA is also currently investigating gasoline PM. Gasoline exhaust is a complex mixture that has not been evaluated in EPA's IRIS. Gasoline exhaust is a ubiquitous source of particulate matter, contributing to the health effects observed for ambient PM which is discussed extensively in the EPA Particulate Matter Criteria Document.[91] The PM Criteria Document notes that the PM components of gasoline and diesel engine exhaust are hypothesized, important contributors to the observed increases in lung cancer incidence and mortality associated with ambient $PM_{2.5}$.[92] Gasoline PM is also a component of near-roadway emissions that may be contributing to the health effects observed in people who live near roadways (see section III.F). There is also emerging evidence for the mutagenicity and cytotoxicity of gasoline exhaust and gasoline PM. Seagrave et al. investigated the combined particulate and semivolatile organic fractions of gasoline engine emissions in various animal and bioassay tests.[93] The authors suggest that emissions from gasoline engines are mutagenic and can induce inflammation and have cytotoxic effects.

EPA is working to improve the understanding of PM emissions from gasoline engines, including the potential range of emissions and factors that influence emissions. EPA led a cooperative test program that recently completed testing approximately 500 randomly procured vehicles in the Kansas City metropolitan area. The purpose of this study was to determine the distribution of gasoline PM emissions from the in-use light-duty fleet. Results from this study are expected to be available shortly. Preliminary results from this work show the influence of high emitters on overall gasoline PM emissions and, also, that gasoline PM emissions increase at lower ambient temperatures in the in-use fleet. Some source apportionment studies show gasoline and diesel PM can result in larger contributions to ambient PM than predicted by EPA emission inventories.[94 95] These source apportionment studies were one impetus behind conducting the Kansas City study.

Another issue related to gasoline PM is the effect of gasoline vehicles and engines on ambient PM, especially secondary PM. Ambient PM is composed of primary PM emitted directly into the atmosphere and secondary PM that is formed from chemical reactions in the atmosphere. The issue of secondary organic aerosol formation from aromatic precursors such as toluene is an important one to which EPA and others are paying significant attention. This is discussed in more detail in section 1.4.1 of the RIA.

d. Near-Roadway Health Effects

Another approach to investigating the collective health effects of mobile source contaminants is to examine associations between living near major roads and different adverse health endpoints. These studies generally examine people living near heavily-trafficked roadways, typically within several hundred meters, where fresh

[87] Ishinishi, N; Kuwabara, N; Takaki, Y; et al. (1988) Long-term inhalation experiments on diesel exhaust. In: Diesel exhaust and health risks. Results of the HERP studies. Ibaraki, Japan: Research Committee for HERP Studies; pp. 11–84.

[88] Heinrich, U; Fuhst, R; Rittinghausen, S; et al. (1995) Chronic inhalation exposure of Wistar rats and two different strains of mice to diesel engine exhaust, carbon black, and titanium dioxide. Inhal. Toxicol. 7:553–556.

[89] Mauderly, JL; Jones, RK; Griffith, WC; et al. (1987) Diesel exhaust is a pulmonary carcinogen in rats exposed chronically by inhalation. Fundam. Appl. Toxicol. 9:208–221.

[90] Nikula, KJ; Snipes, MB; Barr, EB; et al. (1995) Comparative pulmonary toxicities and carcinogenicities of chronically inhaled diesel exhaust and carbon black in F344 rats. Fundam. Appl. Toxicol. 25:80–94.

[91] U.S. EPA (2004) Air Quality Criteria for Particulate Matter: Volume 1. Research Triangle Park, NC: National Center for Environmental Assessment—RTP Office; Report No. EPA/600/P–99/002aF. Enter report number at the following search page, *http://yosemite.epa.gov/ncepihom/nsCatalog.nsf//SearchPubs?Openform.*

[92] U.S. EPA (2004) Air Quality Criteria for Particulate Matter: Volume 1. Research Triangle Park, NC: National Center for Environmental Assessment—RTP Office; Report No. EPA/600/P–99/002aF, p. 8–318. Enter report number at the following search page, *http://yosemite.epa.gov/ncepihom/nsCatalog.nsf//SearchPubs?Openform.*

[93] Seagrave, J.; McDonald, J.D.; Gigliotti, A.P.; Nikula, K.J.; Seilkop, S.K.; Gurevich, M. and Mauderly, J.L. (2002) Mutagenicity and in Vivo Toxicity of Combined Particulate and Semivolatile Organic Fractions of Gasoline and Diesel Engine Emissions. Toxicological Sciences 70:212–226.

[94] Fujita, E.; Watson, M.J.; Chow, M.C.; et al. (1998) Northern Front Range Air Quality Study, Volume C: Source apportionment and simulation methods and evaluation. Prepared for Colorado State University, Cooperative Institute for Research in the Atmosphere, by Desert Research Institute, Reno, NV.

[95] Schauer, J.J.; Rogge, W.F.; Hildemann, L.M.; et al. (1996) Source apportionment of airborne particulate matter using organic compounds as tracers. Atmos. Environ. 30(22):3837–3855.

emissions from motor vehicles are not yet fully diluted with background air.

Several studies have measured elevated concentrations of pollutants emitted directly by motor vehicles near roadways as compared to overall urban background levels. These elevated concentrations generally occur within approximately 200 meters of the road, although the distance may vary depending on traffic and environmental conditions. Pollutants measured with elevated concentrations include benzene, polycyclic aromatic hydrocarbons, carbon monoxide, nitrogen dioxide, black carbon, and coarse, fine, and ultrafine particulate matter. In addition, concentrations of road dust, and wear particles from tire and brake use also show concentration increases in proximity of major roadways.

The near-roadway health studies provide stronger evidence for some health endpoints than others. Evidence of adverse responses to traffic-related pollution is strongest for non-allergic respiratory symptoms, cardiovascular effects, premature adult mortality, and adverse birth outcomes, including low birth weight and size. Some evidence for new onset asthma is available, but not all studies have significant correlations. Lastly, among studies of childhood cancer, in particular childhood leukemia, evidence is inconsistent. Several small studies report positive associations, though such effects have not been observed in two larger studies. As described above, benzene and 1,3-butadiene are both known human leukemogens in adults. As previously mentioned, there is evidence of increased risk of leukemia among children whose parents have been occupationally exposed to benzene. Though the near-roadway studies are equivocal, taken together with the laboratory studies and other exposure environments, the data suggest a potentially serious children's health concern could exist. Additional research is needed to determine the significance of this potential concern.

Significant scientific uncertainties remain in our understanding of the relationship between adverse health effects and near-road exposure, including the exposures of greatest concern, the importance of chronic versus acute exposures, the role of fuel type (e.g. diesel or gasoline) and composition (e.g., % aromatics), relevant traffic patterns, the role of co-stressors including noise and socioeconomic status, and the role of differential susceptibility within the ''exposed'' populations. For a more detailed discussion, see Chapter 3 of the Regulatory Impact Analysis.

These studies provide qualitative evidence that reducing emissions from on-road mobile sources will provide public health benefits beyond those that can be quantified using currently available information.

C. Ozone

Many MSATs are part of a larger category of mobile source emissions known as volatile organic compounds (VOCs), which contribute to the formation of ozone. Mobile sources contribute significantly to national emissions of VOCs. In addition, PFCs are a source of VOCs. The vehicle and PFC standards in this final rule will help reduce emissions of VOCs.

1. Background

Ground-level ozone pollution is formed by the reaction of VOCs and nitrogen oxides (NO_X) in the lower atmosphere in the presence of heat and sunlight. These pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, such as highway and nonroad motor vehicles and engines, power plants, chemical plants, refineries, makers of consumer and commercial products, industrial facilities, and smaller area sources. The PFC controls being finalized in this action will help reduce VOC emissions by reducing evaporation, permeation and spillage from PFCs. The vehicle controls being finalized will also reduce VOC emissions; however, because these reductions will occur at cold temperatures the ozone benefits will be limited.

The science of ozone formation, transport, and accumulation is complex.[96] Ground-level ozone is produced and destroyed in a cyclical set of chemical reactions, many of which are sensitive to temperature and sunlight. When ambient temperatures and sunlight levels remain high for several days and the air is relatively stagnant, ozone and its precursors can build up and result in more ozone than typically would occur on a single high-temperature day. Ozone also can be transported into an area from pollution sources found hundreds of miles upwind, resulting in elevated ozone levels even in areas with low VOC or NO_X emissions.

The current ozone National Ambient Air Quality Standards (NAAQS) established by EPA in 1997 has an 8-hour averaging time.[97] The 8-hour ozone NAAQS is based on well-documented science demonstrating that more people were experiencing adverse health effects at lower levels of exertion, over longer periods, and at lower ozone concentrations than addressed by the previous one-hour ozone NAAQS. The current ozone NAAQS addresses ozone exposures of concern for the general population and populations most at risk, including children active outdoors, outdoor workers, and individuals with pre-existing respiratory disease, such as asthma. The 8-hour ozone NAAQS is met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration over three years is less than or equal to 0.084 ppm.

2. Health Effects of Ozone

The health and welfare effects of ozone are well documented and are assessed in the EPA's 2006 ozone Air Quality Criteria Document (ozone AQCD) and EPA staff papers.[98] [99] Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's activity. Ozone can also aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. Animal toxicologic evidence indicates that with repeated exposure, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. People who are more susceptible to effects associated with exposure to ozone include children, the elderly, and individuals with respiratory disease such as asthma. There is also suggestive evidence that certain people may have greater genetic susceptibility. Those with greater exposures to ozone, for instance due to time spent outdoors (e.g., outdoor workers), are also of concern.

[96] U.S. EPA, Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–05/004aF-cF, 2006. This document is available in Docket EPA–HQ–OAR–2005–0036.

[97] EPA's review of the ozone NAAQS is underway and a proposal is scheduled for June 2007 with a final rule scheduled for March 2008.

[98] U.S. EPA, Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–05/004aF-cF, 2006. This document is available in Docket EPA–HQ–OAR–2005–0036.

[99] U.S. EPA (2007) Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–07–003. This document is available in Docket EPA–HQ–OAR–2005–0036.

The recent ozone AQCD also examined relevant new scientific information which has emerged in the past decade, including the impact of ozone exposure on such health effects as changes in lung structure and biochemistry, inflammation of the lungs, exacerbation and causation of asthma, respiratory illness-related school absence, hospital admissions and premature mortality. Animal toxicologic studies have suggested potential interactions between ozone and PM with increased responses observed to mixtures of the two pollutants compared to either ozone or PM alone. The respiratory morbidity observed in animal studies along with the evidence from epidemiologic studies supports a causal relationship between acute ambient ozone exposures and increased respiratory-related emergency room visits and hospitalizations in the warm season. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and non-accidental and cardiopulmonary mortality.

3. Plant and Ecosystem Effects of Ozone

Ozone contributes to many environmental effects, with impacts to plants and ecosystems being of most concern. Ozone can produce both acute and chronic injury in sensitive species depending on the concentration level and the duration of the exposure. Ozone effects also tend to accumulate over the growing season of the plant, so that even lower concentrations experienced for a longer duration have the potential to create chronic stress on vegetation. Ozone damage to plants includes visible injury to leaves and a reduction in food production through impaired photosynthesis, both of which can lead to reduced crop yields, forestry production, and use of sensitive ornamentals in landscaping. In addition, the reduced food production in plants and subsequent reduced root growth and storage below ground, can result in other, more subtle plant and ecosystems impacts. These include increased susceptibility of plants to insect attack, disease, harsh weather, interspecies competition and overall decreased plant vigor. The adverse effects of ozone on forest and other natural vegetation can potentially lead to species shifts and loss from the affected ecosystems, resulting in a loss or reduction in associated ecosystem goods and services. Lastly, visible ozone injury to leaves can result in a loss of aesthetic value in areas of special scenic significance like national parks and wilderness areas. The final 2006 ozone AQCD presents more detailed information on ozone effects on vegetation and ecosystems.

4. Current and Projected 8-hour Ozone Levels

Currently, ozone concentrations exceeding the level of the 8-hour ozone NAAQS occur over wide geographic areas, including most of the nation's major population centers.[100] As of October 2006 approximately 157 million people live in the 116 areas that are currently designated as not in attainment with the 8-hour ozone NAAQS. There are 461 full or partial counties that make up the 116 8-hour ozone nonattainment areas.

EPA has already adopted many emission control programs that are expected to reduce ambient ozone levels. These control programs include the Clean Air Interstate Rule (70 FR 25162, May 12, 2005), as well as many mobile source rules (many of which are described in section V.D). As a result of these programs, the number of areas that fail to meet the 8-hour ozone NAAQS is expected to decrease.

Based on the recent ozone modeling performed for the CAIR analysis,[101] barring additional local ozone precursor controls, we estimate 37 Eastern counties (where 24 million people are projected to live) will exceed the 8-hour ozone NAAQS in 2010. An additional 148 Eastern counties (where 61 million people are projected to live) are expected to be within 10 percent of violating the 8-hour ozone NAAQS in 2010.

States with 8-hour ozone nonattainment areas will be required to take action to bring these areas into compliance in the future. Based on the final rule designating and classifying 8-hour ozone nonattainment areas (69 FR 23951, April 30, 2004), most 8-hour ozone nonattainment areas will be required to attain the 8-hour ozone NAAQS in the 2007 to 2013 time frame and then be required to maintain the 8-hour ozone NAAQS thereafter.[102] The expected ozone inventory reductions from the standards being finalized in this action may be useful to states in attaining or maintaining the 8-hour ozone NAAQS.

EPA's review of the ozone NAAQS is currently underway and a proposed decision in this review is scheduled for June 2007 with a final rule scheduled for March 2008. If the ozone NAAQS is revised, then new nonattainment areas could be designated. While EPA is not relying on it for purposes of justifying this rule, the emission reductions from this rulemaking would also be helpful to states if there is an ozone NAAQS revision.

D. Particulate Matter

The cold temperature vehicle controls being finalized here will result in reductions of primary PM being emitted by vehicles. In addition, both the vehicle controls and the PFC controls will reduce VOCs that react in the atmosphere to form secondary $PM_{2.5}$, namely organic carbonaceous $PM_{2.5}$.

1. Background

Particulate matter (PM) represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. PM is further described by breaking it down into size fractions. PM_{10} refers to particles generally less than or equal to 10 micrometers (μm) in diameter. $PM_{2.5}$ refers to fine particles, those particles generally less than or equal to 2.5 μm in diameter. Inhalable (or ''thoracic'') coarse particles refer to those particles generally greater than 2.5 μm but less than or equal to 10 μm in diameter. Ultrafine PM refers to particles with diameters generally less than 100 nanometers (0.1 μm). Larger particles (>10 μm) tend to be removed by the respiratory clearance mechanisms, whereas smaller particles are deposited deeper in the lungs.

Fine particles are produced primarily by combustion processes and by transformations of gaseous emissions (e.g., SO_x, NO_X and VOCs) in the atmosphere. The chemical and physical properties of $PM_{2.5}$ may vary greatly with time, region, meteorology and source category. Thus, $PM_{2.5}$ may include a complex mixture of different pollutants including sulfates, nitrates, organic compounds, elemental carbon and metal compounds. These particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers.

EPA has recently amended the PM NAAQS (71 FR 61144, October 17, 2006). The final rule, signed on September 21, 2006 and published on October 17, 2006, addressed revisions to the primary and secondary NAAQS for PM to provide increased protection of public health and welfare, respectively.

[100] A map of the 8-hour ozone nonattainment areas is included in the RIA for this rule.

[101] Technical Support Document for the Final Clean Air Interstate Rule Air Quality Modeling. This document is available in Docket EPA–HQ–OAR–2005–0036.

[102] The Los Angeles South Coast Air Basin 8-hour ozone nonattainment area will have to attain before June 15, 2021.

The primary $PM_{2.5}$ NAAQS include a short-term (24-hour) and a long-term (annual) standard. The level of the 24-hour $PM_{2.5}$ NAAQS has been revised from 65 μg/m³ to 35 μg/m³ to provide increased protection against health effects associated with short-term exposures to fine particles. The current form of the 24-hour $PM_{2.5}$ standard was retained (*e.g.,* based on the 98th percentile concentration averaged over three years). The level of the annual $PM_{2.5}$ NAAQS was retained at 15 μg/m³ continuing protection against health effects associated with long-term exposures. The current form of the annual $PM_{2.5}$ standard was retained as an annual arithmetic mean averaged over three years, however, the following two aspects of the spatial averaging criteria were narrowed: (1) The annual mean concentration at each site shall be within 10 percent of the spatially averaged annual mean, and (2) the daily values for each monitoring site pair shall yield a correlation coefficient of at least 0.9 for each calendar quarter. With regard to the primary PM_{10} standards, the 24-hour PM_{10} NAAQS was retained at a level of 150 μg/m³ not to be exceeded more than once per year on average over a three-year period. Given that the available evidence does not suggest an association between long-term exposure to coarse particles at current ambient levels and health effects, EPA has revoked the annual PM_{10} standard.

With regard to the secondary PM standards, EPA has revised these standards to be identical in all respects to the revised primary standards. Specifically, EPA has revised the current 24-hour $PM_{2.5}$ secondary standard by making it identical to the revised 24-hour $PM_{2.5}$ primary standard, retained the annual $PM_{2.5}$ and 24-hour PM_{10} secondary standards, and revoked the annual PM_{10} secondary standards. This suite of secondary PM standards is intended to provide protection against PM-related public welfare effects, including visibility impairment, effects on vegetation and ecosystems, and material damage and soiling.

2. Health Effects of PM

Scientific studies show ambient PM is associated with a series of adverse health effects. These health effects are discussed in detail in the 2004 Particulate Matter Air Quality Criteria Document (PM AQCD) as well as the 2005 PM Staff Paper.[103, 104] Further discussion of health effects associated with PM can also be found in the RIA for this final rule.

Health effects associated with short-term exposures (e.g. hours to days) in ambient $PM_{2.5}$ include premature mortality, increased hospital admissions, heart and lung diseases, increased cough, adverse lower-respiratory symptoms, decrements in lung function and changes in heart rate rhythm and other cardiac effects. Studies examining populations exposed to different levels of air pollution over a number of years, including the Harvard Six Cities Study and the American Cancer Society Study, show associations between long-term exposure to ambient $PM_{2.5}$ and both total and cardiorespiratory mortality. In addition, the reanalysis of the American Cancer Society cohort shows an association between fine particle and sulfate concentrations and lung cancer mortality.

Recently, several studies have highlighted the adverse effects of PM specifically from mobile sources.[105, 106] Studies have also focused on health effects due to PM exposures on or near roadways.[107] Although these studies include all air pollution sources, including both spark-ignition (gasoline) and diesel powered vehicles, they indicate that exposure to PM emissions near roadways, thus dominated by mobile sources, are associated with health effects. Additional information on near-roadway health effects can be found in section III.B.2.d of this preamble.

3. Welfare Effects of PM

a. Visibility

i. Background

Visibility can be defined as the degree to which the atmosphere is transparent to visible light.[108] Visibility impairment manifests in two principal ways: as local visibility impairment and as regional haze.[109] Local visibility impairment may take the form of a localized plume, a band or layer of discoloration appearing well above the terrain as a result from complex local meteorological conditions. Alternatively, local visibility impairment may manifest as an urban haze, sometimes referred to as a ''brown cloud.'' This urban haze is largely caused by emissions from multiple sources in the urban areas and is not typically attributable to only one nearby source or to long-range transport. The second type of visibility impairment, regional haze, usually results from multiple pollution sources spread over a large geographic region. Regional haze can impair visibility over large regions and across states.

Visibility is important because it has direct significance to people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, where they live and work, and in places where they enjoy recreational opportunities. Visibility is also highly valued in significant natural areas such as national parks and wilderness areas, and special emphasis is given to protecting visibility in these areas. For more information on visibility see the 2004 PM AQCD as well as the 2005 PM Staff Paper.[110 111]

Fine particles are the major cause of reduced visibility in parts of the United

[103] U.S. EPA (2004) Air Quality Criteria for Particulate Matter (Oct 2004), Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. This document is available in Docket EPA–HQ–OAR–2005–0036.

[104] U.S. EPA (2005) Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. EPA–452/R–05–005. This document is available in Docket EPA–HQ–OAR–2005–0036.

[105] Laden, F.; Neas, L.M.; Dockery, D.W.; Schwartz, J. (2000) Association of Fine Particulate Matter from Different Sources with Daily Mortality in Six U.S. Cities. *Environmental Health Perspectives* 108: 941–947.

[106] Janssen, N.A.H.; Schwartz, J.; Zanobetti, A.; Suh, H.H. (2002) Air Conditioning and Source-Specific Particles as Modifiers of the Effect of PM_{10} on Hospital Admissions for Heart and Lung Disease. *Environmental Health Perspectives* 110: 43–49.

[107] Riediker, M.; Cascio, W.E.; Griggs, T.R.; Herbst, M.C.; Bromberg, P.A.; Neas, L.; Williams, R.W.; Devlin, R.B. (2003) Particulate Matter Exposures in Cars is Associated with Cardiovascular Effects in Healthy Young Men. *Am. J. Respir. Crit. Care Med.* 169: 934–940.

[108] National Research Council, 1993. Protecting Visibility in National Parks and Wilderness Areas. National Academy of Sciences Committee on Haze in National Parks and Wilderness Areas. National Academy Press, Washington, DC. This document is available in Docket EPA–HQ–OAR–2005–0036. This book can be viewed on the National Academy Press Web site at *http://www.nap.edu/books/0309048443/html/*.

[109] See discussion in U.S. EPA, National Ambient Air Quality Standards for Particulate Matter; Proposed Rule; January 17, 2006, Vol 71, p. 2676. This information is available electronically at *http://epa.gov/fedrgstr/EPA-AIR/2006/January/Day-17/a177.pdf*.

[110] U.S. EPA (2004) Air Quality Criteria for Particulate Matter (Oct 2004), Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. This document is available in Docket EPA–HQ–OAR–2005–0036.

[111] U.S. EPA (2005) Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. EPA–452/R–05–005. This document is available in Docket EPA–HQ–OAR–2005–0036.

States. To address the welfare effects of PM on visibility, EPA set secondary $PM_{2.5}$ standards which would act in conjunction with the establishment of a regional haze program. In setting this secondary standard, EPA concluded that $PM_{2.5}$ causes adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. The secondary (welfare-based) $PM_{2.5}$ NAAQS was established as equal to the suite of primary (health-based) NAAQS. Furthermore, section 169 of the Act provides additional authorities to remedy existing visibility impairment and prevent future visibility impairment in the 156 national parks, forests and wilderness areas categorized as mandatory class I federal areas (62 FR 38680–81, July 18, 1997).[112] In July 1999 the regional haze rule (64 FR 35714) was put in place to protect the visibility in mandatory class I federal areas. Visibility can be said to be impaired in both $PM_{2.5}$ nonattainment areas and mandatory class I federal areas.

ii. Current Visibility Impairment

Recently designated $PM_{2.5}$ nonattainment areas indicate that, as of October 2006, almost 90 million people live in nonattainment areas for the 1997 $PM_{2.5}$ NAAQS. Thus, at least these populations would likely be experiencing visibility impairment, as well as many thousands of individuals who travel to these areas. In addition, while visibility trends have improved in mandatory class I federal areas, the most recent data show that these areas continue to suffer from visibility impairment.[113] In summary, visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote mandatory class I federal areas.[114] [115] The mandatory class I federal areas are listed in Chapter 3 of the RIA for this action. The areas that have design values above the 1997 $PM_{2.5}$ NAAQS are also listed in Chapter 3 of the RIA for this action.

iii. Future Visibility Impairment

Recent modeling for the Clean Air Interstate Rule (CAIR) was used to project visibility conditions in mandatory class I federal areas across the country in 2015. The results for the mandatory class I federal areas suggest that these areas are predicted to continue to have annual average deciview levels above background in the future.[116] Modeling done for the PM NAAQS also projected $PM_{2.5}$ levels in 2015. These projections include all sources of $PM_{2.5}$, including the engines covered in this rule, and suggest that $PM_{2.5}$ levels above the NAAQS will persist into the future.

The vehicles that will be subject to the standards contribute to visibility concerns in these areas through both their primary PM emissions and their VOC emissions, which contribute to the formation of secondary $PM_{2.5}$. The PFCs that will be subject to the standards also contribute to visibility concerns through their VOC emissions. Reductions in these direct PM and VOC emissions will help to improve visibility across the nation, including mandatory class I federal areas.

b. Atmospheric Deposition

Wet and dry deposition of ambient particulate matter delivers a complex mixture of metals (e.g., mercury, zinc, lead, nickel, aluminum, cadmium), organic compounds (e.g., POM, dioxins, furans) and inorganic compounds (e.g., nitrate, sulfate) to terrestrial and aquatic ecosystems. EPA's Great Waters Program has identified 15 pollutants whose deposition to water bodies has contributed to the overall contamination loadings to these Great Waters. These 15 compounds include several heavy metals and a group known as polycyclic organic matter (POM). Within POM are the polycyclic aromatic hydrocarbons (PAHs). PAHs in the environment may be present in the gas or particle phase, although the bulk will be adsorbed onto airborne particulate matter. In most cases, human-made sources of PAHs account for the majority of PAHs released to the environment. The PAHs are usually the POMs of concern as many PAHs are probable human carcinogens.[117] For some watersheds, atmospheric deposition represents a significant input to the total surface water PAH burden.[118] [119] Emissions from mobile sources have been found to account for a percentage of the atmospheric deposition of PAHs. For instance, recent studies have reported gasoline and diesel vehicles as major contributors in the atmospheric deposition of PAHs to Chesapeake Bay, Massachusetts Bay and Casco Bay.[120] [121] The vehicle controls being finalized may help to reduce deposition of heavy metals and POM.

c. Materials Damage and Soiling

The deposition of airborne particles can also reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion.[122] Particles affect materials principally by promoting and accelerating the corrosion of metals, by degrading paints, and by deteriorating building materials such as concrete and limestone. Particles contribute to these effects because of their electrolytic, hygroscopic, and acidic properties, and their ability to sorb corrosive gases (principally sulfur dioxide). The rate of metal corrosion depends on a number of factors, including the deposition rate and nature of the pollutant; the influence of the metal protective corrosion film; the amount of moisture present; variability in the electrochemical reactions; the presence and concentration of other surface electrolytes; and the orientation of the metal surface.

[112] These areas are defined in section 162 of the Act as those national parks exceeding 6,000 acres, wilderness areas and memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977.

[113] U.S. EPA, Regulatory Impact Analysis for the Final Clean Air Interstate Rule. This document is available in Docket EPA–HQ–OAR–2005–0036.

[114] U.S. EPA, Air Quality Designations and Classifications for the Fine Particles ($PM_{2.5}$) National Ambient Air Quality Standards, December 17, 2004. (70 FR 943, January 5, 2005) This document is also available on the web at: *http://www.epa.gov/pmdesignations/*.

[115] U.S. EPA, Regional Haze Regulations, July 1, 1999. (64 FR 35714, July 1, 1999)

[116] The deciview metric describes perceived visual changes in a linear fashion over its entire range, analogous to the decibel scale for sound. A deciview of 0 represents pristine conditions. The higher the deciview value, the worse the visibility, and an improvement in visibility is a decrease in deciview value.

[117] Deposition of Air Pollutants to the Great Waters—Third Report to Congress, Office of Air Quality Planning and Standards, June 2000, EPA453–R–00–005. This document is available in Docket EPA–HQ–OAR–2005–0036.

[118] Simcik, M.F.; Eisenrich, S.J.; Golden, K.A.; Liu, S.; Lipiatou, E.; Swackhamer, D.L.; and Long, D.T. (1996) Atmospheric Loading of Polycyclic Aromatic Hydrocarbons to Lake Michigan as Recorded in the Sediments. *Environ. Sci. Technol.* 30:3039–3046.

[119] Simcik, M.F.; Eisenrich, S.J.; and Lioy, P.J. (1999) Source Apportionment and Source/Sink Relationships of PAHs in the Coastal Atmosphere of Chicago and Lake Michigan. *Atmospheric Environment* 33: 5071–5079.

[120] Dickhut, R.M.; Canuel, E.A.; Gustafson, K.E.; Liu, K.; Arzayus, K.M.; Walker, S.E.; Edgecombe, G.; Gaylor, M.O.; and McDonald, E.H. (2000) Automotive Sources of Carcinogenic Polycyclic Aromatic Hydrocarbons Associated with Particulate Matter in the Chesapeake Bay Region. *Environ. Sci. Technol.* 34: 4635–4640.

[121] Golomb, D.; Barry, E.; Fisher, G.; Varanusupakul, P.; Koleda, M.; and Rooney, T. (2001) Atmospheric Deposition of Polycyclic Aromatic Hydrocarbons near New England Coastal Waters. *Atmospheric Environment* 35: 6245–6258.

[122] U.S EPA (2005) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. This document is available in Docket EPA–HQ–OAR–2005–0036.

4. Current and Projected $PM_{2.5}$ Levels

In 2005 EPA designated 39 nonattainment areas for the 1997 $PM_{2.5}$ NAAQS based on air quality design values (using 2001–2003 or 2002–2004 measurements) and a number of other factors.[123] (See 70 FR 943, January 5, 2005; 70 FR 19844, April 14, 2005.) These areas are comprised of 208 full or partial counties with a total population exceeding 88 million. As mentioned in section III.D.1, the 1997 $PM_{2.5}$ NAAQS was recently revised and the 2006 $PM_{2.5}$ NAAQS became effective on December 18, 2006. Table III.D–1 presents the number of counties in areas currently designated as nonattainment for the 1997 $PM_{2.5}$ NAAQS as well as the number of additional counties which have monitored data that is violating the 2006 $PM_{2.5}$ NAAQS. Nonattainment areas will be designated with respect to the new 2006 $PM_{2.5}$ NAAQS in early 2010.

TABLE III.D–1.—$PM_{2.5}$ STANDARDS: CURRENT NONATTAINMENT AREAS AND OTHER VIOLATING COUNTIES

	Number of counties	Population[1]
1997 $PM_{2.5}$ Standards: 39 areas currently designated	208	88,394,000
2006 $PM_{2.5}$ Standards: Counties with violating monitors[2]	49	18,198,676
Total	257	106,592,676

[1] Population numbers are from 2000 census data.

[2] This table provides an estimate of the counties violating the 2006 $PM_{2.5}$ NAAQS based on 2003–05 air quality data. The areas designated as nonattainment for the 2006 $PM_{2.5}$ NAAQS will be based on 3 years of air quality data from later years. Also, the county numbers in the summary table include only the counties with monitors violating the 2006 $PM_{2.5}$ NAAQS. The monitored county violations may be an underestimate of the number of counties and populations that will eventually be included in areas with multiple counties designated nonattainment.

Based on modeling performed for the PM NAAQS analysis, we estimate that 52 counties (where 53 million people are projected to live) will exceed the 2006 $PM_{2.5}$ standard in 2015.[124] [125] In addition, 54 counties (where 27 million people are projected to live) are expected to be within 10 percent of violating the 2006 $PM_{2.5}$ NAAQS in 2015.

Areas designated as not attaining the 1997 $PM_{2.5}$ NAAQS will need to attain these standards in the 2010 to 2015 time frame, and then be required to maintain the NAAQS thereafter. The attainment dates associated with the potential nonattainment areas based on the 2006 $PM_{2.5}$ NAAQS would likely be in the 2015 to 2020 timeframe. The emissions standards being finalized in this action would become effective between 2009 and 2015, making the expected PM and VOC inventory reductions useful to states in attaining or maintaining the $PM_{2.5}$ NAAQS.

5. Current PM_{10} Levels

Air quality monitoring data indicates that as of October 2006 approximately 28.5 million people live in 46 designated PM_{10} nonattainment areas, which include all or part of 46 counties. The RIA for this rule lists the PM_{10} nonattainment areas and their populations, as of October 2006. The expected PM and VOC inventory reductions from the standards being finalized in this action could be useful to states in maintaining the PM_{10} NAAQS.

IV. What Are the Emissions, Air Quality, and Public Health Impacts of This Rule?

A. Emissions Impacts of All Rule Provisions Combined

The emissions analysis presented in section IV.A of this preamble is described in more detail in Chapter 2.2.2. of the RIA. The emissions analysis has been updated since the proposal, largely to include the effects of the recently proposed Renewable Fuels Standard, which was required by the Energy Policy Act. The emissions analysis examines the 0.62 vol% standard but does not include the 1.3% maximum average, because of the lead time necessary to conduct inventory modeling. Thus, the emission reductions from highway vehicles and other sources attributable to the fuel benzene standard are underestimated in many areas of the country, particularly in areas where fuel benzene levels were highest without control, such as the Northwest. This issue is discussed in more detail in the RIA.

1. How Will MSAT Emissions Be Reduced?

Figure IV.A–1 depicts the estimated reduction in total air toxic emissions emitted by mobile sources between 1990 and 2030, with and without the standards being finalized in this rule. These estimates do not include diesel PM. Trends in diesel PM emissions are discussed in the regulatory impact analysis for this rule. Without standards being finalized in this rule, emissions of air toxics from mobile sources will be reduced by about 70% percent between 1990 and 2030, from about 3.3 million tons to 1.3 million tons. This will occur despite a projected increase in vehicle miles traveled of over 100 percent, and a projected 150% increase in nonroad activity, based on units of work called horsepower hours. Without additional controls, air toxic emissions from mobile sources would begin to increase after 2015. Similar trends are observed for benzene (see Figure IV.A–2), with a reduction in emissions from about 380,000 tons in 1990 to less than 170,000 tons in 2030, but emissions from mobile sources begin to increase again after 2015.

[123] The full details involved in calculating a $PM_{2.5}$ design value are given in Appendix N of 40 CFR Part 50.

[124] Note that this analysis identifies only counties projected to have a violating monitor; when designated in the future, some areas may include additional contributing counties. Thus, the total number of counties designated in the future and the associated population would likely exceed these estimates.

[125] Regulatory Impact Analysis for the final PM NAAQS rule. This document is available in Docket EPA–HQ–OAR–2005–0036.

Figure IV.A-1. Estimated Reduction in Air Toxic Emissions Emitted by Mobile Sources, 1990 to 2030, With and Without Standards Being Finalized in this Rule

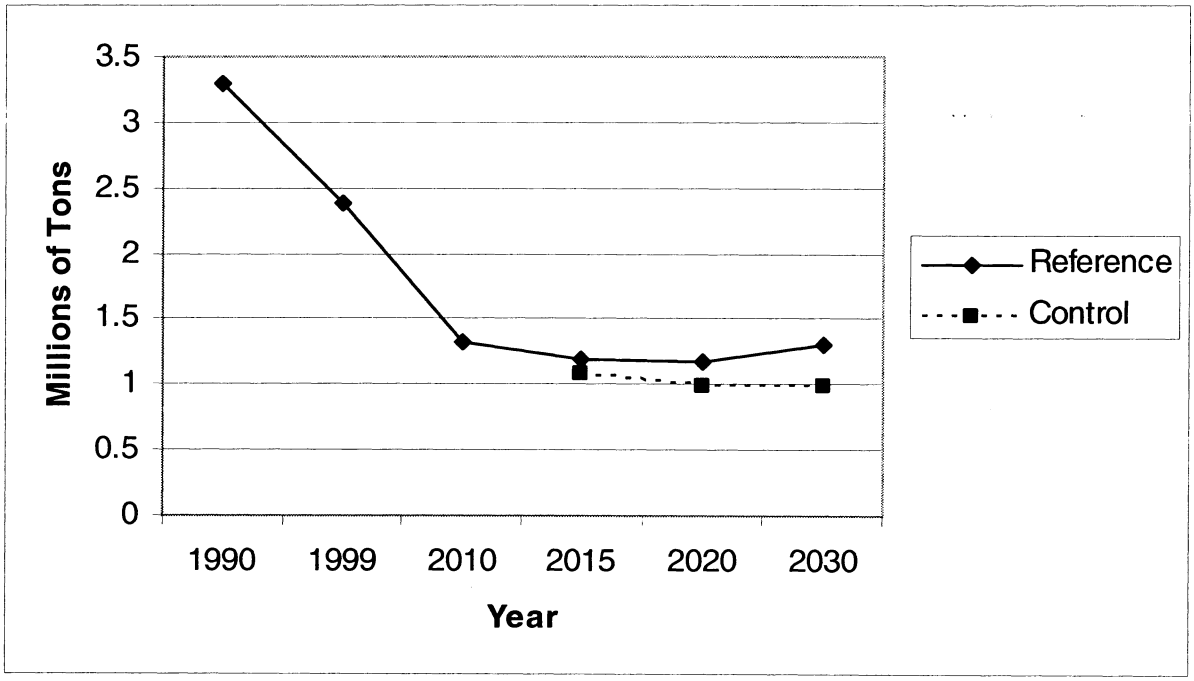
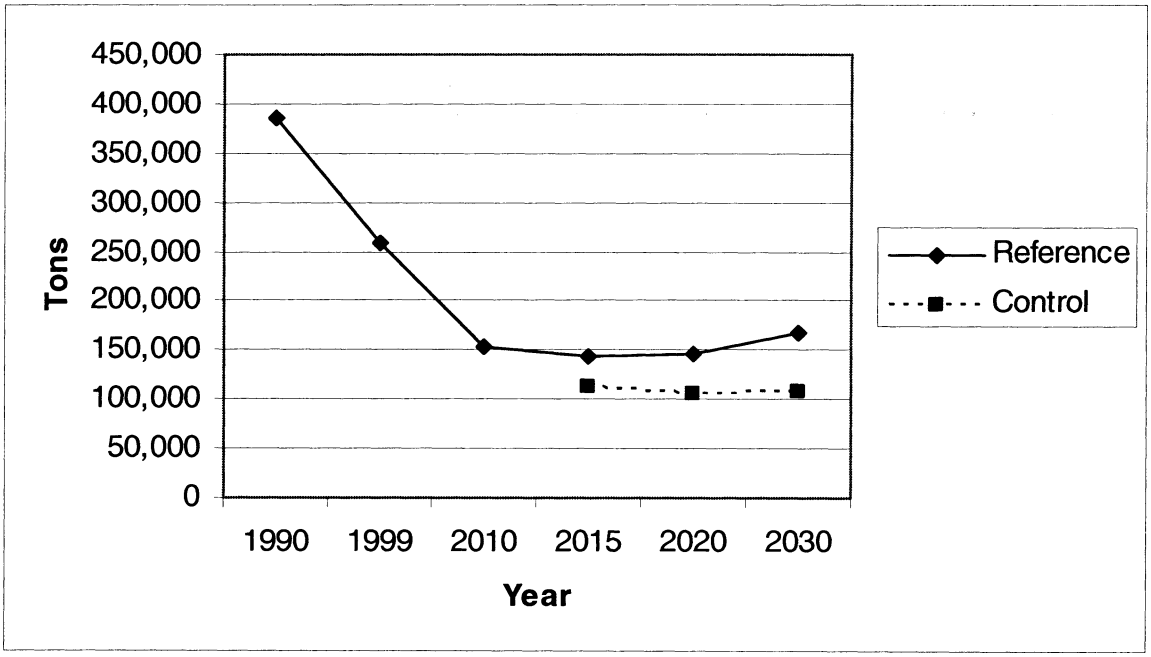


Figure IV.A-2. Estimated Reduction in Benzene Emissions Emitted by Mobile Sources, 1990 to 2030, With and Without Standards Being Finalized in this Rule



Total emissions of MSATs from mobile and stationary sources in 2030 will be 330,000 tons less than they would have been without this rule (Figure IV.A–3). Of these 330,000 tons of reductions, 310,000 will be from mobile sources, with the rest from portable fuel containers (PFCs) and gasoline distribution.[126] Table IV.A–1 summarizes MSAT reductions by source sector in 2015, 2020, and 2030. In addition, total benzene emissions from mobile and stationary sources will be 61,000 tons less than they would have been without this rule (Figure IV.A–4). Table IV.A–2 depicts reductions in benzene by source sector from this rule.

In 2030, annual benzene emissions from gasoline on-road mobile sources will be 45% lower as a result of this rule (Figure IV.A–5), and over 60% lower than they were in 1999. In addition, benzene emissions from gasoline nonroad equipment will be 14% lower in 2030, and over 45% lower than they were in 1999. Benzene emissions from PFCs will be reduced by almost 80% in 2030 (Figure IV.A–6), and benzene emissions from gasoline distribution by over 30% in 2030. For total MSAT emissions from on-road mobile sources, there will be a 38% reduction in MSAT emissions in 2030 (Figure IV.A–7), and a 65% reduction from 1999 levels.

Table IV.A–3 provides estimated reductions in emissions from individual MSATs in 2015, 2020 and 2030, from gasoline vehicles, gasoline nonroad engines, and PFCs as a result of the controls being finalized in this rule.

[126] Reduction in fuel benzene will reduce emissions through the whole distribution chain.

Figure IV.A-3. Reductions in Total MSAT Emissions from All Sources Due to Standards Being Finalized in this Rule

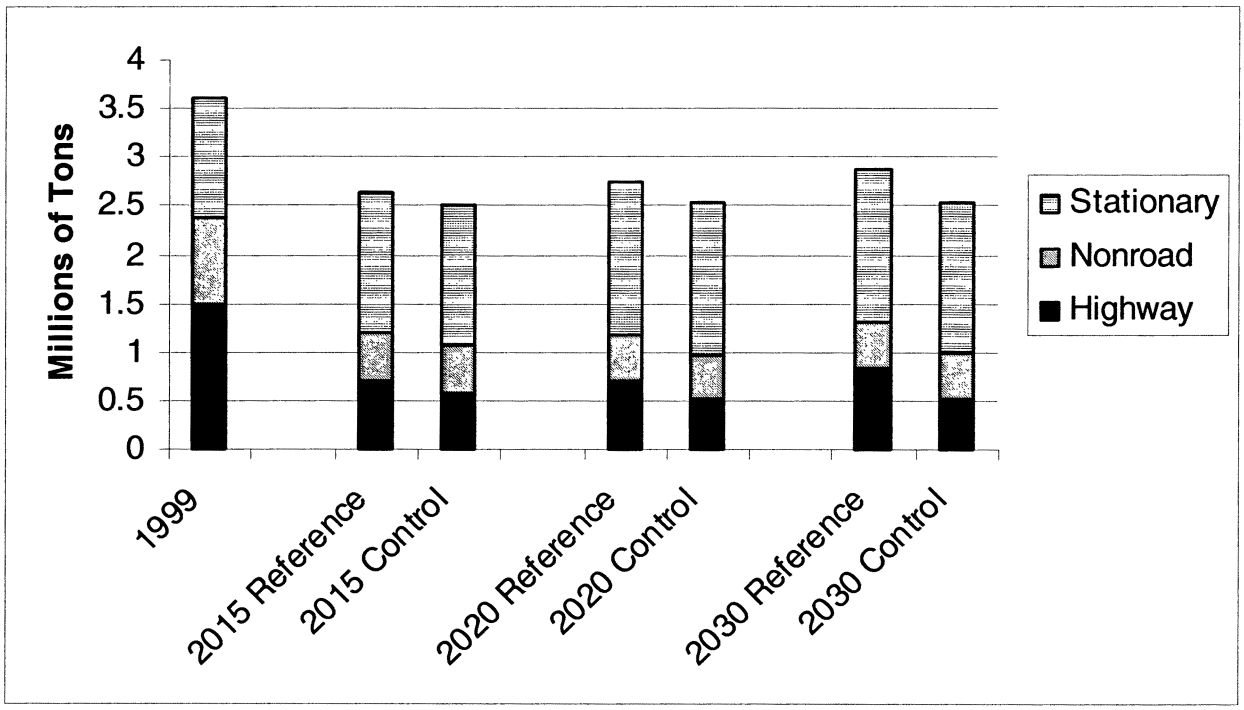


Figure IV.A-4. Reductions in Benzene Emissions from All Sources Due to Standards Being Finalized in this Rule

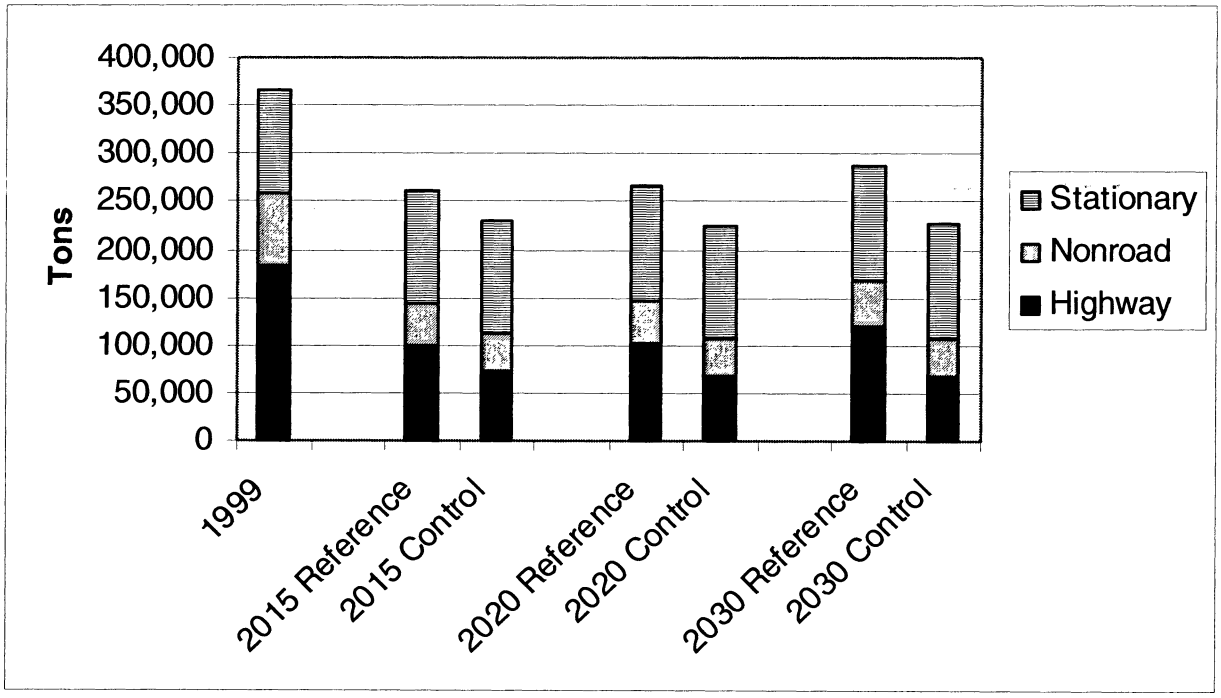


TABLE IV.A–1.—ESTIMATED REDUCTIONS IN MSAT EMISSIONS FROM ALL CONTROL MEASURES BY SECTOR, 2015 TO 2030

MSAT	1999	2015			2020			2030		
		Without rule (tons)	With rule (tons)	Reduction (tons)	Without rule (tons)	With rule (tons)	Reduction (tons)	Without rule (tons)	With rule (tons)	Reduction (tons)
Gasoline Onroad Mobile Sources	1,452,739	675,781	558,666	117,115	693,189	507,782	185,408	808,141	505,074	303,067
Gasoline Nonroad Mobile Sources	806,725	449,422	443,973	5,449	406,196	400,816	5,380	412,617	406,856	5,761
PFCs	37,166	27,355	9,893	17,462	29,338	10,672	18,666	33,430	12,264	21,166
Gasoline Distribution	57,765	62,870	62,059	811	64,942	64,092	850	64,942	64,092	850
Total	2,354,395	1,215,428	1,074,591	140,837	1,193,665	983,362	210,303	1,319,130	988,286	330,844

TABLE IV.A–2.—ESTIMATED REDUCTIONS IN BENZENE EMISSIONS FROM ALL CONTROL MEASURES BY SECTOR, 2015 TO 2030

Benzene	1999	2015			2020			2030		
		Without rule (tons)	With rule (tons)	Reduction (tons)	Without rule (tons)	With rule (tons)	Reduction (tons)	Without rule (tons)	With rule (tons)	Reduction (tons)
Gasoline Onroad Mobile Sources	183,660	97,789	71,688	26,101	101,514	65,878	35,636	119,016	65,601	53,415
Gasoline Nonroad Mobile Sources	68,589	41,343	35,825	5,518	40,161	34,717	5,444	42,994	37,167	5,827
PFCs	853	992	215	777	1,063	232	831	1,210	267	944
Gasoline Distribution	1,984	2,445	1,635	810	2,621	1,772	849	2,621	1,772	849
Total	255,086	142,569	109,363	33,206	145,359	102,599	42,760	165,841	104,807	61,035

Figure IV.A-5. Benzene Emission Reductions from Gasoline Onroad Mobile Sources with All Controls in Place

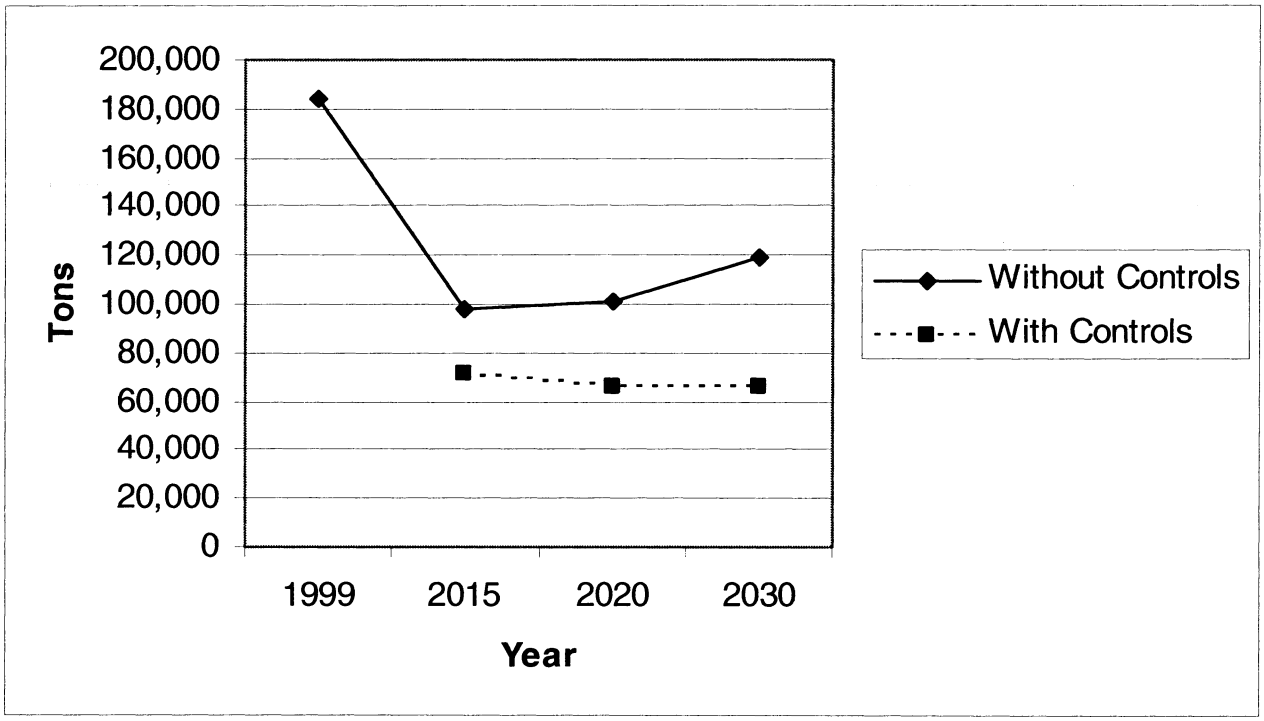


Figure IV.A-6. Benzene Emission Reductions from Portable Fuel Containers with All Controls in Place

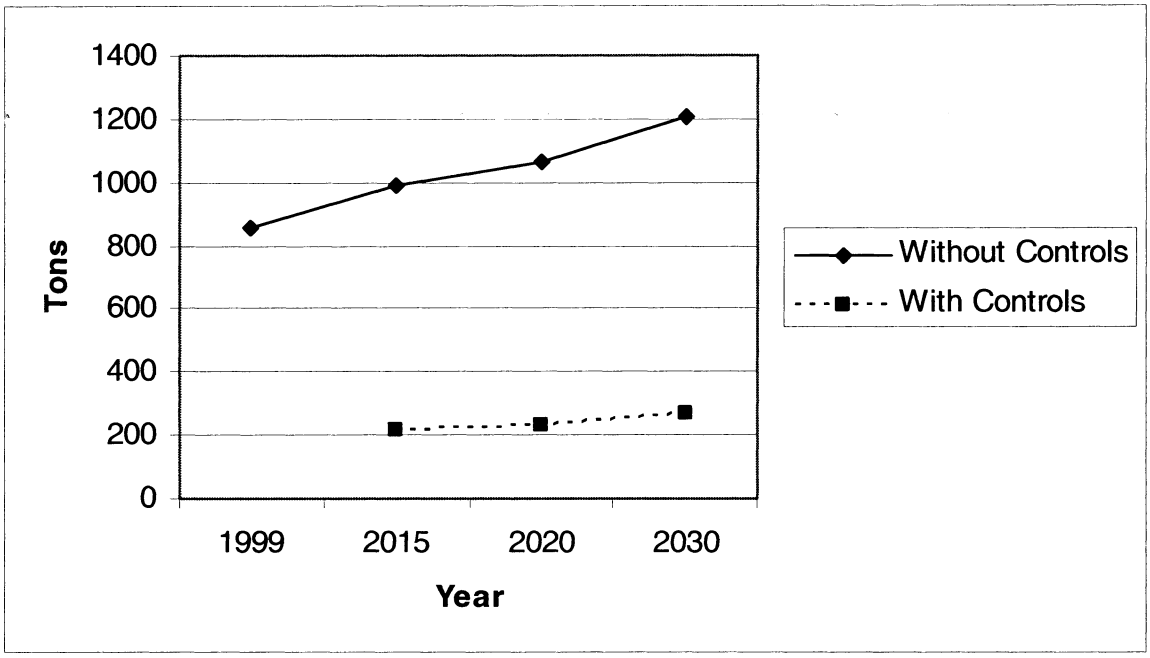


Figure IV.A-7. Total MSAT Emission Reductions from Gasoline Onroad Mobile Sources with All Controls in Place

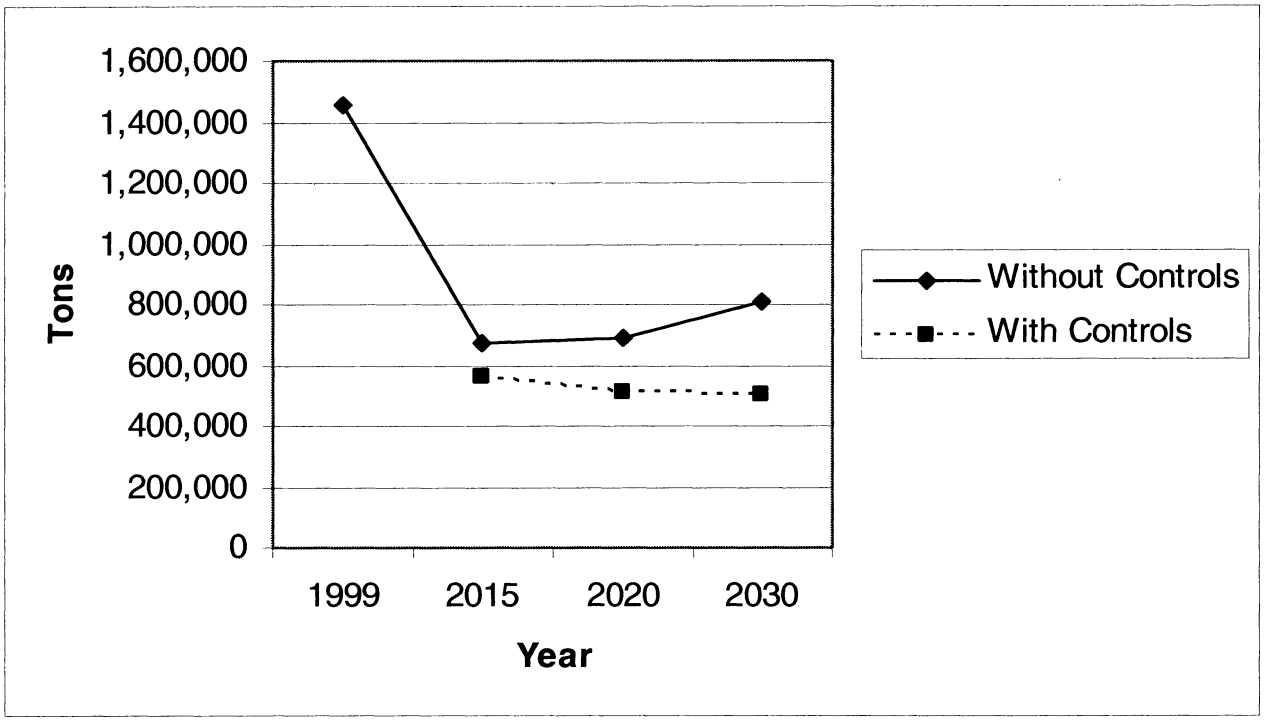


TABLE IV.A–3.—ESTIMATED REDUCTIONS IN EMISSIONS FROM INDIVIDUAL MSATS IN 2015, 2020 AND 2030, FROM GASOLINE VEHICLES, GASOLINE NONROAD ENGINES, AND PORTABLE FUEL CONTAINERS, RESULTING FROM THE CUMULATIVE IMPACTS OF THE CONTROLS IN THIS RULE [127]

MSAT	1999 (tons)	2015			2020			2030		
		Without rule (tons)	With rule (tons)	Reductions (tons)	Without rule (tons)	With rule (tons)	Reductions (tons)	Without rule (tons)	With rule (tons)	Reductions (tons)
1,3-Butadiene	31,234	14,771	13,259	1,512	15,037	12,535	2,501	17,054	12,834	4,220
2,2,4-Trimethylpentane	296,310	166,270	149,178	17,091	159,892	133,578	26,314	174,824	132,763	42,061
Acetaldehyde	27,800	21,223	18,154	3,069	22,156	17,011	5,145	25,754	17,213	8,541
Acrolein	3,835	1,650	1,457	193	1,665	1,347	317	1,889	1,360	529
Benzene	250,227	140,124	107,728	32,396	142,737	100,827	41,911	163,221	103,035	60,186
Ethyl Benzene	120,150	61,300	54,805	6,495	59,963	49,968	9,995	66,823	50,830	15,992
Formaldehyde	74,053	32,341	28,096	4,245	33,350	26,371	6,979	38,472	26,946	11,526
Hexane	106,464	57,852	52,042	5,810	54,673	46,926	7,747	59,152	48,029	11,124
MTBE	143,350	0	0	0	0	0	0	0	0	0
Propionaldehyde	4,142	2,195	1,965	231	2,249	1,869	380	2,565	1,932	633
Styrene	16,352	8,212	6,985	1,227	8,423	6,405	2,018	9,731	6,365	3,366
Toluene	729,908	390,688	347,363	43,325	380,420	312,542	67,878	420,534	310,654	109,880
Xylenes	487,768	252,993	228,561	24,432	245,180	206,913	38,267	270,775	208,839	61,936
Total MSATs	2,291,593	1,149,618	1,009,592	140,026	1,125,744	916,291	209,453	1,250,794	920,800	329,994

2. How Will VOC Emissions Be Reduced?

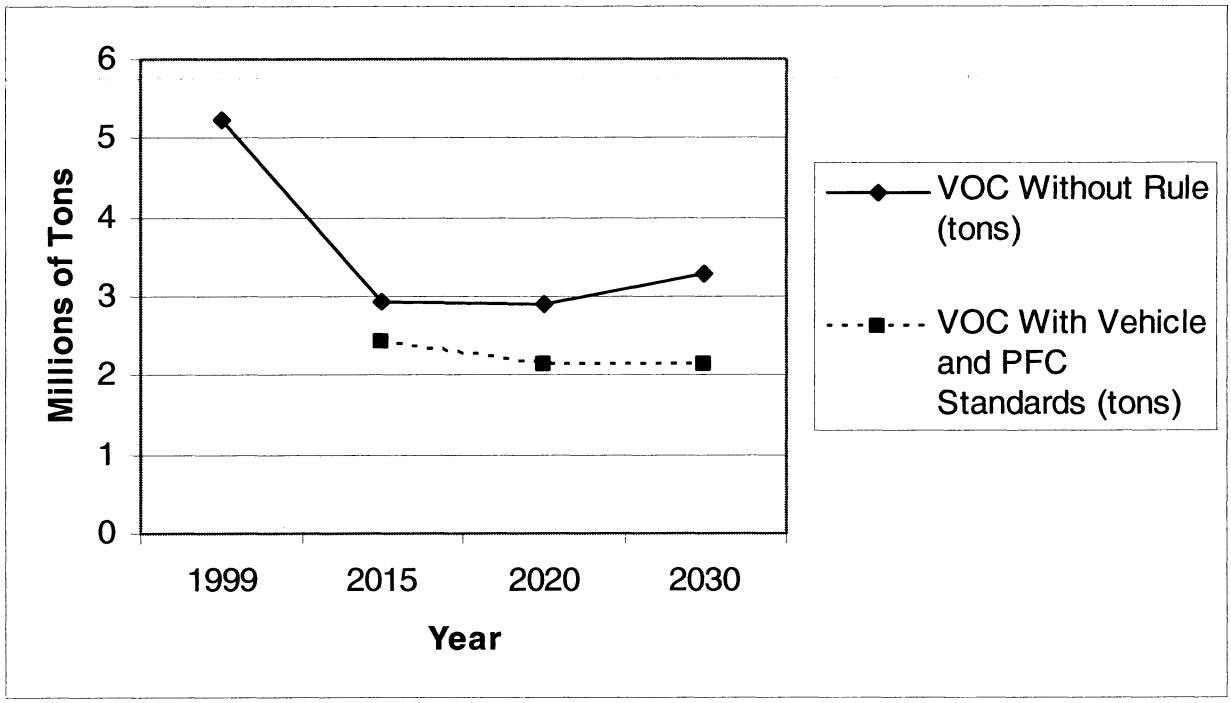
VOC emissions will be reduced by the hydrocarbon emission standards for both light-duty vehicles and PFCs. As seen in the table and accompanying figure below Table IV.A–4 and Figure IV.A–8, annual VOC emission reductions from both of these sources will be 34% lower in 2030 because of this rule, and 59% lower than in 1999.

[127] Napthalene reductions from controls in this rule are not quantified, due to limitations in modeling tools.

TABLE IV.A–4. ESTIMATED REDUCTIONS IN VOC EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND PFCS, 1999 TO 2030

	1999	2015	2020	2030
VOC Without Rule (tons)	5,224,921	2,944,491	2,892,134	3,281,752
VOC With Vehicle and PFC Standards (tons)	.....	2,420,860	2,146,476	2,153,735
VOC Reduction (tons)	.....	523,631	745,658	1,128,017

Figure IV.A-8. Estimated Reductions in VOC Emissions from Light-Duty Gasoline Vehicles and PFCs, 1999 to 2030



3. How Will PM Emissions Be Reduced?

EPA expects that the cold-temperature vehicle standards will reduce exhaust emissions of direct $PM_{2.5}$ by over 19,000 tons in 2030 nationwide (see Table IV.A–5 below). Our analysis of the data from vehicles meeting Tier 2 emission standards indicate that PM emissions follow a monotonic relationship with temperature, with lower temperatures corresponding to higher vehicle emissions. Additionally, the analysis shows the ratio of PM to total non-methane hydrocarbons (NMHC) to be independent of temperature.[128] Our testing indicates that strategies which reduce NMHC start emissions at cold temperatures also reduce direct PM emissions. Based on these findings, direct PM emissions at cold temperatures were estimated using a constant PM to NMHC ratio. PM emission reductions were estimated by assuming that NMHC reductions will result in proportional reductions in PM. This assumption is supported by test data. For more detail, see Chapter 2.1 of the RIA.

TABLE IV.A–5. ESTIMATED NATIONAL REDUCTIONS IN DIRECT $PM_{2.5}$ EXHAUST EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 2015 TO 2030

	2015	2020	2030
$PM_{2.5}$ Reductions from Vehicle Standards (tons)	7,068	11,646	19,421

[128] U.S. EPA. 2005. Cold-temperature exhaust particulate matter emissions. Memorandum from Chad Bailey to docket EPA–HQ–OAR–2005–0036.

B. Emission Impacts by Provision

1. Vehicle Controls

We are finalizing a hydrocarbon standard for gasoline passenger vehicles at cold temperatures. This standard will reduce VOC at temperatures below 75 °F, including air toxics such as benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein, and will also reduce emissions of direct and secondary PM. We are also finalizing new evaporative emissions standards for Tier 2 vehicles starting in 2009. These new evaporative standards reflect the emissions levels already being achieved by manufacturers.

a. Volatile Organic Compounds (VOC)

Table IV.B–1 shows the VOC exhaust emission reductions from light-duty gasoline vehicles and trucks that will result from the cold temperature hydrocarbon standard alone. The standards will reduce VOC emissions from these vehicles in 2030 by 31%. Overall VOC emissions from these vehicles will be reduced by 82% between 1999 and 2030 (including the effects of these standards as well as other standards in place, such as Tier 2).

TABLE IV.B.–1. ESTIMATED NATIONAL REDUCTIONS IN EXHAUST VOC EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 1999 TO 2030.

	1999	2010	2015	2020	2030
VOC Without Rule (tons)	4,899,891	2,990,760	2,614,987	2,538,664	2,878,836
VOC With Proposed Vehicle Standards (tons)	.....	2,839,012	2,293,703	2,009,301	1,996,074
VOC Reductions from Vehicle Standards (tons)	.....	151,748	321,284	529,363	882,762
Percentage Reduction	.....	5	12	21	31

b. Toxics

In 2030, we estimate that the vehicle standards will result in a 38% reduction in total emissions of the MSATs and a 39% reduction in benzene emissions from light-duty vehicles and trucks (see Tables IV.B–1 and IV.B–2). Between 1999 and 2030, total MSATs from light-duty gasoline vehicles and trucks will be reduced by 64%, and benzene by 59%.

TABLE IV.B.–1. ESTIMATED NATIONAL REDUCTIONS IN EXHAUST MSAT EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 1999 TO 2030

	1999	2010	2015	2020	2030
MSATs Without Rule (tons)	1,376,002	695,408	650,012	669,707	783,648
MSATs With Vehicle Standards (tons)	.....	644,312	542,281	492,700	488,824
MSAT Reductions from Vehicle Standards (tons)	.....	51,987	107,731	177,007	294,824
Percentage Reduction	.....	7	17	26	38

TABLE IV.B–2.—ESTIMATED NATIONAL REDUCTIONS IN BENZENE EXHAUST EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 1999 TO 2030.

	1999	2010	2015	2020	2030
Benzene Without Rule (tons)	173,474	99,559	95,234	99,225	116,742
Benzene With Vehicle Standards (tons)	.....	91,621	78,664	72,128	71,704
Benzene Reductions from Vehicle Standards (tons)	.....	7,939	16,570	27,097	45,037
Percentage Reduction	.....	8	17	27	39

c. $PM_{2.5}$

As discussed in Section IV.A.3, EPA expects that the cold-temperature vehicle standards will reduce exhaust emissions of direct $PM_{2.5}$ by over 19,000 tons in 2030 nationwide (see Table IV.A–5).

2. Fuel Benzene Standard

The fuel benzene standard will reduce benzene exhaust and evaporative emissions from both on-road and nonroad mobile sources that are fueled by gasoline. In addition, the fuel benzene standard will reduce evaporative emissions from gasoline distribution and PFCs. Impacts on 1,3-butadiene, formaldehyde, and acetaldehyde emissions are not significant, but are presented in Chapter 2 of the RIA. We do not expect the fuel benzene standard to have quantifiable impacts on any other air toxics, total VOCs, or direct PM.

Table IV.B–3 shows national estimates of total benzene emissions from these source sectors with and without the fuel benzene standard in 2015. These estimates do not include effects of the vehicle or PFC standards (see section IV.A.1 for the combined effects of the controls). They also assume that the fuel program is fully phased in, which is a simplification of the actual phase-in. The fuel benzene standard will reduce total benzene emissions from on-road and nonroad gasoline mobile sources, PFCs, and gasoline distribution by 12% in 2015.

TABLE IV.B–3.—ESTIMATED REDUCTIONS IN BENZENE EMISSIONS FROM GASOLINE STANDARD BY SECTOR IN 2015

	Gasoline on-road mobile sources	Gasoline nonroad mobile sources	PFCs	Gasoline distribution	Total
Benzene Without Rule (tons)	97,789	41,343	992	2,445	142,569
Benzene With Gasoline Standard (tons)	86,875	35,825	619	1,635	124,954
Benzene Reductions from Gasoline Standard (tons)	10,914	5,518	373	810	17,615
Percentage Reduction	11	13	38	33	12

3. PFC Standards

a. VOC

Table IV.B–4 shows the reductions in VOC emissions that we expect from the PFC standard. In 2015, VOC emissions From PFCs will be reduced by 61% because of reduced permeation, spillage, and evaporative losses.

TABLE IV.B–4.—ESTIMATED NATIONAL REDUCTIONS IN VOC EMISSIONS FROM PFCS, 1999 TO 2030

	1999	2010	2015	2020	2030
VOC Without Rule (tons)	325,030	316,756	329,504	353,470	402,916
VOC With PFC Standard (tons)	.....	256,175	127,157	137,175	216,294
VOC Reductions from PFC Standard (tons)	.....	60,580	202,347	216,294	245,255
Percentage Reduction	.....	19	61	61	61

b. Toxics

The PFC standard will reduce emissions of benzene, toluene, xylenes, ethylbenzene, n-hexane, 2,2,4-trimethylpentane, and MTBE. We estimate that benzene emissions from PFCs will be reduced by 68% (see Table IV.B–5) and, more broadly, air toxic emissions by 63% (see Table IV.B–6) in year 2015. These reductions do not include effects of the fuel benzene standard (see section IV.A–1 for the combined effects of the controls). Chapter 2 of the RIA provides details on the emission reductions of the other toxics.

TABLE IV.B–5.—ESTIMATED NATIONAL REDUCTIONS IN BENZENE EMISSIONS FROM PFCS, 1999 TO 2030

	1999	2010	2015	2020	2030
Benzene Without Rule (tons)	853	943	992	1063	1210
Benzene With PFC Standard (tons)	.....	743	320	345	396
Benzene Reductions from PFC Standard (tons)	.....	200	672	718	814
Percentage Reduction	.....	21	68	68	67

TABLE IV.B–6.—ESTIMATED NATIONAL REDUCTIONS IN TOTAL MSAT EMISSIONS FROM PFCS, 1999 TO 2030

	1999	2010	2015	2020	2030
MSATs Without Rule (tons)	37,167	26,189	27,355	29,338	33,430
MSATs With PFC Standard (tons)	.....	21,010	9,998	10,785	12,394
MSAT Reductions from PFC Standard (tons)	.....	5,179	17,357	18,553	21,036
Percentage Reduction	.....	20	63	63	63

C. What Are the Air Quality, Exposure, and Public Health Impacts of This Rule?

1. Mobile Source Air Toxics

The controls being finalized in this rule will reduce both evaporative and exhaust emissions from motor vehicles and nonroad equipment. They will also reduce emissions from PFCs and stationary source emissions associated with gasoline distribution. Therefore, they will reduce exposure to mobile source air toxics for the general population, and also for people near roadways, in vehicles, in homes with attached garages, operating nonroad equipment, and living or working near sources of gasoline distribution emissions (such as bulk terminals, bulk plants, tankers, marine vessels, and service stations). Section III.B of this preamble and Chapter 3 of the RIA provide more details on these types of exposures.

We performed national-scale air quality, exposure, and risk modeling in order to quantitatively assess the impacts of the standards being finalized. The exposure modeling for the final rule accounted for the spatial variability of outdoor concentrations of air toxics due to higher concentrations near roadways. This is a significant improvement over exposure modeling done for the proposal, and is discussed in more detail in Chapter 3 of the RIA. However, in addition to the limitations of the national-scale modeling tools (discussed in Chapter 3 of the RIA), this modeling did not account for the impacts of the recently proposed renewable fuel standard, as this standard was proposed subsequent to the development of inventories for air quality modeling. In addition, while the model includes the

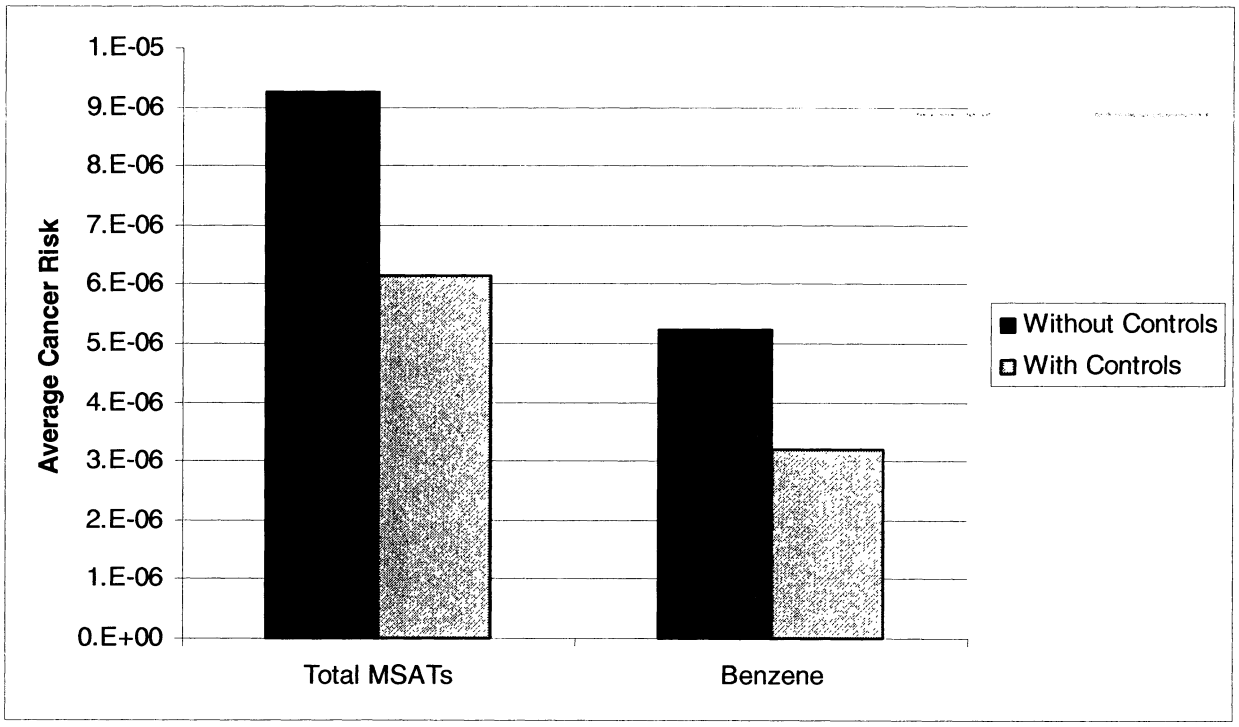
0.62 vol% fuel benzene standard, it does not include the 1.3% maximum average.

The standards being finalized in this rule will reduce both the number of people above the 1 in 100,000 cancer risk level, and the average population cancer risk, by reducing exposures to mobile source air toxics. The number of people above the 1 in 100,000 cancer risk level due to exposure to all mobile source air toxics from all sources will decrease by over 11 million in 2020 and by almost 17 million in 2030. The number of people above the 1 in 100,000 cancer risk level from exposure to benzene from all sources will decrease by about 30 million in 2020 and 46 million in 2030. It should be noted that if it were possible to estimate impacts of the standard on ''background'' concentrations [129], the estimated overall risk reductions would be even larger. The standards will also reduce the number of people with a respiratory hazard index (HI) greater than one by about 10 million in 2020, and 17 million in 2030. As previously discussed, a value of the HI greater than 1.0 can be best described as indicating that a potential may exist for adverse health effects.

Figure IV.C–1 depicts the impact on the mobile source contribution to nationwide average population cancer risk from total MSATs and benzene in 2030. Nationwide, the cancer risk attributable to total MSATs will be reduced by 30%, and the risk from mobile source benzene will be reduced by 37%. In 2030, the highway vehicle contribution to MSAT cancer risk will be reduced on average 36% across the U.S., and the highway vehicle contribution to benzene cancer risk will be reduced on average by 43% across the U.S. The methods and assumptions used to model the impact of the controls are described in more detail in Chapter 3 of the RIA.

Figure IV.C–2 depicts the impact on the mobile source contribution to nationwide average respiratory hazard index (HI) in 2030. Nationwide, the mobile source contribution to the respiratory hazard index will be reduced by 23%.

Figure IV.C-1. Impact of Controls Being Finalized in this Rule on the Mobile Source Contribution to Nationwide Average Population Lifetime Cancer Risk in 2030.



[129] ''Background represents the contribution to ambient levels of air toxics from sources further away than 50 kilometers, as well as the contribution from uninventoried sources.

Figure IV.C-2. Impact of Controls Being Finalized in this Rule on the Mobile Source Contribution to Nationwide Average Respiratory Hazard Index in 2030.

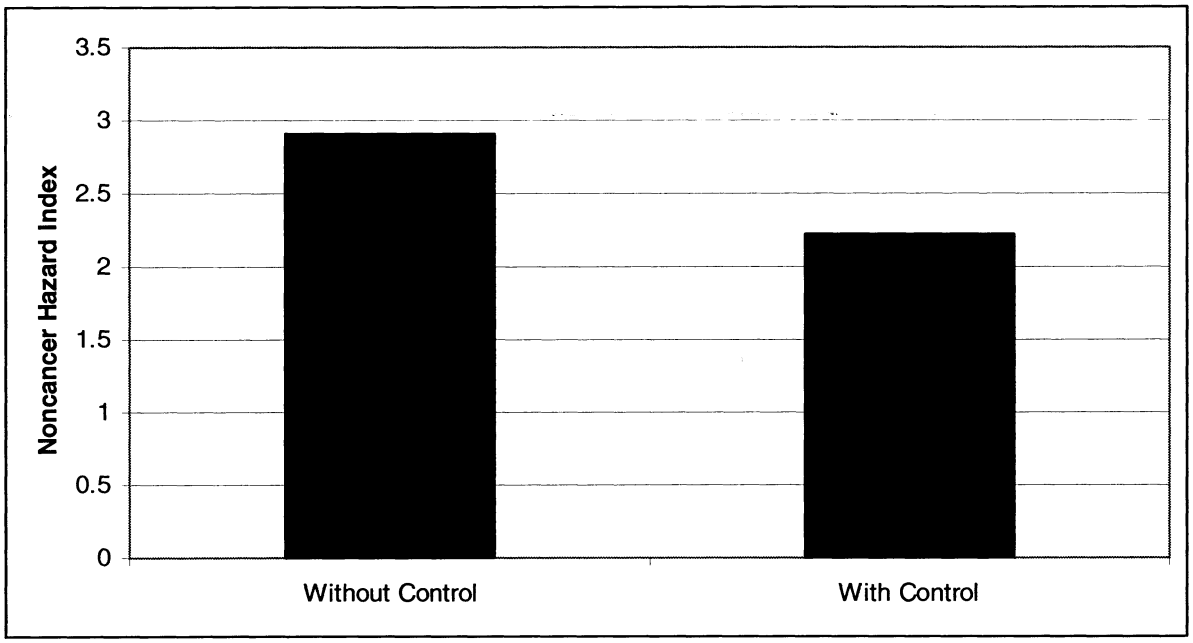


Table IV.C–1 summarizes the change in median and 95th percentile inhalation cancer risks from benzene and all MSATs attributable to all outdoor sources in 2015, 2020, and 2030, with the controls being finalized in this rule. The reductions in risk would be larger if the modeling fully accounted for a number of factors, including exposure to benzene emissions from vehicles, equipment, and PFCs in attached garages and the impacts of the control program on ''background'' levels attributable to transport. Reductions are significantly larger for individuals in the 95th percentile than in the 50th percentile. Thus, this rule is providing bigger benefits to individuals experiencing the highest levels of risk.

TABLE IV.C—1. CHANGE IN MEDIAN AND 95TH PERCENTILE INHALATION CANCER RISK FROM BENZENE AND ALL MSATS ATTRIBUTABLE TO OUTDOOR SOURCES IN 2015, 2020, AND 2030 WITH THE CONTROLS BEING FINALIZED IN THIS RULE

	2015		2020		2030	
	Median	95th	Median	95th	Median	95th
All MSATs:						
Without Controls	1.50×10^{-5}	4.75×10^{-5}	1.53×10^{-5}	4.93×10^{-5}	1.61×10^{-5}	5.28×10^{-5}
With Controls	1.41×10^{-5}	4.37×10^{-5}	1.40×10^{-5}	4.40×10^{-5}	1.42×10^{-5}	4.49×10^{-5}
Percent Change	6	8	8	11	12	15
Benzene:						
Without Controls	6.86×10^{-6}	1.82×10^{-5}	6.93×10^{-6}	1.86×10^{-5}	7.37×10^{-6}	2.06×10^{-5}
With Controls	6.17×10^{-6}	1.53×10^{-5}	6.02×10^{-6}	1.47×10^{-5}	6.06×10^{-6}	1.49×10^{-5}
Percent Change	10	16	13	21	18	28

2. Ozone

The vehicle and PFC standards will also reduce VOC emissions, which are a precursor to ozone. We have modeled the ozone impacts of the PFC standards. As described in more detail in Chapter 3.3 of the RIA, a metamodeling tool developed at EPA, the ozone response surface metamodel, was used to estimate the effects of the emission reductions. The ozone response surface metamodel was created using multiple runs of the Comprehensive Air Quality Model with Extensions (CAMx). Base and control CAMx metamodeling was completed for two future years (2020, 2030) over a modeling domain that includes all or part of 37 Eastern U.S. states. For more information on the response surface metamodel, please see the RIA for this final rule or the Air Quality Modeling Technical Support Document (TSD).

We have made estimates using the ozone response surface metamodel to illustrate the types of change in future ozone levels that we would expect to result from this rule, as described in Chapter 3 of the RIA. The PFC controls are projected to result in a very small

net improvement in future ozone, after weighting for population. Although the net future ozone improvement is small, some VOC-limited areas in the Eastern U.S. are projected to have non-negligible improvements in projected 8-hour ozone design values due to the PFC controls. We view these improvements as useful in meeting the 8-hour ozone NAAQS. These net ozone improvements are in addition to reductions in levels of benzene, a toxic ozone precursor, due to the PFC controls.

3. PM

As described in section IV.A, the vehicle standards will reduce emissions of direct PM. The PM health benefits that would be associated with these reductions in PM emissions and exposure are discussed in section VIII.E of this preamble. The vehicle and PFC standards will also reduce VOC emissions, which contribute to the secondary formation of PM. In this rule we have not quantified the impact of the VOC emission reductions on ambient PM or associated health effects.

D. What Other Mobile Source Emissions Control Programs Reduce MSATs?

As described in section IV.A, existing mobile source control programs in combination with this rule will reduce MSAT emissions (not including diesel PM) by 45% between 1999 and 2030. The existing mobile source programs include controls on fuels, highway vehicles, and nonroad engines and equipment. These programs are also reducing hydrocarbons and PM more generally, as well as oxides of nitrogen. The sections immediately below provide general descriptions of these programs that will be providing MSAT emission reductions, as well as voluntary programs such as the National Clean Diesel Campaign and Best Workplaces for Commuters. We also discuss some programs that are currently being developed. A more detailed description of mobile source programs is provided in Chapter 2 of the RIA.

1. Fuels Programs

As described in section VI of this preamble, this rule would supersede the 2001 MSAT rule and certain provisions of the reformulated gasoline program and anti-dumping programs. These programs are described in Chapter 2 of the RIA.

a. Gasoline Sulfur

EPA's gasoline sulfur program [130] requires, beginning in 2006, that sulfur levels in gasoline could be no higher than 80 ppm as a per-gallon cap, and must average 30 ppm annually. When fully effective, gasoline will have 90 percent less sulfur than before the program. Reduced sulfur levels are necessary to ensure that vehicle emission control systems are not impaired. These systems effectively reduce non-methane organic gas (NMOG) emissions, of which some are air toxics, as well as emissions of NO_X. With lower sulfur levels, emission control technologies can work longer and more efficiently. Both new and older vehicles benefit from reduced gasoline sulfur levels.

b. Gasoline Volatility

A fuel's volatility defines its evaporation characteristics. A gasoline's volatility is commonly referred to as its Reid vapor pressure, or RVP. Gasoline summertime RVP ranges from about 6–9 psi, and wintertime RVP ranges from about 9–14 psi, when additional volatility is required for starting in cold temperatures. Gasoline vapors contain a subset of the liquid gasoline components, and thus can contain toxics compounds such as benzene. Since 1989, EPA has controlled summertime gasoline RVP primarily as a VOC and ozone precursor control, resulting in additional toxics pollutant reductions.

c. Diesel Fuel

In early 2001, EPA issued rules requiring that diesel fuel for use in highway vehicles contain no more than 15 ppm sulfur beginning June 1, 2006.[131] This program contains averaging, banking and trading provisions during the transition to the 15 ppm level, as well as other compliance flexibilities. In June 2004, EPA issued rules governing the sulfur content of diesel fuel used in nonroad diesel engines.[132] In the nonroad rule, sulfur levels are limited to a maximum of 500 ppm sulfur beginning in 2007 (current levels are approximately 3000 ppm). In 2010, nonroad diesel sulfur levels must not exceed 15 ppm.

EPA's diesel fuel requirements are part of a comprehensive program to combine engine and fuel controls to achieve the greatest emission reductions. The diesel fuel provisions enable the use of advanced emission-control technologies on diesel vehicles and engines. The diesel fuel requirements will also provide immediate public health benefits by reducing PM emissions from current diesel vehicles and engines.

d. Phase-Out of Lead in Gasoline

One of the first programs to control toxic emissions from motor vehicles was the removal of lead from gasoline. Beginning in the mid-1970s, unleaded gasoline was phased in to replace leaded gasoline. The phase-out of leaded gasoline was completed January 1, 1996, when lead was banned from motor vehicle gasoline. The removal of lead from gasoline has essentially eliminated on-highway mobile source emissions of this highly toxic substance.

2. Highway Vehicle and Engine Programs

The 1990 Clean Air Act Amendments set specific emission standards for hydrocarbons and for PM. Air toxics are present in both of these pollutant categories. As vehicle manufacturers develop technologies to comply with the hydrocarbon (HC) and particulate standards (e.g., more efficient catalytic converters), air toxics are reduced as well. Since 1990, we have developed a number of programs to address exhaust and evaporative hydrocarbon emissions and PM emissions.

Two of our recent initiatives to control emissions from motor vehicles and their fuels are the Tier 2 control program for light-duty vehicles and the 2007 heavy-duty engine rule. Together these two initiatives define a set of comprehensive standards for light-duty and heavy-duty motor vehicles and their fuels. In both of these initiatives, we treat vehicles and fuels as a system. The Tier 2 control program establishes stringent tailpipe and evaporative emission standards for light-duty vehicles and a reduction in sulfur levels in gasoline fuel beginning in 2004.[133] The 2007 heavy-duty engine rule establishes stringent exhaust emission standards for new heavy-duty engines and vehicles for the 2007 model year as well as reductions in diesel fuel sulfur levels starting in 2006.[134] Both of these programs will provide substantial emissions reductions through the application of advanced technologies. We expect 90% reductions in PM from new diesel engines compared to engines under current standards.

Some of the key earlier programs controlling highway vehicle and engine emissions are the Tier 1 and NLEV standards for light-duty vehicles and trucks; enhanced evaporative emissions standards; the supplemental federal test procedures (SFTP); urban bus standards;

[130] 65 FR 6822 (February 10, 2000).

[131] 66 FR 5002, January 18, 2001. See *http://www.epa.gov/otaq/highway-diesel/index.htm.*

[132] 69 FR 38958, June 29, 2004.

[133] 65 FR 6697, February 10, 2000.

[134] 66 FR 5001, January 18, 2001.

and heavy-duty diesel and gasoline standards for the 2004/2005 time frame.

3. Nonroad Engine Programs

There are various categories of nonroad engines, including land-based diesel engines (e.g., farm and construction equipment), small land-based spark-ignition (SI) engines (e.g., lawn and garden equipment, string trimmers), large land-based SI engines (e.g., forklifts, airport ground service equipment), marine engines (including diesel and SI, propulsion and auxiliary, commercial and recreational), locomotives, aircraft, and recreational vehicles (off-road motorcycles, ''all terrain'' vehicles and snowmobiles). Chapter 2 of the RIA provides more information about these programs.

As with highway vehicles, the VOC standards we have established for nonroad engines will also significantly reduce VOC-based toxics from nonroad engines. In addition, the standards for diesel engines (in combination with the stringent sulfur controls on nonroad diesel fuel) will significantly reduce diesel PM and exhaust organic gases, which are mobile source air toxics.

In addition to the engine-based emission control programs described below, fuel controls will also reduce emissions of air toxics from nonroad engines. For example, restrictions on gasoline formulation (the removal of lead, limits on gasoline volatility and RFG) are projected to reduce nonroad MSAT emissions because most gasoline-fueled nonroad vehicles are fueled with the same gasoline used in on-highway vehicles. An exception to this is lead in aviation gasoline. Aviation gasoline, used in general (as opposed to commercial) aviation, is a high octane fuel used in a relatively small number of aircraft (those with piston engines). Such aircraft are generally used for personal transportation, sightseeing, crop dusting, and similar activities.

4. Voluntary Programs

In addition to the fuel and engine control programs described above, we are actively promoting several voluntary programs to reduce emissions from mobile sources, such as the National Clean Diesel Campaign, anti-idling measures, and Best Workplaces for Commuters SM. While the stringent emissions standards described above apply to new highway and nonroad diesel engines, it is also important to reduce emissions from the existing fleet of about 11 million diesel engines. EPA has launched a comprehensive initiative called the National Clean Diesel Campaign, one component of which is to promote the reduction of emissions in the existing fleet of engines through a variety of cost-effective and innovative strategies. The goal of the Campaign is to reduce emissions from the 11 million existing engines by 2014. Emission reduction strategies include switching to cleaner fuels, retrofitting engines through the addition of emission control devices and engine replacement. For example, installing a diesel particulate filter achieves diesel particulate matter reductions of approximately 90 percent (when combined with the use of ultra low sulfur diesel fuel). The Energy Policy Act of 2005 includes grant authorizations and other incentives to help facilitate voluntary clean diesel actions nationwide.

The National Clean Diesel Campaign is focused on leveraging local, state, and federal resources to retrofit or replace diesel engines, adopt best practices and track and report results. The Campaign targets five key sectors: school buses, ports, construction, freight and agriculture. Almost 300 clean diesel projects have been initiated through the Campaign. These projects will reduce more than 20,000 PM lifetime tons. PM and NO_X reductions from these programs will provide nearly $5 billion in health benefits.

Reducing vehicle idling provides important environmental benefits. As a part of their daily routine, truck drivers often keep their vehicles running at idle during stops to provide power, heat and air conditioning. EPA's SmartWay SM Transport Partnership is helping the freight industry to adopt innovative idle reduction technologies and to take advantage of proven systems that provide drivers with basic necessities without idling the main engine. To date, there are 80 mobile and stationary idle-reduction projects throughout the country. Emission reductions, on an annual basis, from these programs are in excess of 157,000 tons of CO_2, 2,000 tons of NO_X and 60 tons of PM; over 14 million gallons of fuel are being saved annually. The SmartWay Transport Partnership also works with the freight industry by promoting a wide range of new technologies such as advanced aerodynamics, single-wide tires, weight reduction, speed control and intermodal shipping.

Daily commuting represents another significant source of emissions from motor vehicles. EPA's Best Workplaces for Commuters SM program is working with employers across the country to reverse the trend of longer, single-occupancy vehicle commuting. OTAQ recognizes employers that have met the National Standard of Excellence for Commuter Benefits by adding them to the List of Best Workplaces for Commuters. These companies offer superior commuter benefits such as transit subsidies for rail, bus, and vanpools and promote flexi-place and telework. Emergency Ride Home programs provide a safety net for participants. More than 1,600 employers representing 3.5 million U.S. workers have been designated Best Workplaces for Commuters.

Much of the growth in the Best Workplaces for Commuters program has been through metro area-wide campaigns. Since 2002, EPA has worked with coalitions in over 14 major metropolitan areas to increase the penetration of commuter benefits in the marketplace and the visibility of the companies that have received this distinguished designation. Another significant path by which the program has grown is through Commuter Districts including corporate and industrial business parks, shopping malls, business improvement districts and downtown commercial areas. To date EPA has granted the Best Workplaces for Commuters ''District'' designation to over twenty locations across the country including sites in downtown Denver, Houston, Minneapolis, Tampa and Boulder.

5. Additional Programs Under Development That Will Reduce MSATs

a. On-Board Diagnostics for Heavy-Duty Vehicles Over 14,000 Pounds

The Agency has proposed on-board diagnostics (OBD) requirements for heavy-duty vehicles over 14,000 pounds.[135] In general, OBD systems monitor the operation of key emissions controls to detect any failure that would lead to emissions above the standards during the life of the vehicle. Given the nature of the heavy-duty trucking industry, 50-state harmonization of emissions requirement is an important consideration. Initially, the Agency signed a Memorandum of Agreement in 2004 with the California Air Resources Board which expressed both agencies' interest in working towards a single, nationwide program for heavy-duty OBD. Since that time, California has established their heavy-duty OBD program, which will begin implementation in 2010. EPA's program will also begin in 2010. These requirements will help ensure that the emission reductions we projected in the 2007 rulemaking for heavy-duty engines occur in-use.

[135] *http://epa.gov/obd/regtech/heavy.htm.*

b. Standards for Small Nonroad Spark-Ignition Engines

We are developing a proposal for small nonroad spark-ignition engines, those typically used in lawn and garden equipment and in spark-ignition marine engines. This proposal is being developed in response to Section 428 of the Omnibus Appropriations Bill for 2004, which requires EPA to propose regulations under Clean Air Act section 213 for new nonroad spark-ignition engines under 50 horsepower. We plan to propose standards that would further reduce engine and equipment emissions for these nonroad categories. We anticipate that any new standards would provide significant additional reductions in exhaust and evaporative HC (and VOC-based toxics) emissions.

c. Standards for Locomotive and Marine Diesel Engines

We are planning to propose more stringent standards for large diesel engines used in locomotive and marine applications, as discussed in a recent Advance Notice of Proposed Rulemaking.[136] New standards for marine diesel engines would apply to engines less than 30 liters per cylinder in displacement (all engines except for Category 3). We are considering standards modeled after our Tier 4 nonroad diesel engine program, which achieve substantial reductions in PM, HC, and NO_X emissions. These standards would be based on the use of high efficiency catalyst aftertreatment and would also require fuel sulfur control.

E. How Do These Mobile Source Programs Satisfy the Requirements of Clean Air Act Section 202(l)?

The benzene and hydrocarbon standards in this action will reduce benzene, 1,3-butadiene, formaldehyde, acrolein, polycyclic organic matter, and naphthalene, as well as many other hydrocarbon compounds that are emitted by motor vehicles, including those that are discussed in more detail in Chapter 1 of the RIA. The emission reductions expected from today's controls are set out in section IV.A and B of this preamble and Chapter 2 of the RIA.

EPA believes that the emission reductions from the standards finalized today for motor vehicles and their fuels, combined with the standards currently in place, represent the maximum achievable reductions of emissions from motor vehicles through the application of technology that will be available, considering costs and the other factors listed in section 202(l)(2). This conclusion applies whether one considers just the compounds listed in Table 1.1–1 of the RIA, or consider all of the compounds on the Master List of emissions, given the breadth of EPA's current control programs and the broad groups of emissions that many of the control technologies reduce. For example, EPA has already taken significant steps to reduce diesel emissions from motor vehicles (as well as other mobile sources). As explained above, we have adopted stringent standards for on-highway diesel trucks and buses and these standards control the air toxics emitted by these motor vehicles to the extent feasible.

Emissions from motor vehicles can be chemically categorized as hydrocarbons, trace elements (including metals) and a few additional compounds containing carbon, nitrogen and/or halogens (e.g., chlorine). For the hydrocarbons, which are the vast majority of these compounds, we believe that with the controls finalized today, we will control the emissions of these compounds from motor vehicles to the maximum amount currently feasible or currently identifiable with available information. Section V of this preamble provides more details about why the standards represent maximum achievable reduction of hydrocarbons from motor vehicles. Motor vehicle controls do not reduce individual hydrocarbons selectively; instead, the maximum emission reductions are achieved by controls on hydrocarbons as a group. There are fuel controls that could selectively reduce individual air toxics (e.g., formaldehyde, acetaldehyde, 1,3-butadiene), as well as controls that reduce hydrocarbons more generally. Section VI of this preamble describes why the standards we are finalizing today represent the maximum emission reductions achievable through fuel controls, after considering the factors enumerated in section 202(l)(2) of the Clean Air Act.

Motor vehicle emissions also contain trace elements, including metals, which originate primarily from engine wear and impurities in engine oil and gasoline or diesel fuel. EPA does not have authority to regulate engine oil, and there are no feasible motor vehicle controls to directly prevent engine wear. Nevertheless, oil consumption and engine wear have decreased over the years, decreasing emission of metals from these sources. Metals associated with particulate matter will be captured in emission control systems employing a particulate matter trap, such as will be used in heavy-duty vehicles meeting the 2007 standards. We believe that currently, particulate matter traps, in combination with engine-out control, represent the maximum feasible reduction of both motor vehicle particulate matter and toxic metals present as a component of the particulate matter.

The mobile source contribution to the national inventory for metal compounds is generally small. In fact, the emission rate for most metals from motor vehicles is small enough that quantitative measurement requires state-of-the art analytical techniques that are only recently being applied to this source category. We have efforts underway to gather information regarding trace metal emissions, including mercury emissions, from motor vehicles (see Chapter 1 of the RIA for more details).

A few metals and other elements are used as fuel additives. These additives are designed to reduce the emission of regulated pollutants either in combination with or without an emission control device (e.g., a passive particulate matter trap). Clean Air Act section 211 (a) and (b) provide EPA with various authorities to require the registration of fuel additives by their manufacturers before their introduction into commerce. Registration involves certain data requirements that enable EPA to identify products whose emissions may pose an unreasonable risk to public health. In addition, this section provides EPA with authority to require health effects testing to fill any gaps in the data that would prevent a determination regarding the potential for risk to the public. It is under the section 211 registration program that EPA is currently generating the information needed to update an assessment of the potential human health risks related to having manganese in the national fuel supply. Clean Air Act section 211(c) provides the primary mechanism by which EPA would take actions necessary to minimize exposure to emissions of metals or other additives to diesel and gasoline.

Existing regulations limit sulfur in gasoline and diesel fuel to the maximum amount feasible and will reduce emissions of all sulfur-containing compounds (e.g., hydrogen sulfide, carbon disulfide) to the greatest degree achievable.[137] [138] [139] For the remaining compounds (e.g., chlorinated

[136] 69 FR 39276, June 29, 2004.

[137] 65 FR 6697, February 10, 2000.

[138] 66 FR 5001, January 18, 2001.

[139] 69 FR 38958, June 29, 2004 (standards for non-road diesel engines and fuels). Although non-road vehicles are not ''motor vehicles,'' and so are not subject to section 202(1)(2), EPA nevertheless has adopted standards resulting in the greatest feasible reductions of mobile source air toxics from these engines.

compounds), we currently have very little information regarding emission rates and conditions that impact emissions. This information would be necessary in order to evaluate potential controls under section 202(l). Emissions of hydrocarbons containing chlorine (e.g., dioxins/furans) would likely be reduced with control measures that reduce total hydrocarbons, just as these emissions were reduced with the use of catalytic controls that lowered exhaust hydrocarbons.

V. New Light-Duty Vehicle Standards

A. Introduction

The program we are establishing for vehicles will achieve the same significant toxics reductions that we projected for the proposed rule (see generally 71 FR 15845–15848). The program is very similar to that proposed except for a few minor changes made in response to comments we received. These changes will improve the implementation of the program without significantly changing the program's overall emission reductions and environmental benefits. As described in this section, we are adopting stringent new nonmethane hydrocarbon standards for vehicles to reduce hydrocarbon (HC) emissions during vehicle cold temperature operation. As discussed in the proposal, the current HC emissions standards are measured within a range of specified warm temperatures, and the test procedure does not include cold temperatures. Data indicate that cold HC emissions currently are very high for many vehicles compared to emissions at normal test temperatures. The new cold temperature standards and program requirements will be phased in starting in 2010. When fully phased in, the new standards will further reduce overall vehicle HC emissions by about 31%, or by about 883,000 tons in 2030.

By reducing overall HC emissions from vehicles, we will be significantly reducing several gaseous toxics including benzene, formaldehyde, 1,3-butadiene, and acetaldehyde. We also project that the cold temperature standard will provide concurrent reductions in direct PM emissions from vehicles, since the strategies manufacturers are expected to employ to reduce cold HC will reduce PM as well. Although Clean Air Act section 202(l) deals with control of air toxics, and not criteria pollutants like PM, this co-benefit of cold temperature control is significant.

We are finalizing the new cold temperature standards and implementation schedule essentially as proposed. We are also adopting several other related provisions and requirements largely as proposed. Many of these provisions will help the manufacturers smoothly transition to the new standards in the shortest lead time possible. They include corporate average emissions standards, emissions credits, options for alternative phase-in schedules, and special provisions for small businesses. The program also includes certification and compliance provisions.

We are also adopting new evaporative emissions standards, beginning in model year 2009. The new standards are essentially the same as those contained in the California LEVII program. Manufacturers have been selling 50-state evaporative systems that meet both the Tier 2 and LEVII requirements. Today's final rule will ensure that industry continues this practice.

Sections V.B. and V.C. provide the details of the new cold temperature and evaporative emissions standards, respectively, and briefly discuss some of the comments we received on the proposed vehicles program. We have seriously considered all of the input from stakeholders in developing the final vehicles program and believe that the final rule appropriately addresses the concerns of all stakeholders. We provide a full discussion of the comments we received on vehicles in Chapter 3 of the Summary and Analysis of Comments for this rule.

B. What Cold Temperature Requirements Are We Adopting?

1. Why Are We Adopting a New Cold Temperature NMHC Standard?

As emissions standards have become more stringent, manufacturers have concentrated primarily on controlling emissions performance just after the start of the engine in order to further reduce emissions. To comply with stringent hydrocarbon emission standards at 75 °F, manufacturers developed new emission control strategies and practices that resulted in significant emissions reductions at that start temperature. We expected that proportional reductions in hydrocarbon emissions would occur at other colder start temperatures as a result of the more stringent standards. We believe that there is no engineering reason why proportional control should not be occurring on a widespread basis.

In some cases, certification data for recent model year light-duty vehicles indicate that individual vehicles did demonstrate proportional improvements in hydrocarbon emission results at 20 °F relative to their 75 °F results, confirming our belief that proportional control is feasible and indeed is practiced at least occasionally. One manufacturer's certification results reflected proportional improvements across almost its entire vehicle lines, further supporting that proportional control is feasible. However, for most vehicles, certification reports show a sharp rise in hydrocarbon [140] emissions at 20 ° F when compared to the reported 75 ° F hydrocarbon emission levels. Any rise in hydrocarbon emissions, specifically nonmethane hydrocarbons (NMHC), will result in proportional rise in VOC-based air toxics.[141] While some increase in NMHC emissions can be expected simply due to combustion limitations of gasoline engines at colder temperatures, the reported levels of hydrocarbon emissions seem to indicate a significantly diminished use of hydrocarbon emissions controls occurring at colder temperatures. Thus, although all vehicle manufacturers have been highly successful at reducing emissions at the test start temperature range, in general, they do not appear to be capitalizing on NMHC emission control strategies and technologies at lower temperatures. This is likely because compliance with hydrocarbon standards is not required at 20 degree F temperatures. (see 71 FR at 15845.) Today's rule remedies this by requiring such compliance.

2. What Are the New NMHC Exhaust Emissions Standards?

We are finalizing a set of standards that will achieve proportional NMHC control from the 75 °F Tier 2 standards to the 20 °F test point. We expect that by fully utilizing available Tier 2 hardware and software control strategies, manufacturers will be able to achieve this standard without major changes to Tier 2 vehicle designs or the use of additional technology. Table V.B–1 contains the final standards.

[140] Most certification 20 °F hydrocarbon levels are reported as total hydrocarbon (THC), but NMHC accounts for approximately 95% of THC as seen in results with both THC and NMHC levels reported. This relationship also is confirmed in EPA test programs supporting this rulemaking.

[141] ''VOC/PM Cold Temperature Characterization and Interior Climate Control Emissions/Fuel Economy Impact,'' Volume I and II, October 2005.

TABLE V.B–1.—20 °F FTP EXHAUST EMISSION STANDARDS

Vehicle GVWR and category	NMHC sales-weighted fleet average standard (grams/mile)
≤6000 lbs: Light-duty vehicles (LDV) & Light light-duty trucks (LLDT)	0.3
>6000 lbs: Heavy light-duty trucks (HLDT) up to 8,500 lbs & Medium-duty passenger vehicles (MDPV) up to 10,000 lbs	0.5

As shown in the table, we are finalizing, as proposed, two separate sales-weighted fleet average NMHC standards: 0.3 grams/mile for vehicles at or below 6,000 pounds (lbs) GVWR and 0.5 grams/mile for vehicles over 6,000 lbs, including MDPVs.[142] NMHC emissions will be measured during the Cold Federal Test Procedure (FTP) test, which already requires hydrocarbon measurement.[143] The new standard does not require additional certification testing beyond what is required today with ''worst case'' model selection of a durability test group.[144]

The separate fleet average standards we are finalizing account for challenges related to vehicle weight. We examined certification data from Tier 2 and interim non-Tier 2 vehicles (i.e., vehicles not yet phased into the final Tier 2 program, but meeting interim standards established by Tier 2), and saw a general trend of increased hydrocarbon levels with heavier GVWR vehicles. Some comments suggested that the standard for HLDT/MDPVs should be the same standard as applies to LDVs or contain a second future phase that reduces emissions to those levels. At this time, we continue to believe that heavier vehicles have application-specific design limitations. Heavier vehicles generally produce higher emissions for several reasons. First, added weight requires additional work to accelerate the vehicle mass, generally resulting in higher emissions, particularly soon after engine start-up. Second, the design of these emission control systems may incorporate designs for specific duty cycles (i.e., trailer towing) that can negatively affect emissions, particularly during 20° F cold starts. For example, since the catalyst may be located further away from the engine for protection from high exhaust temperatures during design-specific duty cycles, warm-up of the catalyst is typically delayed, especially at colder temperatures. Therefore, we believe the 0.3 g/mile fleet average standard for vehicles below 6,000 lbs GVWR is not technically feasible at this time for heavier vehicles. We are thus finalizing a 0.5 g/mile standard for vehicles over 6000 lbs GVWR, including both HLDTs (6000 lbs to 8500 lbs) and MDPVs.

We are finalizing the sales-weighted fleet average approach as proposed, as the way to achieve the greatest degree of emission control for Tier 2 vehicles. At the same time, this approach allows manufacturers sufficient lead time and flexibility to certify different vehicle groups to different levels, thus lowering the costs of the program. A fleet average provides manufacturers with flexibility to balance challenging vehicle families with ones that more easily achieve the standards. We believe this approach is appropriate because the base Tier 2 program is also based on emissions averaging, and will result in a mix of emissions control strategies across the fleet that have varying cold temperature capabilities. While the Tier 2 program continues to phase in, manufacturers are concurrently developing emissions control packages. The capabilities of each Tier 2 package will not be fully understood until manufacturers are able to evaluate the potential of the individual designs to control cold temperature emissions.

We received several comments from state and environmental groups supporting the new cold temperature standards. Manufacturers indicated their support of the Agency's initiative to seek reductions in MSATs, and one manufacturer commented that cold temperature hydrocarbon control is both effective and logical. Manufacturers commented that the new standards would be very challenging, but that the flexibilities incorporated into the final rule will significantly help manufacturers achieve the new standards. One manufacturer with a product line limited to vehicles below 6,000 lbs GVWR suggested that the 0.3 g/mile standard was too stringent and unreasonable based on an assessment of their current vehicle emission levels. The manufacturer's comments did not provide data or further technical analysis to substantiate this claim. We know of no engineering basis for the standards not being technically achievable. Moreover, there are about nine other manufacturers with similar product lines exclusively below 6,000 lbs GVWR, and they did not provide similar comments. We continue to believe that with careful examination of existing emission control opportunities at colder temperatures on Tier 2 compliant vehicles, especially given the lead time provided, manufacturers will identify strategies to comply with the new standards across their product lines.

We are establishing a Family Emissions Limit (FEL) structure in which manufacturers will determine individual FELs for each group of vehicles certified. These FELs are the standard for each individual group, and are averaged on a sales-weighted basis to demonstrate overall compliance with the fleet average standards. We are using the FEL-based approach for the new cold temperature NMHC standards because we believe it results in the same level of environmental benefit but adds flexibility and leads to cost-effective compliance strategies. The FEL approach is discussed further in section V.B.4 below.

We are applying the new cold temperature NMHC standards to light-duty gasoline-fueled vehicles. However, diesel vehicles, alternative-fueled vehicles, and heavy-duty vehicles will not be subject to these standards, since we lack data on which to base standards. Section V.B.6.a provides a detailed discussion of applicability and comments received.

3. Feasibility of the Cold Temperature NMHC Standards

We believe the new standards will be challenging but are attainable and provide the greatest emission reductions using technology that will be available.

[142] Tier 2 created the medium-duty passenger vehicle (MDPV) category to include larger complete passenger vehicles, such as SUVs and vans, with a GVWR of 8,501–10,000 pounds GVWR. Large pick-ups above 8,500 pounds are not included in the MDPV category but are included in the heavy-duty vehicle category.

[143] 40 CFR Subpart C, § 86.244–94 requires the measurement of all pollutants measured over the FTP except NO_X.

[144] The existing cold FTP test procedures are specified in 40 CFR Subpart C. In the final rule for fuel economy labeling, (71 FR 77872, December 27, 2006), EPA revised the cold FTP test protocol to require manufacturers to run the heater and/or defroster while conducting the cold FTP test. This had previously been an optional provision. We do not believe this requirement will have a significant impact on emissions.

The feasibility assessment described below is based on our analysis of the standard's stringency given current emission levels at certification (considering deterioration, compliance margin, and vehicle weight), available emission control techniques, and our own feasibility testing. In addition, sections V.B.3–6 describe the lead time and flexibility within the program structure, which also contribute to the achievability of the standards. There are a number of technologies discussed below that can be utilized to achieve these standards. We expect that manufacturers will employ these technologies in various combinations, which will likely vary from vehicle to vehicle depending on a vehicle's base emission control package developed for Tier 2 compliance. Moreover, as discussed in section V.D, due to current Tier 2 phase-in schedules, we are not yet in a position to evaluate fully the achievability of standards based on new technologies that may result when Tier 2 is fully phased in in model year 2009. Thus, we are not considering more stringent cold temperature NMHC standards that would require the application of new technology to Tier 2 vehicles.

Chapter 8 of the RIA contains vehicle and nationwide cost estimates, including capital and development costs. We believe the estimated costs are reasonable and the rule is cost-effective, as shown in section XIII, below. Given the emission control strategies currently available, we expect manufacturers to implement these technologies successfully without a significant impact on vehicle noise, energy consumption, or safety factors. Although new emissions control strategies are necessary at cold temperatures, we do not expect fundamental Tier 2 vehicle hardware to change.

Manufacturers commented that the standards will be extremely challenging because the standards are based on full useful life performance and manufacturers must account for fuel quality in the field to ensure adequate performance. Manufacturers also noted that they must account for a host of requirements in addition to the new cold temperature standards, including Tier 2 and SFTP standards. In response, we understand the challenges involved in complying with the new cold temperature standards and we are providing the essential lead time for manufacturers to identify and resolve any related issues as part of overall vehicle development. We are also including several other provisions discussed below, including an averaging program, phase-in, emissions credits, deficit carry-forward, and in-use standards that provide manufacturers with flexibility in transitioning to the new standards.

a. Currently Available Emission Control Technologies

We believe that the cold temperature NMHC standards for gasoline-fueled vehicles being finalized today are challenging but attainable with Tier 2 (i.e., existing) level emission control technologies. Our determination of feasibility is based on the emission control hardware and calibration strategies used today on Tier 2 vehicles. These emission control technologies are utilized to meet the stringent Tier 2 standards for HC at the FTP temperature range of 68 °F to 86 °F, but are not generally used or activated at colder temperatures. As discussed in section V.D, the standards we are finalizing today will not force changes to Tier 2 compliance strategies. Many current engine families already achieve emissions levels at or below the emission standards being adopted (see RIA Chapter 5) and accomplish this through software and calibration control technologies. However, a significant number of engine families emit more than twice the level of the new standards most likely because they fail to use the Tier 2 control technologies at colder temperatures. We believe the new standards can be met by the application of calibration and software approaches similar to those currently used at 75 °F. Although manufacturers could use additional hardware to facilitate compliance with the new standard, we are not projecting that they would choose to do so because the standards can be achieved through lower-cost calibration and software strategies. As described in section V.B.2.c, our own feasibility testing of a vehicle over 6000 lbs GVWR achieved NMHC reductions consistent with the standard through calibration approaches alone.

In 2002, the European Union (EU) finalized a −7 °C (20 °F) cold HC requirement.[145] While the European standard is based on a different drive cycle, manufacturers have developed individual strategies to comply with this standard. When the EU implemented the new cold HC standard in conjunction with a new 75 °F standard (Euro4), many manufacturers responded by employing National Low Emission Vehicle (NLEV)[146] level hardware and supplementing it with advanced cold start emission control strategies. The EU similarly determined that heavier weight vehicles may have duty-cycle based design limitations and also adopted a separate unique emission standard for these vehicles. Many manufacturers offer common vehicle models in both European and U.S. markets. Such manufacturers can leverage European models to transfer emission control technologies successfully used for 20 °F hydrocarbon control in Europe to their U.S. model counterparts.

There are several strategies used in the vehicles that are achieving proportional improvements in NMHC emissions at 20 °F FTP. Calibration and software strategies that can be used include lean limit fuel strategies, fuel injection timing,[147] elevated idle speeds, retarded spark timing, redundant spark timing, and accelerated closed loop times. These strategies are consistently and successfully used at 75 °F to meet stringent Tier 2 standards. We expect that software and/or calibration changes will perform as well or better than added hardware. This is because some hardware such as the improved catalyst system may not be usable immediately following the cold start because it must warm-up to operate efficiently. Calibration and software strategies that minimize emissions produced by the engine during this period while simultaneously accelerating usage of the catalyst will be more effective than most new hardware options. See RIA Chapter 5 for further discussion.

In addition to calibration strategies, some manufacturers may comply with the new standards by extending the use of existing Tier 2 hardware to 20 °F. An example of this is secondary air systems. Several European models sold in the U.S. market demonstrate excellent cold HC performance and utilize secondary air systems from 75 °F to 20 °F start temperatures. The secondary air systems reduce emissions by injecting ambient air into the exhaust, thus supplying oxygen for more complete combustion. This also supplies supplemental heat to the catalyst. These systems have been used extensively to reduce hydrocarbon emissions at 75 °F starts. Currently, auto

[145] European Union (EU) Type VI Test (−7°C) required for new vehicle models certified as of 1/1/2002.

[146] NLEV voluntary program introduced California low emission cars and light-duty trucks (0–6000 lbs. GVW) into other states beginning in 1999.

[147] Meyer, Robert and John B. Heywood, ''Liquid Fuel Transport Mechanisms into the Cylinder of a Firing Port-Injected SI Engine During Start-up,'' SAE 970865, 1997.

makers are equipping a portion of the Tier 2 fleet with secondary air systems for compliance with Tier 2 standards.

Some manufacturers with vehicles containing secondary air systems claimed that they are not utilizing them at temperatures below freezing simply because of past engineering issues. Those successfully using secondary air at 20 °F (mainly European companies) indicated that these challenges have been addressed through design changes. The robustness of these systems below freezing has also been confirmed with the manufacturers and with the suppliers of the secondary air components.[148] While alternative technologies are available and produce comparable results, vehicles equipped with secondary air technology should meet the new 20 °F standard by utilizing it at colder temperatures.

b. Feasibility Considering Current Certification Levels, Deterioration and Compliance Margin

The standards we are finalizing will have a full useful life of 120,000 miles, consistent with Tier 2 standards. We believe the 0.3 g/mile FEL standard leaves adequate flexibility for compliance margins and any emissions deterioration concerns. Of the vehicles certified to Tier 2 with available cold temperature certification data, approximately 20% of vehicles below 6,000 lbs GVWR had HC levels in the range of 0.18 to 0.27 g/mile, which is two to three times the 75 °F Tier 2 bin 5 full useful life standard. These reported HC levels are from Cold CO test results for certification test vehicles with typically only 4,000 mile aged systems, without full useful life deterioration applied. Rapid advances in emission control hardware technology have lowered deterioration factors used by manufacturers to demonstrate full useful life compliance, usually indicating little or no deterioration over a vehicle's lifetime. These deterioration factors are common across all required test cycles including cold temperature testing. Additionally, manufacturers typically incorporate a 20% to 30% compliance margin to account for in-use issues that may cause emissions variability. See RIA Chapter 5 for further discussion and details regarding current certification levels.

c. Feasibility and Test Programs

While a few of the heavier vehicles achieved emission levels below the 0.5 g/mile level, there are only limited 20 °F certification results for Tier 2 compliant vehicles over 6000 lbs GVWR because the Tier 2 standards are still phasing in for these vehicles. Prior to proposal, we conducted a feasibility study in 20 °F conditions for Tier 2 vehicles over 6000 lbs GVWR. The test program further investigated the feasibility of compliance for heavier vehicles and assessed their capabilities with typical Tier 2 hardware. For one vehicle with models above and below 6,000 lbs GVWR, we reduced HC emissions by 60–70%, depending on the control strategy. This vehicle had a baseline level of about 1.0 g/mile. The results are well within the 0.5 g/mile standard including compliance margin, and within a 0.3 g/mile level on some tests. We achieved these reductions through recalibration without the use of new hardware.

Comments from the auto industry suggested that the original single vehicle feasibility test program and the approach used to reduce emission levels on the feasibility vehicle were too simplistic and did not fully account for competing requirements. The commenter stated that that Tier 2 FTP and SFTP requirements have affected hardware decisions, such as catalyst location, and make it more difficult to simultaneously obtain optimal performance at colder temperatures. For the final rule, we completed a second feasibility program to help address the comments regarding the first feasibility program. For the second feasibility test program, we tested a vehicle with some of the specific challenges listed by the auto industry which represented a worst case vehicle from the perspective of cold temperature emissions control including catalyst location and a large displacement engine. The second feasibility program utilized emission control methods already practiced in the production European version of the vehicle tested, helping to demonstrate that significant emission controls through calibration are available to manufacturers today. Simply utilizing the European emission controls resulted in a 32% reduction in NMHC emissions. The findings from both studies are provided in detail in the RIA.

While the auto industry did not question the feasibility of the standards, they expressed concerns that EPA was not conveying the complexity of effort required for full product line manufacturers to meet the new standards. We believe that the feasibility program demonstrated that Tier 2 vehicles, including higher weight vehicles, currently have existing emission control capabilities to achieve the new standards. The extensive emission data from certification tests detailed in RIA Chapter 5 provides substantial support to the assessment that Tier 2 vehicles generally possess the necessary technology to achieve the new standards. In most cases, the technologies need to be activated and optimized at colder temperatures through calibration strategies. However, we recognize that manufacturers, particularly full line manufacturers, will have to do significant development work to bring their expansive Tier 2 product line into compliance with the new standards over the vehicles' full useful life. This is why we have included a phase-in of the standards over 6 model years.

4. Standards Timing and Phase-In

a. Phase-In Schedule

As proposed, we will begin implementing the standard in the 2010 model year (MY) for LDV/LLDTs and 2012 MY for HLDT/MDPVs. The implementation schedule, in Table V.B–2, begins three model years after the Tier 2 phase-in is complete for each vehicle class. Manufacturers will demonstrate compliance with phase-in requirements through sales projections, similar to Tier 2, as discussed below in Section V.B.7.

TABLE V.B–2.—PHASE-IN SCHEDULE FOR 20 °F NMHC STANDARD BY MODEL YEAR

Vehicle GVWR (category)	2010	2011	2012	2013	2014	2015
≤6000 lbs (LDV/LLDT)	25%	50%	75%	100%	.....	.....
>6000 lbs HLDT and MDPV	.....	.....	25%	50%	75%	100%

[148] Memo to docket ''Discussions Regarding Secondary Air System Usage at 20°F with European Automotive Manufacturers and Suppliers of Secondary Air Systems,'' December 2005.

We requested comments on the proposed start date and duration of the phase-in schedule. Generally, manufacturers supported the phase-in schedule. Commenters indicated that the stringency of the standards will increase the development workload and facility demands, but that the proposed rule recognized these cost issues and provided sufficient mechanisms for phase-in flexibility to help manufacturers transition to the new program. One manufacturer with only LDV and LLDT vehicles in their product line commented that the required phase-in percentage affects a larger portion of their products compared with other manufacturers with heavier vehicles, and therefore the phase-in should be extended to accommodate construction of new facilities. Conversely, a non-profit organization commented that EPA should begin the program earlier than we proposed. The organization cited our assessment that manufacturers could utilize primarily calibration and software changes, and not hardware changes, to achieve compliance. However, as discussed below, we believe that the finalized start date and phase-in schedule will achieve the greatest amount of emissions reductions in the shortest feasible amount of time.

EPA must consider lead time in determining the greatest degree of emission reduction achievable under section 202(l) of the Clean Air Act. Also, for vehicles above 6,000 GVWR, section 202(a) of the Act requires that four years of lead time be provided to manufacturers. We believe that lead time and phase-in schedule is needed to allow manufacturers to develop compliant vehicles without significant disruptions in their product development cycles. The three-year period between completion of the Tier 2 phase-in and the start of the new cold NMHC standard should provide vehicle manufacturers sufficient lead time to design their compliance strategies and to determine the product development plans necessary to meet the new standards.

We recognize that the new cold temperature standards we are finalizing could represent a significant new challenge for many manufacturers and development time will be needed. The issue of NMHC control at cold temperatures was not anticipated by many entities, and research and development to address the issue is consequently at a rudimentary stage for some manufacturers. Lead time is therefore necessary before compliance can be demonstrated. While certification will only require one vehicle model of a durability group to be tested, manufacturers must do development on all vehicle combinations to ensure full compliance within the durability test group. A phase-in is needed because manufacturers must develop control strategies for several vehicle lines. Since manufacturers cannot be expected to implement the standard over their entire product line in 2010, we believe a phase-in allows the program to begin sooner than would otherwise be feasible.

As noted at proposal, the lead time and phase-in are also needed to address test facility availability issues (see 71 FR 15849). Prior to proposal, manufacturers raised concerns that a rapid phase-in schedule would lead to a significant increase in the demand for their cold testing facilities, which could necessitate substantial capital investment in new cold test facilities to meet development needs. This is because manufacturers would need to use their cold testing facilities not only for certification but also for vehicle development. Durability test groups may be large and diverse and therefore require significant development effort and cold test facility usage for each model. If vehicle development is compressed into too narrow a time window, significant numbers of new facilities would be needed. Manufacturers were also concerned that investment in new test facilities would be stranded at the completion of the initial development and phase-in period.

We took these concerns into consideration when drafting our proposed rule and are finalizing the start date and phase-in as proposed because we continue to believe they address these issues adequately. Our finalized phase-in period accommodates test facilities and work load concerns by distributing these fleet phase-in percentage requirements over a four-year period for each vehicle weight category (six years total). The staggered start dates for the phase-in schedule between the two weight categories should further alleviate manufacturers' burden regarding construction of new test facilities. We recognize that some manufacturers may still determine that upgrades to their current cold facility are needed to handle increased workload, or that additional shifts must be added to their facility work schedules that are not in place today. The lead time provided and the four-year phase-in period provides needed time for vehicle manufacturers to develop a compliance schedule that does not significantly interfere with their future product plans. Manufacturers commented in support of the lead time and phase in provided, commenting that these program elements are needed to avoid high test facility costs.

b. Alternative Phase-In Schedules

We are finalizing provisions, as proposed, that allow manufacturers to introduce vehicles earlier than required in exchange for flexibility to make offsetting adjustments, on a one-for-one basis, to the phase-in percentages in later years. Alternative phase-in schedules essentially credit the manufacturer for its early or accelerated efforts and allow the manufacturer greater flexibility in subsequent years during the phase-in. Under these alternative schedules, manufacturers would have to introduce vehicles that meet or surpass the NHMC average standards before they are required to do so, or else introduce vehicles that meet or surpass the standard in greater quantities than required.

As proposed, we are finalizing provisions allowing manufacturers to apply for an alternative phase-in schedule that would still result in 100% phase-in by 2013 and 2015, respectively, for the lighter and heavier weight categories. As with the primary phase-in, manufacturers would base an alternative phase-in on their projected sales estimates. An alternate phase-in schedule submitted by a manufacturer would be subject to EPA approval and would need to provide the same emissions reductions as the primary phase-in schedule. The alternative phase-in cannot be used to delay full implementation past the last year of the primary phase-in schedule (2013 for LDVs/LDTs and 2015 for HLDTs/MDPVs).

As proposed, this alternative phase-in schedule will be acceptable if it passes a specific mathematical test (see 71 FR 15849). We have designed the test to provide manufacturers a benefit from certifying to the standards early, while ensuring that significant numbers of vehicles are introduced during each year of the alternative phase-in schedule. Manufacturers will multiply their percent phase-in by the number of years the vehicles are phased in prior to the second full phase-in year. The sum of the calculation will need to be greater than or equal to 500, which is the sum from the primary phase-in schedule ($4 \times 25 + 3 \times 50 + 2 \times 75 + 1 \times 100 = 500$). For example, the equation for LDVs/LLDTs will be as follows:

$$(6 \times API_{2008}) + (5 \times API_{2009}) + (4 \times API_{2010}) + (3 \times API_{2011}) + (2 \times API_{2012}) + (1 \times API_{2013}) \geq 500\%,$$

where ''API'' is the anticipated

phase-in percentage for the referenced model year

As described above, the final sum of percentages for LDVs/LDTs must equal or exceed 500 − the sum that results from a 25/50/75/100 percent phase-in. For example, a 10/25/50/55/100 percent phase-in for LDVs/LDTs that begins in 2009 will have a sum of 510 percent and is acceptable. A 10/20/40/70/100 percent phase-in that begins the same year has a sum of 490 percent and is not acceptable.

To ensure that significant numbers of compliant LDVs/LDTs are introduced in the 2010 time frame (2012 for HLDT/MDPVs), manufacturers would not be allowed to use alternative phase-in schedules that delay the implementation of the requirements, even if the sum of the phase-in percentages ultimately meets or exceeds 500. Such a situation could occur if a manufacturer delayed implementation of its compliant production until 2011 and began an 80/85/100 percent phase-in that year for LDVs/LDTs. To protect against this possibility, we are finalizing, as proposed, that for any alternative phase-in schedule, the manufacturer's API × year factors for LDV/LLDTs from the 2010 and earlier model years (2012 and earlier for HLDT/MDPVs) sum to at least 100. The early phase-in also encourages the early introduction of vehicles meeting the new standard or the introduction of such vehicles in greater quantity than required, achieving early emissions reductions.

One commenter recommended that EPA carefully consider the added complexity of allowing alternative phase-in schedules before including these provisions in the final rule. In response, we allowed manufacturers the option of using similar alternative phase-ins for Tier 2 and these provisions have not proven to be detrimental in the implementation of the Tier 2 program. We believe the added flexibility provided to manufacturers helps them to meet the new requirements as soon as possible while also helping to minimize disruptions to their product plans. These benefits offset the complexity added by the alternative phase-in option.

Manufacturers commented that EPA should remove the requirement for 2010 to have a sum of 100 because it limits flexibility and could cause manufacturers to run a deficit early in the program. We are retaining this requirement as proposed, except for the option discussed in the next paragraph. In general, this requirement ensures that manufacturers introduce complying vehicles early in the phase-in. The alternative phase-in is not intended to postpone introduction of compliant vehicles; instead, it is to allow an accelerated introduction of vehicles and to allow manufacturers the flexibility of aligning compliance with production schedules. The commenter's suggestion of removing the sum of 100 provision for MY 2010 and earlier vehicles would essentially amount to delaying the program by one year. Since all manufacturers make LDV/LDTs, the sum of 100 provision ensures that environmental benefits are achieved as soon as possible, while the alternative phase-in provision as a whole provides additional flexibility to manufacturers.

As described above, we proposed an early-year requirement for alternative phase-in schedules for HLDTs/MDPVs (see 71 FR 15850). Similar to the LDV/LDT requirement, we proposed that the API × year factors from the 2012 and earlier model years sum to at least 100. We are finalizing the option of electing an HLDT/MDPV alternative phase-in that meets the 500% criteria, including the 100% criteria for model years 2012 and earlier, as proposed. However, based upon comments received, we are revising this provision to allow additional flexibilities. The comments pointed out that such a requirement would pose significant hardship for limited-line manufacturers who produce only a narrow range of HLDTs/MDPVs. For example, a manufacturer who only sells one configuration in the HLDT/MDPV category would not have the option of certifying only 25% of these vehicles in 2012. To meet our proposed criteria, that manufacturer would have to ensure that the model is fully compliant in 2012 (i.e., 100% of their HLDTs/MDPVs), eliminating any flexibility for these manufacturers. To address this concern, we are allowing HLDT/MDPV manufacturers the additional option of employing a phase-in not meeting the early year requirement (sum of 100 in 2012) as long as their full phase-in is accelerated. Under this option, we are requiring only that the full alternative phase-in equation may meet or exceed 600% for HLDTs/MDPVs. We believe this will still yield environmental benefits as quickly as possible, while not putting an unreasonable burden on limited-line manufacturers of HLDTs/MDPVs. Manufacturers with limited HLDT/MDPV product offerings will still achieve 100 percent phase-in of the HLDTs/MDPVs before the end of the phase-in schedule in 2015. For example, a manufacturer that only has one HLDT/MDPV family and achieves 100% phase-in in 2013 would have a sum of 600% in the equation:

$$(6 \times 0) + (5 \times 0) + (4 \times 0) + (3 \times 100\%) + (2 \times 100\%) + (1 \times 100\%) = 600\%$$

As noted above, phase-in schedules, in general, add little flexibility for manufacturers with limited product offerings because a manufacturer with only one or two test groups cannot take full advantage of a 25/50/75/100 percent or similar phase-in. Therefore, consistent with our proposal which reflected the recommendations of the Small Advocacy Review Panel (SBAR Panel), which we discuss in more detail later in section V.E, manufacturers meeting EPA's definition of ''small volume manufacturer'' will be exempt from the phase-in schedules and will be required simply to comply with the final 100% compliance requirement. This provision will only apply to small volume manufacturers and not to small test groups of larger manufacturers.

5. Certification Levels

Manufacturers typically certify groupings of vehicles called durability groups and test groups, and they have some discretion on what vehicle models are placed in each group. A durability group is the basic classification used by manufacturers to group vehicles to demonstrate durability and to predict deterioration. A test group is a basic classification within a durability group used to demonstrate compliance with FTP 75 °F standards.[149] For Cold CO, manufacturers certify on a durability group basis, whereas for 75 °F FTP testing, manufacturers certify on a test group basis. In keeping with the current cold CO standards, we are requiring testing on a durability group basis for the cold temperature NMHC standard, as proposed (see 71 FR 15850). Manufacturers will have the option of certifying on the smaller test group basis, as is allowed under current cold CO standards. Testing on a test group basis will require more tests to be run by manufacturers but may provide them with more flexibility within the averaging program. In either case, the worst-case vehicle within the group from an NMHC emissions standpoint must be tested for certification.

For the new standard (and consistent with certification for most section 202 standards), manufacturers will declare a family emission limit (FEL) for each group either at, above, or below the fleet averaging standard. The FEL must be based on the certification NMHC level, including deterioration factor, plus the

[149] 40 CFR 86.1803–01.

compliance margin manufacturers feel is needed to ensure in-use compliance. The FEL becomes the standard for each group, and each group could have a different FEL so long as the projected sales-weighted average level met the fleet average standard at time of certification. Like the standard, the FEL will be set at one significant digit to the right of the decimal point. Manufacturers will compute a sales-weighted average for the NMHC emissions at the end of the model year and then determine credits generated or needed based on how much the average is above or below the standard.

One commenter questioned if the FEL approach would interfere with the Tier 2 program, which uses bins rather than FELs. We do not believe that the two approaches create a conflict because compliance with Tier 2 and the cold temperature standards operate independent of one another. Tier 2 standards and bins are not a factor when manufacturers demonstrate compliance with the cold temperature standards.

6. Credit Program

As described above, we are finalizing proposed provisions allowing manufacturers to average the FELs for NMHC emissions by sales of their vehicles and comply with a corporate average NMHC standard (see 71 FR 15850). In addition, we are finalizing, as proposed, banking and trading provisions: when a manufacturer's average NMHC emissions from vehicles certified and sold falls below the corporate average standard, the manufacturer may generate credits that it could save for later use (banking) or transfer to another manufacturer (trading). Manufacturers must consume any credits if their corporate average NMHC emissions were above the applicable standard for the weight class.

As proposed, credits may be generated prior to, during, and after the phase-in period. Manufacturers could certify LDVs/LLDTs to standards as early as the 2008 model year (2010 for HLDTs/MDPVs) and receive early NMHC credits for their efforts. They could use credits generated under these ''early banking'' provisions after the phase-in begins in 2010 (2012 for HLDTs/MDPVs).

One organization opposed the use of credits from one weight class to offset debits in another weight class. However, EPA views the averaging, banking, and trading (ABT) provisions as an important element in setting emission standards reflecting the greatest degree of emission reduction achievable, considering factors including cost and lead time. If there are vehicles that will be particularly costly or have a particularly hard time coming into compliance with the standard, the ABT program allows a manufacturer to adjust the compliance schedule accordingly, without special delays or exceptions having to be written into the rule. This is an important flexibility especially given the current uncertainty regarding optimal technology strategies for any given vehicle line. In these circumstances, ABT allows us to consider a more stringent emission standard than might otherwise be achievable under the Clean Air Act, since ABT reduces the cost and improves the technological feasibility of achieving the standard. By enhancing the technological feasibility and cost-effectiveness of the new standard, ABT allows the standard to be attainable earlier than might otherwise be possible. Also see, e.g., 69 FR 38996–97, (June 19, 2004), which discusses an ABT program for nonroad diesel engines, which allows for use of credits across engine families. This type of credit use can be important in enhancing standards' overall technical feasibility, cost-effectiveness, and pace of implementation.

a. How Credits Are Calculated

As proposed, the corporate average for each weight class will be calculated by computing a sales-weighted average of the FEL NMHC levels to which each group was certified. As discussed above, manufacturers will group vehicles into durability groups or test groups and establish an FEL for each group. This FEL becomes the standard for that group. Consistent with FEL practices in other vehicle standards, manufacturers may opt to select an FEL above the test level. The FEL will be used in calculating credits. The number of credits or debits will then be determined using the following equation:

$$\text{Credits or Debits} = (\text{Standard} - \text{Sales-weighted average of FELs to nearest tenth}) \times \text{Actual Sales}$$

If a manufacturer's average was below the 0.3 g/mi corporate average standard for LDVs/LDTs (below 0.5 g/mi for HLDTs/MDPVs), credits would be generated. These credits could then be used in a future model year when its average NMHC might exceed the 0.3 or the 0.5 standard. Conversely, if the manufacturer's fleet average was above the corporate average standard, banked credits could offset the difference, or credits could be purchased from another manufacturer.

b. Credits Earned Prior to Primary Phase-In Schedule

As proposed, we are finalizing provisions allowing manufacturers to earn early emissions credits if they introduce vehicles that comply with the new standards early and the corporate average of those vehicles is below the applicable standard. Early credits could be earned starting in model year 2008 for vehicles meeting the 0.3 g/mile standard and in 2010 for vehicles meeting the 0.5 g/mile standard. These emissions credits generated before the start of the phase-in could be used both during and after the phase-in period and have all the same properties as credits generated by vehicles subject to the primary phase-in schedule. As mentioned in section V.B.4.b above, we are also finalizing a provision that allows manufacturers to apply for an alternative phase-in schedule for vehicles that are introduced early. The alternative phase-in and early credits provisions would operate independent of one another.

c. How Credits Can Be Used

A manufacturer can use credits in any future year when its corporate average is above the standard, or it can trade (transfer) the credits to other manufacturers. Because of separate sets of standards for the different weight categories, we are finalizing as proposed that manufacturers compute their corporate NMHC averages separately for LDV/LLDTs and HLDTs/MDPVs. Credit exchanges between LDVs/LLDTs and HLDTs/MDPVs will be allowed. This will provide added flexibility for fuller-line manufacturers who may have the greatest challenge in meeting the new standards due to their wide disparity of vehicle types/weights and emissions levels.

d. Discounting and Unlimited Life

Credits will allow manufacturers a way to address unexpected shifts in their sales mix. The NMHC emission standards in this program are quite stringent and do not present easy opportunities to generate credits. Therefore, we will not discount unused credits. Further, the degree to which manufacturers invest the resources to achieve extra NMHC reductions provides true value to the manufacturer and to the environment. We do not want to take measures to reduce the incentive for manufacturers to bank credits, nor do we want to take measures to encourage unnecessary credit use. Consequently, NMHC credits will not have a credit life limit. However, credits may only be used to offset deficits

accrued with respect to the new 0.3/0.5 g/mile cold temperature standards, and cannot be used in Tier 2 or other programs.

e. Deficits Can Be Carried Forward

When a manufacturer has an NMHC deficit at the end of a model year—that is, its corporate average NMHC level is above the required corporate average NMHC standard—the manufacturer will be allowed to carry that deficit forward into the next model year. To prevent deficits from being carried forward indefinitely, we are finalizing, as proposed, that manufacturers will not be permitted to run a deficit for two years in a row. A deficit carry-forward may only occur after the manufacturer used any banked credits. If the deficit still exists and the manufacturer chooses not to, or is unable to, purchase credits, the deficit will be carried over. At the end of that next model year, the deficit must be covered with an appropriate number of credits that the manufacturer generated or purchased. Any remaining deficit means that the manufacturer is not in compliance and can be subject to an enforcement action.

We believe that it is reasonable to provide this flexibility to carry a deficit for one year given the uncertainties that manufacturers face with changing market forces and consumer preferences, especially during the introduction of new technologies. These uncertainties can make it hard for manufacturers to accurately predict sales trends of different vehicle models.

f. Voluntary Heavy-Duty Vehicle Credit Program

In addition to MDPV requirements in Tier 2, we also currently have chassis-based emissions standards for other complete heavy-duty vehicles (e.g., large pick-ups and cargo vans) above 8,500 pound GVWR. However, these standards do not include cold temperature CO standards. As noted below in section V.B.6.a, we did not propose to apply cold temperature NMHC standards to heavy-duty gasoline vehicles due to a current lack of emissions data on which to base such standards. Accordingly, the final rule does not contain any provisions for heavy-duty vehicle standards or credit program.

Our proposal discussed a few ideas for voluntary approaches where manufacturers could earn credits by including heavy-duty gasoline vehicles in the program. We only received one comment regarding a voluntary credit program for heavy-duty gasoline vehicles. The organization that submitted the comment opposed the creation of NMHC credits applicable to other vehicle categories generated by reductions from heavy-duty vehicles. In light of this lack of support, as well as insufficient data, we are not including a heavy-duty standard or credit program at this time. We plan to revisit the need for and feasibility of standards as data become available.

7. Additional Vehicle Cold Temperature Standard Provisions

a. Applicability

As proposed, the new cold temperature NMHC standards apply to all gasoline-fueled light-duty vehicles and MDPVs sold nationwide. The cold NMHC standards do not apply to diesel vehicles, alternative-fueled vehicles, or to the non-gasoline portion of flex fuel vehicles (FFVs).[150] We are finalizing as proposed that FFVs will still require certification to the applicable cold NMHC standard, though only when operated on gasoline. FFVs operating on ethanol are not subject to the cold standard. When manufacturers submit their application for certification for FFVs (such as FFVs that can run on gasoline or E85 [151]), the FFVs must have been tested using gasoline. The application must also include a statement that either confirms the same control strategies used with gasoline will be used when operating on ethanol, or that identifies any differences as an Auxiliary Emission Control Device (AECD). Again, dedicated alternative-fueled vehicles are not covered.

We requested comment on standards for vehicles operating on fuels other than gasoline. Vehicle manufacturers agreed that the cold NMHC standards should not apply to diesels and alternative fuel vehicles, stating that the standard would capture all but a very small percentage of air toxics emissions from the light-duty onroad fleet. We also received comments in support of a standard for diesel vehicles. One organization argued that the EPA must exercise its authority to gather the necessary data and establish a cold temperature NMHC standard for diesel, alternative fuel, and FFVs, or explain why such standards are not needed.

A comprehensive assessment of appropriate standards for diesel vehicles will require a significant amount of investigation and analysis of issues such as feasibility and costs. While we have significant amounts of data on which to base our final standards for light-duty gasoline vehicles, we have very little data for light-duty diesels. Currently, diesel vehicles are not subject to the cold CO standard, so, unlike the situation for gasoline motor vehicles where some certification data under cold temperature conditions are available, there is very limited data available on diesel cold temperature emissions. Also, many manufacturers are currently in the process of developing their diesel product offerings and the cold temperature performance of these vehicles cannot yet be evaluated.

Therefore, at this time, the cold NMHC standards will not apply to light-duty diesel vehicles. We will continue to evaluate data for these vehicles as they enter the fleet and will reconsider the need for standards. We have adopted cold temperature FTP testing for diesels as part of the Fuel Economy Labeling rulemaking, including NMHC measurement.[152] These testing data would allow us to assess diesel NMHC certification levels over time. There are sound engineering reasons, however, to expect cold NMHC emissions for diesel vehicles to be as low as or even lower than those required for gasoline vehicles in the finalized standards. This is because diesel engines operate with leaner air-fuel mixtures compared to gasoline engines. Therefore diesels have fewer engine-out NMHC emissions due to the abundance of oxygen and more complete combustion. A very limited amount of confidential manufacturer-furnished information is consistent with this engineering hypothesis.

With respect to FFVs, although FFVs are currently required to certify to the cold CO standards at 20 °F while operating on gasoline, there is no cold testing requirement for these vehicles while operating on the alternative fuel at 20 °F. There are little data upon which to evaluate NMHC emissions when operating on alternative fuels at cold temperatures. For FFVs operating on E85,[153] it is difficult to develop a reasonable standard due to a lack of fuel specifications, testing protocols, and test data for the 20 °F cold CO cycle. Standards reflecting use of other fuels such as methanol and natural gas pose similar uncertainty. As in the case of diesels, it will take time to gain an

[150] In this preamble, we use the term flex fuel vehicle (FFV) to mean a vehicle capable of operating on two or more different fuel types, either separately or simultaneously. Most FFVs available today run on gasoline and ethanol mixtures. EPA regulations use the term ''multi-fuel vehicle'' when referring to these vehicles.

[151] E85 is a fuel mixture consisting of 85% ethanol and 15% gasoline.

[152] ''Fuel Economy Labeling of Motor Vehicles; Revisions to Improve Calculations of Fuel Economy Estimates,'' Final Rule, 71 FR 77872, December 27, 2006.

[153] E85 is a fuel mixture consisting of 85% ethanol and 15% gasoline typical of a summer blend of an ethanol based alternative fuel.

understanding of these other technologies in sufficient detail to support a rulemaking. Therefore, as proposed, we are not adopting a cold NMHC testing requirement for FFVs while operating on the non-gasoline fuel or for alternative fuel vehicles under this final rulemaking. However, for FFVs, we are requiring confirmation that emission controls used when operating on gasoline are also used when operating on the non-gasoline fuel unless a reasonable exception why they cannot be used is declared. We will continue to investigate these other technologies.

Between the proposed rule and today's final rule, we conducted an initial emissions testing program on a limited number of FFVs operated on several blends of gasoline and ethanol at normal test temperatures and 20 °F.[154] These vehicles were tested on summer gasoline and E85 under normal test temperatures and on winter gasoline and E70[155] at 20 °F. At 20 °F, HC emissions were significantly higher with E70 fuel than with gasoline, with the HC emissions largely consisting of unburned ethanol generated during the cold start. The reason for the elevated HC emission levels is that during cold starts, ethanol, which is an MSAT, does not readily burn in the combustion chamber due to its higher boiling point (approximately 180 °F). FFVs must start on the gasoline portion of the alternative fuel, which can compose as little as 15% of the alternative fuel. Ethanol emissions are further increased at colder temperatures because the lower engine start temperature will require an increasing amount of the fuel mixture to start the vehicle and subsequently more unburned ethanol can escape the combustion process. However, the testing also indicates significantly lower benzene emission levels for FFVs when operating on the high ethanol blends. Benzene was 30% to 90% lower on E85 and approximately 30% lower on E70 compared to the levels when run on gasoline. Acetaldehyde emissions are significantly higher with E85 relative to emissions from gasoline-fueled vehicles, since it is a byproduct of partial (i.e., incomplete) ethanol combustion. In addition, some other VOC-based toxics emissions were generally lower with the vehicles running on E85 and E70 compared with gasoline.

There are many issues that must be resolved before we are able to establish a cold temperature standard for FFVs when run on E85 (and E70 at cold temperatures). These include feasibility (i.e., levels that are technically achievable), cost, test procedures, test fuel specifications and the appropriate form of the standard. For example, because much of the VOC emissions from FFVs operating on the high ethanol blends at cold temperatures is unburned ethanol, we may need to consider whether higher NMHC level would be justified or whether an NMHC minus ethanol standard would have merit. We plan to address these issues as part of a broader assessment of E85 emissions regulatory issues in the future.

One organization commented that EPA must establish cold temperature standards for heavy-duty vehicles. Since there is no 20 °F cold standard for heavy-duty vehicles, we have no data for heavy-duty gasoline-fueled vehicles, but we would expect a range of emissions performance similar to that of lighter gasoline-fueled trucks. Due to the lack of test data on which to base feasibility and cost analyses, we did not propose cold temperature NMHC standards for these vehicles. As mentioned previously, we plan to revisit this issue when sufficient data become available.

b. Useful Life

We are adopting the proposed requirement that the new cold temperature standards must be met over the full useful life of the vehicle, consistent with other emissions standards for Tier 2 vehicles. The ''useful life'' of a vehicle means the period of use or time during which an emission standard applies to light-duty vehicles and light-duty trucks.[156] Given that we expect that manufacturers will make calibration or software changes to existing Tier 2 technologies, it is reasonable for the new cold temperature standards to have the same useful life as the Tier 2 standards. For LDV/LLDT, the full useful life values will be 120,000 miles or 10 years, whichever comes first, and for HLDT/MDPV, full useful life is 120,000 miles or 11 years, whichever comes first.[157] We did not receive any comments regarding these useful life provisions.

c. High Altitude

We do not expect emissions to be significantly different at high altitude due to the use of common emissions control calibrations. Limited data submitted by a manufacturer suggest that FTP emissions performance at high altitude generally follows sea level performance. Furthermore, there are very limited cold temperature testing facilities at high altitudes. Therefore, under normal circumstances, manufacturers will not be required to submit vehicle test data for high altitude. Instead, manufacturers will be required to submit an engineering evaluation indicating that common calibration approaches will be utilized at high altitude. Any deviation from sea level in emissions control practices must be included in the auxiliary emission control device (AECD) descriptions submitted by manufacturers at certification. In addition, any AECD specific to high altitude must include engineering emission data for EPA evaluation to quantify any emission impact and validity of the AECD. We did not receive any comments regarding these provisions relating to altitude.

d. In-Use Standards for Vehicles Produced During Phase-In

As proposed, we are finalizing provisions for an in-use standard that is 0.1 g/mile higher than the certification FEL for any given test group for a limited number of model years. For example, a test group with a 0.2 g/mile FEL would have an in-use standard of 0.3 g/mile. This would not change the FEL or averaging approaches and would only apply in cases where EPA tests vehicles in-use to ensure emissions compliance. Tables V.B–3 and V.B–4 provide the finalized schedule for the availability of the in-use standards.

[154] ''Flex Fuel Vehicles (FFVs) VOC/PM Cold Temperature Characterization When Operating on Ethanol (E10, E70, E85)'' February, 2007.

[155] E70 is a fuel mixture consisting of 70% ethanol and 30% gasoline typical of a winter blend of an ethanol based alternative fuel.

[156] 40 CFR 86.1803–01.

[157] 40 CFR 86.1805–04.

TABLE V.B–3.—SCHEDULE FOR IN-USE STANDARDS FOR LDVS/LLDTS

Model year of introduction	2008	2009	2010	2011	2012	2013
Models years that the in-use standard is available for carry-over test groups	2008 2009 2010 2011	2009 2010 2011 2012	2010 2011 2012 2013	2011 2012 2013	2012 2013 2014	2013 2014

TABLE V.B–4.—SCHEDULE FOR IN-USE STANDARDS FOR HLDVS/MDPVS

Model year of introduction	2010	2011	2012	2013	2014	2015
Models years that the in-use standard is available for carry-over test groups	2010 2011 2012 2013	2011 2012 2013 2014	2012 2013 2014 2015	2013 2014 2015	2014 2015 2016	2015 2016

This approach is similar to the one adopted in the Tier 2 rulemaking.[158] As we have indicated, the standards we are finalizing will be more challenging for some vehicles than for others. With any new technology, or even with new calibrations of existing technology, there are risks of in-use compliance problems that may not appear in the certification process. In-use compliance concerns may discourage manufacturers from applying new calibrations or technologies. Thus, we believe it is appropriate, for the first few years, for those vehicles most likely to require the greatest applications of effort to provide assurance to the manufacturers that they will not face recall if they exceed standards in use by a specified amount.

The in-use standards will be available for the first few model years of sales after a test group meeting the new standards is introduced, according to a schedule that provides more years for test groups introduced earlier in the phase-in. This schedule provides manufacturers with time to determine the in-use performance of vehicles and learn from the earliest years of the program to help ensure that vehicles introduced after the phase-in period meet the final standards in-use. The in-use compliance margin only applies to carry-over models. That is, once a test group is certified to the new standards, it will be carried over to future model years.

We received one comment on the provisions for an interim in-use standard. A manufacturer commented that the EPA should consider allowing an interim in-use increment greater than 0.1 g/mi to account for known variability in in-use conditions and vehicle technologies. However, we did not receive any data that supported the manufacturer's assertion, nor any indication of an acceptable increase beyond the 0.1 g/mi increment. Furthermore, no other manufacturers commented on this provision. We believe the 0.1 g/mi increment is sufficient and that anything greater may result in a reduction of emission control. Therefore, the interim in-use standard is finalized as proposed.

8. Monitoring and Enforcement

As proposed, manufacturers must either report that they met the relevant corporate average standard in their annual reports to the Agency, or show via the use of credits that they have offset any exceedance of the corporate average standard. Manufacturers must also report their credit balances or deficits. EPA will monitor the program.

As in Tier 2, the averaging, banking and trading program will be enforced through the certificate of conformity that manufacturers must obtain in order to introduce any regulated vehicles into commerce.[159] The certificate for each test group will require all vehicles to meet the emissions level to which the vehicles were certified, and will be conditioned upon the manufacturer meeting the corporate average standard within the required time frame. If a manufacturer fails to meet this condition, the vehicles causing the corporate average exceedance will be considered to be not covered by the certificate of conformity for that engine family. A manufacturer will be subject to penalties on an individual vehicle basis for sale of vehicles not covered by a certificate.

EPA will review the manufacturer's sales to designate the vehicles that caused the exceedance of the corporate average standard. We will designate as nonconforming those vehicles in those test groups with the highest certification emission values first, continuing until we reach a number of vehicles equal to the calculated number of noncomplying vehicles, as determined above. In a test group where only a portion of vehicles are deemed nonconforming, we will determine the actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group number. Manufacturers will be liable for penalties for each vehicle sold that is not covered by a certificate.

As proposed, we will condition certificates to enforce the requirements that manufacturers not sell credits that they have not generated. A manufacturer that transfers credits it does not have will create an equivalent negative credit balance or deficit that the manufacturer must make up by the reporting deadline for the same model year. A credit deficit in such cases at the reporting deadline will be a violation of the conditions under which EPA issued the certificate of conformity. EPA will identify the nonconforming vehicles in the same manner described above and nonconforming vehicles will not be covered by the certificate.

In the case of a trade that resulted in a negative credit balance that a manufacturer could not cover by the reporting deadline for the model year in which the trade occurred, both the buyer and the seller will be liable, except in cases involving fraud. We believe that holding both parties liable will induce the buyer to exercise diligence in assuring that the seller has or will be able to generate appropriate credits and will help to ensure that inappropriate trades do not occur.

We did not propose any new compliance monitoring activities or programs for vehicles. These vehicles will be subject to the certification testing provisions of the CAP2000

[158] "Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements," Final Rule, 65 FR 6796, February 10, 2000.

[159] "Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements," Final Rule, 65 FR 6797, February 10, 2000.

rule.[160] We are not requiring manufacturer in-use testing to verify compliance. There is no cold CO manufacturer in-use testing requirement today (similarly, we do not require manufacturer in-use testing for SCO3 standards under the Supplemental Federal Test Procedures (SFTP) program largely due to the limited availability of the test facilities). As noted earlier, manufacturers have limited cold temperature testing capabilities and we believe these facilities will be needed for product development and certification testing. However, we have the authority to conduct our own in-use testing program for exhaust emissions to ensure that vehicles meet standards over their full useful life. We will pursue remedial actions when substantial numbers of properly maintained and used vehicles fail any standard in-use. We also retain the right to conduct Selective Enforcement Auditing of new vehicles at manufacturers' facilities.

The use of credits will not be permitted to address Selective Enforcement Auditing or in-use testing failures. The enforcement of the averaging standard will occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity will be conditioned upon compliance with the averaging provisions. If a manufacturer failed to meet the corporate average standard and did not obtain appropriate credits to cover its shortfalls in that model year or in the subsequent model year (see deficit carry forward provision in section V.B.5.e.), then the certificate for the affected test groups will be void for all past, present, and future sales related to that certificate. Manufacturers will need to track their certification levels and sales unless they produced only vehicles certified to NMHC levels below the standard and did not plan to bank credits. We did not receive any comments on the provisions regarding Selective Enforcement Auditing or conditions of certification.

C. What Evaporative Emissions Standards Are We Finalizing?

We are finalizing as proposed a set of numerically more stringent evaporative emission standards for all light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles. The standards we are finalizing are equivalent to California's LEV II standards, and these standards are shown in Table V.C–1. The new standards represent about a 20 to 50 percent reduction (depending on vehicle weight class and type of test) in the diurnal plus hot soak standards currently in place for Tier 2 vehicles.[161] As with the current Tier 2 evaporative emission standards, the standards we are finalizing vary by vehicle weight class. The increasingly higher standards for heavier weight class vehicles account for larger vehicle sizes and fuel tanks (non-fuel and fuel emissions).[162]

TABLE V.C–1.—FINAL EVAPORATIVE EMISSION STANDARDS

[Grams of hydrocarbons per test]

Vehicle class	3-Day diurnal plus hot soak	Supplemental 2-day diurnal plus hot soak
LDVs	0.50	0.65
LLDTs	0.65	0.85
HLDTs	0.90	1.15
MDPVs	1.00	1.25

1. Current Controls and Feasibility of the New Standards

As described earlier, we are reducing the numerical level of the evaporative emission standards applicable to diurnal and hot soak emissions from light-duty vehicles and trucks by about 20 to 50 percent. These new standards are meant to be effectively the same as the evaporative emission standards in the California LEV II program. Although the new standards are numerically more stringent, as we explained at proposal, we believe they are essentially equivalent to the current Tier 2 standards because of differences in testing requirements (see 71 FR 15854; also see section V.C.5 below for further discussion of such test differences, e.g., test temperatures and fuel volatilies). As discussed in the proposal, this view is supported by manufacturers and by current industry practices. Based on this understanding, we do not project additional VOC or air toxics reductions from the evaporative standards we are finalizing today.[163] Also, we do not expect additional costs since we expect that manufacturers will continue to produce 50-state evaporative systems. Therefore, harmonizing the federal and California LEV–II evaporative emission standards will codify (i.e., lock in) the approach manufacturers have already indicated they are taking for 50-state evaporative systems.

We believe this action is an important step to ensure that the federal standards reflect the lowest possible evaporative emissions, and it also will provide states with certainty that the emissions reductions we project to occur due to 50-state compliance strategies will in fact occur. In addition, the new standards will assure that manufacturers continue to use available fuel system materials to minimize evaporative emissions.

In the proposal, we considered but did not propose more stringent evaporative requirements contained in the partial zero-emission vehicle (PZEV) portion of California's LEV II program. The LEV II program includes PZEV credits for vehicles that achieve near zero emissions (e.g., LDV evaporative emission standards for both the 2-day and 3-day diurnal plus hot soak tests are 0.35 grams/test, which are more stringent than the standards finalized today). State and local air quality organizations commented that EPA should adopt the PZEV evaporative standards. In addition, they indicated that California Air Resources Board estimates the additional per vehicle cost

[160] 71 FR 2810, January 17, 2006.

[161] Diurnal emissions (or diurnal breathing losses) means evaporative emissions as a result of daily temperature cycles or fluctuations for successive days of parking in hot weather. Hot soak emissions (or hot soak losses) are the evaporative emissions from a parked vehicle immediately after turning off the hot engine. For the evaporative emissions test procedure, diurnal and hot soak emissions are measured in an enclosure commonly called the SHED (Sealed Housing for Evaporative Determination).

[162] Larger vehicles may have greater non-fuel evaporative emissions, probably due to an increased amount of interior trim, vehicle body surface area, and larger tires.

[163] U.S. EPA, Office of Air and Radiation, Update to the Accounting for the Tier 2 and Heavy-Duty 2005/2007 Requirements in MOBILE6, EPA420–R–03–012, September 2003.

for a PZEV evaporative emission system to be about $10.20. They commented that EPA should consider the introduction of a similar standard for some vehicles. Moreover, they urged us to commit in the final rule to pursue actions to achieve further evaporative emission reductions in the future.

However, auto manufacturers supported the proposed evaporative emission standards. They indicated that, as EPA tentatively concluded in the proposed rule, it would be inappropriate for EPA to propose more stringent standards. Manufacturers noted that PZEVs have been limited to a small fraction of the light-duty fleet, mainly small 4-cylinder passenger cars, and that the PZEV standard has not proven feasible across the light-duty fleet. Furthermore, it is significantly more costly to comply with the PZEV evaporative emission standard because of significant modifications needed to the evaporative emission control system and fuel system. Also, the auto manufacturers suggested that emission benefits, if any, of the PZEV standard would be minimal.

We have decided not to set more stringent PZEV-equivalent evaporative standards at this time. The limited PZEV vehicles available today require additional evaporative emissions technology or hardware (e.g., modifications to fuel tank and secondary canister) beyond what will be needed for vehicles meeting the new standards that we are adopting today. As we described in the proposed rule, at this time, we need to better understand the evaporative system modifications (i.e., technology, costs, lead time, etc.) potentially needed across the vehicle fleet to meet PZEV-level standards before we can fully evaluate whether it is feasible to consider more stringent standards. For example, at this point we cannot determine whether the PZEV technologies could be used fleetwide or on only a limited set of vehicles. Thus, in the near term, we lack any of the information necessary to determine if further reductions are feasible, and if they could be achievable considering cost, energy and safety issues. Moreover, sufficient new information or data was not provided from commenters on the proposed rule to close these gaps in our understanding. However, we intend to consider more stringent evaporative emission standards in the future.

2. Evaporative Standards Timing

As proposed, we will implement today's evaporative emission standards in model year 2009 for LDVs/LLDTs and model year 2010 for HLDTs/MDPVs. Many manufacturers already have begun or completed model year 2008 certification. Thus, model year 2009 is the earliest practical start date of new standards for LDVs/LLDTs. For HLDTs/MDPVs, the phase-in of the existing Tier 2 evaporative emission standards ends in model year 2009. Thus, the model year 2010 is the earliest start date possible for HLDTs/MDPVs. As discussed earlier, since we believe that manufacturers already meet these standards, there is no need for additional lead time beyond the implementation dates we are finalizing.

3. Timing for Flex Fuel Vehicles

For FFVs, the phase-in schedule we are finalizing for the new evaporative standards is somewhat different than the phase-in schedule we proposed for these vehicles. In the proposal, we recognized that manufacturers will need a few additional years of lead time to adjust their evaporative systems to comply with the new evaporative emission standards for FFVs operating on the non-gasoline fuel, typically E85 (see 71 FR 15855). The existing regulations require that FFVs or E85 vehicles (vehicles designed to operate on fuel that is 85 percent ethanol and 15 percent gasoline) certify on both gasoline and E10 (E10 is a fuel containing 10 percent ethanol and 90 percent gasoline) for the evaporative emissions test procedure. E10 is considered the ''worst case'' test fuel for evaporative emissions, because it is the ethanol blend that results in greater evaporative emissions. Thus, E10 is the evaporative certification test fuel for E85 vehicles. Thus far, only a few FFV systems have been certified to California LEV–II standards on E10 fuel. Vehicles not certified with E10 in California are sold as gasoline-fueled only vehicles rather than FFVs. Some manufacturers are still developing FFVs for future introduction and the evaporative control systems in some cases have not been fully field tested and certified on the E10 fuel. Therefore, certifying FFVs to the new standards on the E10 fuel (which is required by Tier 2) represents a new requirement for manufacturers.

We proposed that FFVs would need to meet the new evaporative emission certification standards on the non-gasoline fuel beginning in the fourth year of the program—2012 for LDVs/LLDTs and 2013 for HLDTs/MDPVs. We proposed that the evaporative emission standards would be implemented in 2009 for LDVs/LLDTs and 2010 for HLDTs/MDPVs for the FFVs when run on gasoline (along with gasoline vehicles that are not flex fuel). At the time of proposal, we believed this additional three years of lead time would provide sufficient time for manufacturers to make adjustments to their new evaporative systems for FFVs, which are limited product lines.

Auto manufacturers commented that additional lead time and flexibility beyond that proposed is needed for the non-gasoline portion of FFVs. Manufacturers requested the following revisions to the proposed timing of the new evaporative emission standards for the non-gasoline portion of FFVs:

—combine the LDV/LLDT and HLDT/MDPV fleets,
—implement the phase-in of this combined fleet starting in 2013, and
—permit a three-year phase-in of 30 percent/60 percent/100 percent for this combined fleet.

The auto industry indicated that for many manufacturers of FFVs, the new standards are considered new emission requirements for their FFVs. This is unlike the situation for gasoline vehicles, where EPA intends to codify what is already being done in practice rather than imposing any new requirements on gasoline vehicles. For most manufacturers of FFVs, there is no demonstrated capability at this time to meet the new evaporative emission standards from which to begin planning compliance to the new standards. Also, manufacturers expressed that there are important enough differences between fuels in the gasoline and FFVs (or the non-gasoline portion of FFVs) that independent evaluations of FFVs on gasoline and the non-gasoline fuel are warranted.

In addition, auto manufacturers stated that as interest in alternative fuels has increased due to energy supply concerns, they are suddenly considering widespread introduction of FFV models, across entire product lines. What was at first a limited offering of a few models may become more offerings across a manufacturer's full line of products in the timeframe of this rulemaking. The auto industry argues that these new developments justify lead time provisions commensurate with those when a new emission requirement applies across a manufacturer's light-duty product line.

They also indicated that model renewals provide the most cost-effective timing for the introduction of new emissions capability to meet the new standards. At this time, some manufacturers plan model renewals for multiple vehicle lines from model years 2013 to 2015. Allowing a three-year phase-in for the non-gasoline portion of FFVs provides more opportunities for scheduled model renewals to coincide

with implementation dates for the new standards. Planning, engineering, and development activities needed to meet these new standards can be incorporated into the model redesign activities.

We believe that many of the concerns presented by manufacturers supporting additional lead time are valid. Most manufacturers have less experience meeting the new standards on the non-gasoline portion of FFVs compared to gasoline vehicles. The new standards will apply beginning in model year 2012 with a three-year phase-in, 30/60/100 percent, for LDVs/LLDTs and HLDTs/MDPVs grouped together (see Table V.C–2). Although auto manufacturers requested a start date of 2013 for a combined fleet, we believe the additional flexibilities we are providing (three-year phase-in and grouping LDVs/LLDTs and HLDTs/MDPVs together) is sufficient flexibility for the production of FFVs. There is enough time between now and the implementation dates or phase-in schedule (2012 through 2014) for manufacturers to coordinate model renewals with the introduction of broader product offerings of FFVs. See the Summary and Analysis of Comments of this rulemaking for further discussion of comments and our responses to comments.

TABLE V.C–2.—PHASE-IN SCHEDULE FOR NON-GASOLINE PORTION OF FFVS: EVAPORATIVE EMISSION STANDARDS*

Vehicle GVWR (Category)	2012	2013	2014
≤6000 lbs (LDVs/LLDTs) and > 6000 lbs (HLDTs and MDPVs)	30%	60%	100%

*Phase-in schedules are grouped together for LDVs/LLDTs and HLDTs/MDPVs.

Provisions for in-use evaporative emission standards similar to those described below in section V.C.4 do not apply to the non-gasoline portion of FFVs. We believe that three to five additional years to prepare vehicles (or evaporative families) to meet the certification standards, and to simultaneously make vehicle adjustments from the federal in-use experience of other vehicles (including those that are not FFVs) is sufficient to resolve any issues for FFVs. Also, we did not receive comments requesting additional flexibility beyond the phase-in schedule for certification vehicles discussed earlier. Therefore, we are finalizing our proposal not to provide additional in-use compliance margin to FFVs. According to the phase-in schedule for a combined fleet in Table V.C–2, the evaporative emission standards will apply both for certification and in-use beginning in 2012 for LDVs/LLDTs and HLDTs/MDPVs.

4. In-Use Evaporative Emission Standards

As described earlier in this section, we are adopting evaporative emission standards that are equivalent to California's LEV II standards. Currently, the Tier 2 evaporative emission standards are the same for certification and in-use vehicles. However, the California LEV II program permits manufacturers to meet less stringent standards in-use for a short time in order to account for potential variability in-use during the initial years of the program when technical issues are most likely to arise.[164] The LEV II program specifies that in-use evaporative emission standards of 1.75 times the certification standards will apply for the first three model years after an evaporative family is first certified to the LEV II standards (only for vehicles introduced prior to model year 2007, the year after 100 percent phase-in).[165] [166] An interim three-year period was considered sufficient to accommodate any technical issues that may arise.

Federal in-use conditions may raise unique issues (e.g., salt/ice exposure) for evaporative systems certified to the new standards (which are equivalent to the LEV II standards), and thus, we will adopt a similar, interim in-use compliance provision for vehicles subject to these new federal standards. As with the LEV II program, this provision will enable manufacturers to make adjustments for unforeseen problems that may occur in-use during the first three years of a new evaporative family. We believe that a three-year period is enough time to resolve these problems, because it allows manufacturers to gain real world experience and to make adjustments to a vehicle within a typical product cycle.

Depending on the vehicle weight class and type of test, the Tier 2 certification standards are 1.3 to 1.9 times the LEV II certification standards. On average the Tier 2 standards are 1.51 times the LEV II certification standards. Thus, to maintain the same level of stringency for the in-use evaporative emission standards provided by the Tier 2 program, we will apply the Tier 2 standards in-use for only the first three model years after an evaporative family is first certified under today's new standards, instead of using the LEV II 1.75 multiplier approach described above. Since the new evaporative emission certification standards (equivalent to LEV II standards) will be implemented in model year 2009 for LDVs/LLDTs and model year 2010 for HLDTs/MDPVs, these same certification standards will apply in-use beginning in model year 2012 for LDVs/LLDTs and model year 2013 for HLDTs/MDPVs.[167] The schedule for in-use evaporative emissions standards are shown in Tables V.C.–3 and V.C.–4 below.

TABLE V.C–3.—SCHEDULE FOR IN-USE EVAPORATIVE EMISSION STANDARDS FOR LDVS/LLDTS

Model year of introduction	2009	2010	2011
Models Years That Tier 2	2009	2010	2011

[164] California Air Resources Board, ''LEV II'' and ''CAP 2000'' Amendments to the California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles, Final Statement of Reasons, September 1999.

[165] 1.75 times the 3-day diurnal plus hot soak and 2-day diurnal plus hot soak standards.

[166] For example, evaporative families first certified to LEV II standards in the 2005 model year shall meet in-use standards of 1.75 times the evaporative certification standards for 2005, 2006, and 2007 model year vehicles.

[167] For example, evaporative families first certified to the new LDV/LLDT evaporative emission standards in the 2011 model year will be required to meet the Tier 2 LDV/LLDT evaporative emission standards in-use for 2011, 2012, and 2013 model year vehicles (applying Tier 2 standards in-use will be limited to the first three years after introduction of a vehicle), and 2014 and later model year vehicles of such evaporative families will be required to meet the new LDV/LLDT evaporative emission standards in-use.

TABLE V.C–3.—SCHEDULE FOR IN-USE EVAPORATIVE EMISSION STANDARDS FOR LDVS/LLDTS—Continued

Model year of introduction	2009	2010	2011
Standards Apply to In-use Vehicles	2010 2011	2011 2012	2012 2013

TABLE V.C–4.—SCHEDULE FOR IN-USE EVAPORATIVE EMISSION STANDARDS FOR HLDTS/MDPVS

Model year of introduction	2010	2011	2012
Models Years That Tier 2 Standards Apply to In-use Vehicles	2010 2011 2012	2011 2012 2013	2012 2013 2014

5. Existing Differences Between California and Federal Evaporative Emission Test Procedures

As described above, the levels of the California LEV II evaporative emission standards are seemingly more stringent than EPA's Tier 2 standards, but due to differences in California and EPA evaporative test requirements, EPA and most manufacturers view the programs as similar in stringency. The Tier 2 evaporative program requires manufacturers to certify the durability of their evaporative emission systems using a fuel containing the maximum allowable concentration of alcohols (highest alcohol level allowed by EPA in the fuel on which the vehicle is intended to operate, i.e., a ''worst case'' test fuel). Under current requirements, this fuel would be about 10 percent ethanol by volume.[168] We are retaining these Tier 2 durability requirements for the new evaporative emissions program. California does not require this provision. To compensate for the increased vulnerability of system components to alcohol fuel, manufacturers have indicated that they will produce a more durable evaporative emission system than the Tier 2 numerical standards would imply, using the same low permeability hoses and low loss connections and seals planned for California LEV II vehicles.

As shown in Table V.C–3, in addition to the maximum alcohol fuel content for durability testing, the other key differences between the federal and California test requirements are fuel volatilities, diurnal temperature cycles, and running loss test temperatures.[169] The EPA fuel volatility requirement is 2 psi greater than that of California. The high end of EPA's diurnal temperature range is 9° F lower than that of California. Also, EPA's running loss temperature is 10° F lower than California's.

TABLE V.C–3.—DIFFERENCES IN TIER 2 AND LEV II EVAPORATIVE EMISSION TEST REQUIREMENTS

Test Requirement	EPA Tier 2	California LEV II
Fuel volatility (Reid Vapor Pressure in psi):	9	7
Diurnal temperature cycle (degrees F):	72–96	65–105
Running loss test temperature (degrees F):	95	105

Currently, California accepts evaporative emission results generated on the federal test procedure (using federal test fuel), because available data indicates the federal procedure to be a ''worst case'' procedure. In addition, manufacturers can currently obtain federal evaporative certification based upon California results (meeting LEV II standards under California fuels and test conditions), if they obtain advance approval from EPA.[170]

Auto manufacturers commented that meeting the new standards can be achieved more effectively if they are provided greater flexibility in the certification process. They recommended that EPA allow federal evaporative certification to the new standards, which are equivalent to California's LEV II standards, through California evaporative testing results without obtaining advance approval. Since we are harmonizing federal evaporative standards with the LEV II evaporative emission standards in today's rule, we believe that for the new standards it is unnecessary to continue to require this advance approval for California results. Thus, we are finalizing provisions that would allow certification to the new evaporative emission standards in accordance with California test conditions and test procedures without pre-approval from EPA.

D. Additional Exhaust Control Under Normal Conditions

We received comments recommending that EPA harmonize exhaust emissions standards with the California LEV II program. We also received comments from manufacturers stating that more stringent tailpipe standards beyond Tier 2 were not warranted and that the difference between Tier 2 and LEV II would not be meaningful. As discussed in the proposal (71 FR 15856), we did not propose to further align the federal light-duty exhaust emissions control program with that of California. We continue to believe, for reasons discussed below, that it would not be appropriate to adopt more stringent tailpipe standards under normal test conditions beyond those contained in Tier 2. It is possible that a future evaluation could result in EPA reconsidering the option of harmonizing the Tier 2 program with California's LEV-II program or otherwise seeking emission reductions beyond those of the Tier 2 program and those being finalized today.[171] A full analysis of the comments is available in the Summary and Analysis of Comments document for this final rule.

As explained earlier, section 202(l)(2) requires EPA to adopt regulations that contain standards which reflect the greatest degree of emissions reductions achievable through the application of technology that will be available, taking into consideration existing motor

[168] Manufacturers are required to develop deterioration factors using a fuel that contains the highest legal quantity of ethanol available in the U.S.

[169] Running loss emissions means evaporative emissions as a result of sustained vehicle operation (average trip in an urban area) on a hot day. The running loss test requirement is part of the 3-day diurnal plus hot soak test sequence.

[170] Currently, EPA may require comparative data from both federal and California tests.

[171] See *Sierra Club* v. *EPA*, 325 F. 3d at 480 (EPA can reasonably determine that no further reductions in MSATs are presently achievable due to uncertainties created by other recently promulgated regulatory provisions applicable to the same vehicles).

vehicle standards, the availability and costs of the technology, and noise, energy and safety factors. The cold temperature NMHC program finalized today is appropriate under section 202(l)(2) as a near-term control: that is, a control that can be implemented relatively soon and without disruption to the existing vehicle emissions control program. We did not propose additional long-term controls (i.e., controls that require longer lead time to implement) because we lack the information necessary to assess their appropriateness. We believe it will be important to address the appropriateness of further MSAT controls in the context of compliance with other significant vehicle emissions regulations (discussed below).

In the late 1990's both the EPA and the California Air Resources Board finalized new and technologically challenging light-duty vehicle/truck emission control programs. The EPA Tier 2 program focuses on reducing NO_X emissions from the light-duty fleet. In contrast, the California LEV–II program focuses primarily on reducing hydrocarbons by tightening the light-duty nonmethane organic gas (NMOG) standards.[172] Both programs will require the use of hardware and emission control strategies not used in the fleet under previously existing programs. Both programs will achieve significant reductions in emissions. Taken as a whole, the Tier 2 program presents the manufacturers with significant engineering challenges in the coming years. Manufacturers must bring essentially all passenger vehicles under the same emission control program regardless of their size, weight, and application. The Tier 2 program represents a comprehensive, integrated package of exhaust, evaporative, and fuel quality standards which will achieve significant reductions in NMHC, NO_X, and PM emissions from all light-duty vehicles in the program. These reductions will include significant reductions in MSATs. Emission control in the Tier 2 program will be based on the widespread implementation of advanced catalyst and related control system technology. The standards are very stringent and will require manufacturers to make full use of nearly all available emission control technologies.

Today, the Tier 2 program remains in its phase-in. Cars and lighter trucks will be fully phased into the program with the 2007 model year, and the heavier trucks won't be fully entered into the program until the 2009 model year. Even though the lighter vehicles will be fully phased in by 2007, we expect the characteristics of this segment of the fleet to remain in a state of transition at least through 2009, because manufacturers will be making adjustments to their fleets as the larger trucks phase in. The Tier 2 program is designed to enable vehicles certified to the LEV–II program to cross over to the federal Tier 2 program. At this point in time, however, it is difficult to predict the degree to which this will occur. The fleetwide NMOG levels of the Tier 2 program will ultimately be affected by the manner in which LEV–II vehicles are certified within the Tier 2 bin structure, and vice versa. We intend to carefully assess these two programs as they evolve and periodically evaluate the relative emission reductions and the integration of the two programs.

Today's final rule addresses toxics emissions from vehicles operating at cold temperatures. The technology to achieve this is already available and we project that compliance will not be costly. However, we do not believe that we could reasonably propose further controls at this time. There is enough uncertainty regarding the interaction of the Tier 2 and LEV–II programs to make it difficult to evaluate today what might be achievable in the future. Depending on the assumptions one makes, the LEV–II and Tier 2 programs may or may not achieve very similar NMOG emission levels. Therefore, the eventual Tier 2 baseline technologies and emissions upon which new standards would necessarily be based are not known today. Additionally, we believe it is important for manufacturers to focus in the near term on developing and implementing robust technological responses to the Tier 2 program without the distraction or disruption that could result from changing the program in the midst of its phase-in. We believe that it may be feasible in the longer term to seek additional emission reductions from the base Tier 2 program, and the next several years will allow an evaluation based on facts rather than assumptions. For these reasons, we are deferring a decision on seeking additional NMOG reductions from the base Tier 2 program.

E. Vehicle Provisions for Small Volume Manufacturers

Before issuing a proposal for this rulemaking, we analyzed the potential impacts of these regulations on small entities. As a part of this analysis, we convened a Small Business Advocacy Review Panel (SBAR Panel, or ''the Panel''). During the Panel process, we gathered information and recommendations from Small Entity Representatives (SERs) on how to reduce the impact of the rule on small entities, and those comments are detailed in the Final Panel Report which is located in the public record for this rulemaking (Docket EPA–HQ–OAR–2005–0036). Based on these comments, we proposed lead time transition and hardship provisions that will be applicable to small volume manufacturers as described below in section V.E.1 and V.E.2. For further discussion of the Panel process, see section XII.C of this rule and/or the Final Panel Report. We received no comments on this section in response to the proposed rulemaking.

As discussed in more detail in section XII.C, in addition to the major vehicle manufacturers, three distinct categories of businesses relating to highway light-duty vehicles would be covered by the new vehicle standards: small volume manufacturers (SVMs), independent commercial importers (ICIs),[173] and alternative fuel vehicle converters.[174] We define small volume manufacturers as those with total U.S. sales less than 15,000 vehicles per year, and this status allows vehicle models to be certified under a slightly simpler certification process. For certification purposes, SVMs include ICIs and alternative fuel vehicle converters since they sell less than 15,000 vehicles per year.

About 34 out of 50 entities that certify vehicles are SVMs, and the Panel identified 21 of these 34 SVMs that are small businesses as defined by the Small Business Administration criteria (5 manufacturers, 10 ICIs, and 6 converters). Since a majority of the SVMs are small businesses and all SVMs have similar characteristics as described below in section V.E.1, the Panel recommended that we apply the lead time transition and hardship provisions to all SVMs. These manufacturers represent just a fraction of one percent of the light-duty vehicle and light-duty truck sales. Our final rule today is consistent with the Panel's recommendation.

[172] NMOG includes emissions of nonmethane hydrocarbons plus all other nonmethane organic air pollutants (for example, aldehydes), which are ozone precursors. For gasoline and diesel vehicles, NMHC and NMOG emissions levels are very similar.

[173] ICIs are companies that hold a Certificate (or certificates) of Conformity permitting them to import nonconforming vehicles and to modify these vehicles to meet U.S. emission standards.

[174] Alternative fuel vehicle converters are businesses that convert gasoline or diesel vehicles to operate on alternative fuel (e.g., compressed natural gas), and converters must seek a certificate for all of their vehicle models.

1. Lead Time Transition Provisions

In these types of vehicle businesses, predicting sales is difficult and it is often necessary to rely on other entities for technology (see earlier discussions in section V on technology needed to meet the new standards).[175] [176] Moreover, percentage phase-in requirements pose a dilemma for an entity such as an SVM that has a limited product line. For example, it is challenging for an SVM to address percentage phase-in requirements if the manufacturer makes vehicles in only one or two test groups. Because of its very limited product lines, a SVM could be required to certify all their vehicles to the new standards in the first year of the phase-in period, whereas a full-line manufacturer (or major manufacturer) could utilize all four years of the phase-in. Thus, similar to the flexibility provisions implemented in the Tier 2 rule, the Panel recommended that we allow SVMs (includes all vehicle small entities that would be affected by this rule, which are the majority of SVMs) the following options for meeting cold temperature NMHC standards and evaporative emission standards as an element of determining appropriate lead time for these entities to comply with the standards.

For cold NMHC standards, the Panel recommended that SVMs simply comply with the standards with 100 percent of their vehicles during the last year of the four-year phase-in period. Since these entities could need additional lead time and the new standards for LDVs and LLDTs would begin in model year 2010 and would end in model year 2013 (25%, 50%, 75%, 100% phase-in over four years), we are finalizing, as proposed, a provision requiring only that SVMs certify 100 percent of their LDVs and LLDTs in model year 2013. Also, since the new standard for HLDTs and MDPVs would start in 2012 (25%, 50%, 75%, 100% phase-in over four years), we are finalizing, again as proposed, a provision requiring that the SVMs certify 100 percent of their HLDTs and MDPVs in model year 2015.

In regard to evaporative emission standards, the Panel recommended that since the new evaporative emissions standards would not have phase-in years, we allow SVMs to simply comply with standards during the third year of the program. We have implemented similar provisions in past rulemakings. Given the additional challenges that SVMs face, as noted above, we believe that this recommendation is reasonable. Therefore, for a 2009 model year start date for LDVs and LLDTs, we are finalizing, as proposed, a provision requiring that SVMs meet the evaporative emission standards in model year 2011. For a model year 2010 implementation date for HLDTs and MDPVs, we are finalizing the proposed provision requiring that SVMs comply in model year 2012.

2. Hardship Provisions

In addition, the Panel recommended that case-by-case hardship provisions be extended to SVMs for the cold temperature NMHC and evaporative emission standards as an aspect of determining the greatest emission reductions feasible. These entities could, on a case-by-case basis, face hardship more than major manufacturers (manufacturers with sales of 15,000 vehicles or more per year), and we are finalizing as proposed this provision to provide what could prove to be a needed safety valve for these entities. SVMs will be allowed to apply for up to an additional 2 years to meet the 100 percent phase-in requirements for cold NMHC and the delayed requirement for evaporative emissions. As with hardship provisions for the Tier 2 rule, we are finalizing, as proposed, a provision providing that applications for such hardship relief must be made in writing, must be submitted before the earliest date of noncompliance, must include evidence that the noncompliance will occur despite the manufacturer's best efforts to comply, and must include evidence that severe economic hardship will be faced by the company if the relief is not granted.

We will work with the applicant to ensure that all other remedies available under this rule are exhausted before granting additional relief. To avoid any perception that the existence of the hardship provision could prompt SVMs to delay development, acquisition and application of new technology, we want to make clear that we expect this provision to be rarely invoked, and that relief would rarely be granted. Today's rule contains numerous flexibilities for all manufacturers and it delays implementation dates for SVMs. We would expect SVMs to prepare for the applicable implementation dates in today's rule.

3. Special Provisions for Independent Commercial Importers (ICIs)

Although the SBAR panel did not specifically recommend it, we are finalizing as proposed provisions allowing ICIs to participate in the averaging, banking, and trading program for cold temperature NMHC fleet average standards (as described in Table IV.B.–1), but with appropriate constraints to ensure that fleet averages will be met. The existing regulations for ICIs specifically prohibit ICIs from participating in emission-related averaging, banking, and trading programs unless specific exceptions are provided (see 40 CFR 85.1515(d)). The concern is that they may not be able to predict their sales and control their fleet average emissions because they are dependent upon vehicles brought to them by individuals attempting to import uncertified vehicles. However, an exception for ICIs to participate in an averaging, banking, and trading program was made for the Tier 2 NO_X fleet average standards (65 FR 6794, February 10, 2000), and today we are finalizing, as proposed, a similar exception for the cold temperature NMHC fleet average standards.

If an ICI is able to purchase credits or to certify a test group to a family emission level (FEL) below the applicable cold temperature NMHC fleet average standard, the rule allows the ICI to bank credits for future use. Where an ICI desires to certify a test group to a FEL above the applicable fleet average standard, the rule allows them to do so if they have adequate and appropriate credits. Where an ICI desires to certify to an FEL above the fleet average standard and does not have adequate or appropriate credits to offset the vehicles, we will permit the manufacturer to obtain a certificate for vehicles using such a FEL, but will condition the certificate such that the manufacturer can only produce vehicles if it first obtains credits from other manufacturers or from other vehicles certified to a FEL lower than the fleet average standard during that model year.

Our experience over the years through certification indicates that the nature of the ICI business is such that these companies cannot predict or estimate their sales of various vehicles well. Therefore, we do not have confidence in their ability to certify compliance under a program that will allow them leeway to produce some vehicles to a higher FEL now but sell vehicles with lower FELs later, such that they were able to

[175] For example, as described later in section V.E.3, ICIs may not be able to predict their sales because they are dependent upon vehicles brought to them by individuals attempting to import uncertified vehicles.

[176] SMVs (those with sales less than 15,000 vehicles per year) include ICIs, alternative fuel vehicle converters, companies that produce specialty vehicles by modifying vehicles produced by others, and companies that produce small quantities of their own vehicles, but rely on major manufacturers for engines and other vital emission related components.

comply with the fleet average standard. We also cannot reasonably assume that an ICI that certifies and produces vehicles one year, will certify or even be in business the next. Consequently, we are finalizing the proposed provision barring ICIs from utilizing the deficit carry forward provisions of the ABT program.

VI. Gasoline Benzene Control Program

A. Description of and Rationale for the Gasoline Benzene Control Program

We received comments on a wide range of issues regarding our proposal of a gasoline benzene control program. We have considered these comments carefully. This notice finalizes a gasoline benzene control program that is very similar to the proposed program, with the inclusion of an upper limit benzene standard on which we sought comment.

The gasoline benzene control program has three main components, each of which is discussed in this section:

—*A gasoline benzene content standard.* In general, refiners and importers will be subject to an annual average gasoline benzene standard of 0.62 volume percent (vol%), beginning January 1, 2011. This single standard will apply to all gasoline, both reformulated gasoline (RFG) and conventional gasoline (CG) nationwide (except for gasoline sold in California, which is already covered by a similar state program).

—*An upper limit benzene standard.* In general, this ''maximum average standard'' will require that the annual average of actual benzene levels that each refinery produces be less than or equal to 1.3 vol% without the use of credits, beginning July 1, 2012.[177]

—*An averaging, banking, and trading (ABT) program.* The ABT program allows refiners and importers to choose the most economical compliance strategy (investment in technology, credits, or both) for meeting the 0.62 vol% annual average benzene standard. The program allows refiners to generate ''early credits'' for making qualifying benzene reductions earlier than required and allows refiners and importers to generate ''standard credits'' for overcomplying with the 0.62 vol% benzene standard in 2011 and beyond. Credits may be used interchangeably towards compliance with the 0.62 vol% standard, ''banked'' for future use, and/or transferred nationwide to other refiners/importers subject to the standard. While credits may not be used to demonstrate compliance with the 1.3 vol% maximum average standard, the ABT program in its entirety provides the refining industry with significant compliance flexibility. To achieve compliance with the 0.62 vol% average standard in 2011 and beyond, refiners and importers may use credits generated and/or obtained under the ABT program, reduce their gasoline benzene levels, or any combination of these.

—*Provisions for refiners facing economic hardship.* Refiners approved as ''small refiners'' will have access to special temporary relief provisions. In addition, any refiner facing extreme unforeseen circumstances or extreme hardship circumstances can apply for temporary relief.

1. Gasoline Benzene Content Standard

a. Description of the Average Benzene Content Standard

The program finalized in this rule requires significant reductions in the average levels of benzene in gasoline sold in the U.S. Beginning in 2011, the average benzene level of all batches of gasoline produced during a calendar year at each refinery will need to be at or below a standard of 0.62 vol% benzene. Approved small refiners must comply with this requirement by 2015. Each gasoline importer will need to meet the 0.62 vol% standard on average for its imported gasoline during each year. The 0.62 vol% average standard may be met through actual production/importation of fuel with a benzene content of 0.62 vol% or less, on average, and/or by using benzene credits. A deficit is created when compliance is not achieved in a given year. This deficit may be carried forward without regulatory approval but must be made up the next year. (See VI.B (Implementation), below.) While this subsection focuses on the 0.62 vol% average standard, refiners and importers will also be subject to a ''maximum average benzene standard'' of 1.3 vol%, which is discussed below in section VI.A.1.d.

The 0.62 vol% average benzene standard applies to all gasoline, both RFG and CG. Gasoline sold nationwide is covered by the standard, with the exception of gasoline sold in California. California gasoline is covered by existing State of California benzene requirements that result in benzene reductions similar to the federal program finalized here.

The 0.62 vol% average benzene standard and the 1.3 vol% maximum average standard result in air toxics emissions reductions that are greater than required under all existing gasoline-related MSAT programs. As a result, upon implementation in 2011, the regulatory provisions for this gasoline benzene control program will become the regulatory mechanism used to implement the RFG and CG (Anti-Dumping) annual average toxics performance requirements and the annual average benzene content requirement for RFG. The current RFG and Anti-Dumping annual average toxics provisions thus will be replaced by this benzene control program. This final benzene control program will also replace the requirements of the 2001 MSAT rule (''MSAT1''). In addition, the program will satisfy certain conditions of the Energy Policy Act of 2005 (EPAct) and thus remove the need to revise individual MSAT1 toxics baselines for RFG otherwise required by the EPAct. In all of these ways, this program will significantly consolidate and simplify the existing national fuel-related MSAT regulatory program while achieving greater overall emission reductions.[178] See Section VI.C below for additional discussion of this issue.

b. Why Are We Finalizing a Benzene Content Standard?

As discussed in the proposal, we believe a benzene content standard is the most cost-effective and most certain way to reduce gasoline benzene emissions from vehicles. Fuel benzene reductions directly and demonstrably result in benzene emissions reductions which also results in overall MSAT emission reductions. Focusing MSAT control on benzene alone means that the effectiveness of the control will not be affected by changes in fuel composition or vehicle technology. Because benzene is a small component of gasoline (around 1 vol%), gasoline octane is not significantly affected by a reduction in benzene content. Other fuel changes that could be undertaken to reduce MSATs would significantly impact octane, and replacing that octane would be costly and could increase emissions of MSATs other than benzene. Nonetheless, in addition to proposing to control fuel-related MSAT emissions by means of a gasoline benzene content standard, we sought comment on a

[177] The per-gallon benzene cap (1.3 vol%) in the RFG program will continue to apply separately.

[178] Although this program will supersede several compliance requirements from other programs, we are retaining certain recordkeeping and reporting requirements from these programs. For example, refiners will need to continue to provide gasoline fuel property data for more than just benzene. This is discussed in more detail in VI.B below.

number of alternative approaches, including control of toxics in addition to benzene and more stringent limits on gasoline sulfur and volatility. A number of commenters expressed support for some of these alternatives and others opposed them. In reaching our decision to finalize a benzene content standard, we evaluated the comments on each of the alternative approaches, and we discuss these next.

i. Standards That Would Include Toxics Other Than Benzene

We considered separate standards for each of the key fuel-related toxics (we discuss control of aromatic compounds separately) as well as a total toxics performance standard.

A Standard for Total Toxics Performance

Several commenters advocated a standard in the form of a toxics emissions performance standard, analogous to the current MSAT1 and RFG standards. Some commenters requested an air toxics standard in addition to the fuel benzene content standard we are finalizing. In general, these commenters expressed concern that if toxics other than benzene are not also controlled simultaneously, refiners may allow the emissions of these other compounds to increase, even while benzene is being reduced. Other commenters requested a toxics standard instead of fuel benzene control (or as an alternative compliance option). These commenters felt that a toxics performance standard offered more compliance flexibility. Other commenters supported our proposed benzene-only standard, stating that a total toxics standard would add complexity without additional benefit.

For several reasons, we continue to believe that a benzene-only standard is superior to a toxics emissions performance standard. First, because controlling benzene is much more cost-effective than controlling emissions of other MSATs, refiners historically have preferentially reduced benzene under the MSAT1 and other air toxics control programs. This is despite the theoretical flexibility that refiners have under a toxics performance standard to change other fuel parameters instead of benzene. Thus, even if we were to express the proposed standard as an air toxics performance standard, we would expect the outcome to be the same—refiners would reduce benzene content and leave unchanged the levels of other MSATs.

Even with, or as a result of, this fuel benzene control, we do not expect refiners to actively modify their refinery operations such that increases will occur in emissions of the other MSATs currently controlled under the toxics performance standards. These other MSATs are acetaldehyde, formaldehyde, POM, and 1,3-butadiene, and they are all affected to varying degrees by VOC emissions control. VOC emissions are generally decreasing due to the gasoline sulfur controls recently phased in along with tighter vehicle controls under the Tier 2 program, as well as the vehicle controls being finalized under this program (see section V above). In combination, these changes are expected to decrease VOC-based MSAT emissions substantially.

In addition to reductions because of declining VOC emissions, formaldehyde emissions are currently, and for the foreseeable future, declining as MTBE use ends. See 71 FR 15860.

According to the Complex Model, the Agency's current gasoline emissions compliance model, POM emissions correlate directly with VOC emissions (see 40 CFR 80.45(e)(8). Therefore, we expect significant POM emission reductions as VOC emissions decline.

For 1,3-butadiene, the fuel parameter of interest is olefins. Increasing olefins increases 1,3-butadiene emissions. However, olefins are expected to decrease as a result of the implementation of the gasoline sulfur program because they are reduced along with sulfur during the desulfurization process. Olefins are also often used for their octane value, but because of increased ethanol use, this need should be reduced. As a result, we do not expect refiners to take actions to increase olefins, and thus 1,3-butadiene emissions should not increase. Also, 1,3-butadiene, like other MSATs, is reduced when VOC is reduced due to fuel and vehicles standards being implemented (see 71 FR 15860).

The one MSAT likely to increase in the future is acetaldehyde. Current market forces, along with state and federal policies and requirements such as the proposed Renewable Fuels Standard (RFS) Program,[179] ensure that ethanol use will increase, and thus acetaldehyde as well, since that MSAT is directly and substantially affected by ethanol use. Acetaldehyde emissions are currently about one-seventh the magnitude of benzene emissions from motor vehicles, but are increasing (while formaldehyde emissions are decreasing) due to the substitution of ethanol for MTBE in RFG as a result of state MTBE bans. Any action that refiners could take to offset the total toxics increase as a result of acetaldehyde increasing would be through benzene control, which we are already requiring to be controlled to the maximum extent possible. The EPAct, which charged EPA with developing the RFS program, also requires an evaluation of that Act's impacts on air quality. Any future control of acetaldehyde emissions will be based primarily on the results of that study. EPA thus believes it premature to act until we determine a course of future action reflecting the EPAct study, a draft of which is due to Congress in 2009.

As described above, with the exception of acetaldehyde, the benzene control program will ensure the certainty of additional MSAT reductions. Other MSAT emissions are thus unlikely to increase under this program. Because an air toxics standard would not provide any additional emission reductions, we believe that the regulatory controls, and the associated paperwork and the other administrative costs that would result if standards explicitly including these other MSATs were adopted, are not necessary. The benzene control program will thus ensure the certainty of additional MSAT reductions. A toxics emissions performance standard that would effectively achieve the same level of MSAT reduction would be more costly and complex. For all of these reasons, we believe a standard in the form of a benzene content standard will produce more certain environmental results with less complexity than a toxics emissions performance standard, and we are therefore finalizing only a benzene content standard.

A Standard for Aromatic Compounds in Addition to Benzene

In the proposal, we considered MSAT control through the reduction of the content of aromatics in addition to benzene in gasoline. For a number of reasons, we did not propose such control (see 71 FR 15860 and 15864). During the comment period, we received comments urging EPA to impose controls on non-benzene gasoline aromatic compounds, in addition to controlling benzene. These commenters believe aromatics control would provide more toxics emissions reductions than a benzene-only control program, and they also believe it would improve air quality by significantly reducing fine particulate matter. Expanded use of E85 and flexible-fuel vehicles and ETBE were suggested as ways to replace the octane value which would be lost if aromatics were reduced. They also cited other benefits such as energy independence and reduction of trade deficits, and stated that costs to

[179] 71 FR 55552, September 22, 2006.

the refining industry would not be significant. A significant rebuttal to this request for aromatics control was presented by the refining industry.

We note first that regardless of specific regulatory action to control aromatics, the increased use of ethanol in response to current market forces and state and federal policies (including the RFS program) will contribute to lower aromatics levels. This will occur for two reasons. First, ethanol has historically been blended downstream of refineries, either as a ''splash blend'' or as a ''match blend.'' In a splash blend, the ethanol is mixed with finished gasoline. In a match blend, refiners prepare a special subgrade of gasoline that, when blended with ethanol, becomes finished gasoline. In recent years, match blending has increased as refiners have been producing RFG with ethanol, and it is expected to increase even more as ethanol use expands. A splash blend will reduce aromatics by about 3 vol% by simple dilution.[180] A match blend will reduce aromatics by about 5 vol%.[181] With ethanol use expected to more than double, we expect a significant reduction in aromatics levels. Second, with all of this ethanol there will be excess octane in the gasoline pool. Thus, not only will increased ethanol use decrease aromatics concentrations through dilution, but refiners will make the economic decision to use ethanol to reduce or avoid producing aromatics for the purpose of increasing octane.

Because of differences in how refiners will respond to the rapid increase in ethanol use, it would be difficult to determine an appropriate level for an aromatics standard at this time. The gasoline market is going through an historic transition now due to the removal of MTBE, conversion of some portion of the MTBE production volume to other high octane blendstock production, growth of ethanol use, and the rise in crude oil prices. Consequently, it is difficult to reliably project a baseline level of aromatics for the gasoline pool with any confidence. This is compounded by a great deal of uncertainty in knowing how much of the market ethanol will capture. Projections by EIA are significantly higher now than just a few months ago, and Presidential and Congressional proposals could easily result in 100% of gasoline being blended with ethanol. Second, aromatics levels vary dramatically across refineries based on a number of factors, including refinery configuration and complexity, access to other high octane feedstocks, access to the chemicals market, crude sources, and premium grade versus regular grade production volumes. Third, without knowing with some certainty the range of aromatics contents of refineries' gasoline, we cannot determine the greatest degree of emission reduction achievable, and also cannot make reasonable estimates regarding cost, lead time, safety, energy impacts, etc. As a result, at this time we would not be able to determine an appropriate or meaningful aromatics standard.

For the purpose of reducing total toxics emissions, fuel benzene control is far more cost-effective than control of total aromatics, for a number of reasons. As we explained in the proposal, reducing the content of other aromatics in gasoline is much less effective at reducing benzene emissions than reducing fuel benzene content. Based on the Complex Model,[182] roughly 20 times greater reduction in total aromatics content is needed to achieve the same benzene emission reduction as is achieved by fuel benzene reductions. At the same time, to broaden the program to control other aromatics would result in a significant octane loss. While we have not yet conducted a thorough refinery modeling evaluation, based on existing refinery and market information the alternative sources of octane (other than ethanol) appear to be of limited supply and would be of limited effectiveness in replacing the octane lost from any fuel aromatics reductions. Furthermore, as noted above, the uncertainty in the extent to which ethanol will penetrate the market makes it difficult to project the potential replacement of aromatics with ethanol. Any significant reduction in aromatics would also affect the gasoline and diesel sulfur reduction programs because hydrogen, which is used in the desulfurization process, is produced when aromatics are produced. If refiners were required to reduce their aromatics levels, costs would increase further because some would have to expand or build new hydrogen production facilities.

Reducing aromatics would also raise other environmental concerns that would need to be addressed in any regulation. Actions available to refineries for replacing octane, including adding ethanol, can increase other MSATs, as mentioned above. In addition, some commenters encouraged the use of the ether derived from ethanol, ETBE, to make up octane. Any regulatory action that required or was based on the use of ETBE would likely raise issues of potential groundwater contamination given the groundwater contamination caused by the use of the chemically similar MTBE.

There may be compelling reasons to consider aromatics control in the future, especially regarding reduction in secondary $PM_{2.5}$ emissions, to the extent that evidence supports a role for aromatics in secondary $PM_{2.5}$ formation.[183] Unfortunately, there are limitations in both primary and secondary PM science and modeling tools that limit our present ability to quantitatively predict what would happen for a given fuel control. Thus, at this point, we do not feel that the existing body of information and analytical tools provide a sufficient basis to determine if further fuel aromatics control is warranted. However, we do feel that additional research is very important. Test programs and analyses are planned to address primary PM issues, including those examining the role of aromatics. Also, more work is underway on how fuel aromatics, including toluene, affect secondary PM formation, and how aromatics control should be incorporated into air quality predictive models.[184]

In summary, we believe that aromatics levels will be falling even without an aromatics standard, and aromatics control will need to be evaluated in the context of what might be possible beyond what will occur through the expanded use of ethanol. Furthermore, any additional control would be costly and raise a number of other issues which need further investigation before EPA could responsibly initiate such a control effort. Thus, we have concluded that additional aromatics control for MSAT purposes is not warranted at this time.

[180] If the aromatics content of a gallon of gasoline is 30 vol%, adding 10% ethanol dilutes the aromatic content to about 27 vol%.

[181] Section 2.2 ''Effects of Ethanol and MTBE on Gasoline Fuel Properties'' in the Renewable Fuel Standard Program: Draft Regulatory Impact Analysis, September, 2006.

[182] Total toxics emissions are as calculated by the Complex Model. This model is the tool used to determine compliance with the toxics emissions controls in the RFG, Anti-dumping, and MSAT1 programs. Cost estimates for aromatics control and analysis of relative benzene emissions with control of aromatics and benzene are found in Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline; Final rule, Table VI–A6 of the Regulatory Impact Analysis, February 16, 1994.

[183] See Chapter 1 in the RIA for more on current studies on this subject.

[184] See Chapter 1 in the RIA for more on current studies on this subject.

ii. Control of Gasoline Sulfur and/or Volatility for MSAT Reduction

In the proposal, we outlined a number of issues related to further control of gasoline sulfur content and volatility (usually described as Reid vapor pressure, or RVP) as a means of MSAT emissions reduction.[185] (See 71 FR 15861–62.) In both cases, there was insufficient data on newest technology vehicles at that time to evaluate their effectiveness as MSAT controls. Therefore, we did not propose changes to existing standards.

We received several comments related to sulfur and RVP control, but there was general agreement in the comments from auto manufacturers and refiners that sufficient data does not yet exist for EPA to take action as a part of this rule. Consequently, we are not taking action to adopt additional control of gasoline sulfur or RVP. However, since the proposal, we have completed a small fuel effects test program in cooperation with several automakers to help evaluate the impact of fuel property changes on emissions from Tier 2 vehicles. These data suggest that reducing gasoline sulfur below 30 ppm could bring significant reductions in VOC and NO_X, but the data relating to air toxics reductions were not statistically significant. Unlike past programs on older technology vehicles, these data suggest that reducing gasoline volatility from 9 to 7 psi RVP under normal testing conditions (75° F) may actually increase exhaust toxics emissions. The program did not examine the impacts of fuel volatility on evaporative emissions. These data indicate that there may be benefits to future fuel control but that more testing is warranted. More details on the test program and its results are available in Chapter 6 of the RIA.

iii. Diesel Fuel Changes

In the proposal, EPA did not propose additional controls on diesel fuel for MSAT control. We continue to believe that the recent highway and nonroad diesel programs (see section IV. D. 1. c above) will achieve the greatest currently achievable reductions in diesel-related MSAT control (i.e., reductions in emissions of diesel particulate matter and exhaust organic gases). These emission reductions will result from the deep cuts in diesel fuel sulfur that will be implemented in the same time frame as this gasoline benzene rule, along with the associated diesel engine emission control requirements of the diesel programs. We said that we were unaware of other changes to diesel fuel that could have a significant effect on MSAT emissions, and requested comment about limiting this action to gasoline benzene.

One group of commenters stated in joint comments that they believe that EPA needs to do more to protect human health and the environment from the effects of diesel exhaust emissions. While they specifically mention actions to accelerate the introduction of cleaner diesel engines, they do not suggest any additional changes to diesel fuel. Another commenter, a refiner, believes that further diesel fuel controls are not warranted.

Some commenters support control of the polyaromatic hydrocarbon (PAH) content of diesel fuel. The actions refiners are taking to produce ultra-low sulfur diesel fuel (15 ppm sulfur) are expected to reduce the PAH content in diesel fuel.[186] In addition, available data indicate that the advent of exhaust emission controls on diesel engines under the recent diesel programs will reduce exhaust PAH, regardless of any changes to diesel fuel.

We continue to believe that existing regulations will achieve the greatest currently achievable reductions in MSAT emissions from diesel engines. EPA will continue to monitor MSAT issues related to diesel fuel. For example, there are active programs underway to measure PAH exhaust emissions from diesel engines meeting the 2007 PM engine standards.[187] However, at this time, we are not aware of diesel fuel controls that could significantly affect MSAT emissions and commenters did not offer specific information to the contrary. Consequently, we have focused our fuel-related MSAT action on gasoline benzene, as proposed.

c. Why Are We Finalizing a Level of 0.62 vol% for the Average Benzene Standard?

We considered a range of average benzene standards, taking into account technological feasibility as well as cost and the other enumerated statutory factors. We received comments from a variety of parties supporting standards more stringent than the proposed level of 0.62 vol%. In general, the refining industry did not express strong opposition to a standard of 0.62 vol%. However, several small refiners opposed a benzene standard and argued for relief for small refiners if EPA went forward with such a program. One commenter, an importer, proposed a standard of 1.0 vol%. None of the commenters opposing the 0.62 vol% standard provided analytical support for a less stringent standard, or addressed how a less stringent standard might reflect the greatest emission reductions achievable based on the statutory factors. We have considered all of these comments and reassessed the level of the standard in light of the key factors we are required to consider, and have concluded that, as proposed, 0.62 vol% is the appropriate level for the average standard, because it achieves the greatest achievable emission reductions through the application of technology that will be available, considering cost, energy, safety, and lead time.[188] As discussed in section VI.A.1.d below, we have drawn this conclusion in the context of the 1.3 vol% maximum average benzene standard. We summarize our assessment of technological and economic factors next.

i. General Technological Feasibility of Benzene Control

Benzene Control Technologies

We have identified several technologies that can cost-effectively reduce gasoline benzene levels and we assessed their feasibility. These benzene control technologies function primarily by controlling the benzene in the feedstock to and the product stream from the reformer. They primarily focus on the reformer because refiners rely on the reformer to produce aromatic compounds for their octane content, and benzene is one of the aromatic compounds produced. For refiners who are not actively reducing the benzene in their gasoline today, we estimate that the reformer is responsible for about one half to three quarters of the benzene in gasoline.

Since the proposal, we learned of a change in how a particular gasoline blending stream is being routed in the refinery which affects its treatability for reducing benzene. After speaking to several refiners, we learned that natural gasoline is being blended differently into gasoline today because of the need to address the sulfur in this stream for compliance with Tier 2. Specifically, natural gasoline is being blended with the crude oil before the crude oil is refined in the refinery. Therefore the benzene in natural gasoline would be treated along with the naturally occurring benzene in crude oil using the

[185] For further discussion of the impact of these fuel properties on emissions, see RIA Chapter 7.

[186] Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel—Final Rule, Section 5.9.4 of the Regulatory Impact Analysis, June 29, 2004.

[187] Health Effects Institute's Advanced Collaborative Emissions Study.

[188] EPA does not believe that there are any noise issues associated with these standards, and no comments suggested any such issues exist.

benzene control technologies described below. We reflected this change in our refinery modeling.

One approach to reducing gasoline benzene levels is to reroute around the reformer the intermediate refiner streams that have the greatest tendency to form benzene in the reformer. This technology is usually termed light naphtha splitting. Assuming that a refinery applying this technology is not applying any sort of benzene control today, we estimate that this method reduces the benzene levels of reformate (the stream leaving the reformer) by 60 percent. This approach requires little or no capital investments in refineries to realize the results, but its effectiveness is limited because it does not address any of the naturally-occurring benzene found in crude oil and from natural gasoline and the other benzene which is formed in the reformer. Although this benzene control technology normally will not achieve the most substantial benzene control, refiners choosing it will achieve some measure of benzene control and then would likely need to purchase credits to comply with the 0.62 benzene standard.

To achieve deeper benzene control, refiners with an isomerization unit can send the rerouted intermediate refinery stream to their isomerization unit. The isomerization unit would saturate the naturally-occurring benzene from crude oil and natural gasoline in the rerouted refinery intermediate stream mentioned above, thus achieving additional benzene reduction. Using these two technologies together, refiners will be able to reduce reformer benzene levels by an estimated 80 percent. However, the benzene formed in the reformer would still not be treated using these two technologies together.

For even deeper benzene reductions than benzene precursor rerouting by itself or in combination with isomerization, refiners could choose between benzene saturation and benzene extraction. Each of these technologies work by reducing the benzene levels in the reformate, achieving an estimated 96 percent reduction in benzene, assuming that the refinery is not already taking steps to control its benzene levels. Benzene saturation involves using hydrogen to saturate the benzene into cyclohexane, which is a compound usually found in gasoline. Benzene extraction units chemically extract the benzene from the rest of the hydrocarbon compounds in reformate and concentrate it to a high purity using distillation such that it is suitable for sale into the chemicals market. Either of these technologies is capable of achieving the deepest levels of gasoline benzene reductions, allowing virtually all refiners to meet or exceed the 0.62 vol% gasoline benzene standard.

The actual impact of these benzene control technologies on an individual refinery's finished gasoline benzene content, however, will be a function of many different refinery-specific factors. These factors include the types of refining units in each refinery and the benzene levels produced by them, and the extent to which they are already utilizing one or more of these benzene control technologies.

Each of the benzene control technologies associated with the reformer has been commercially demonstrated by at least half a dozen units in U.S. refineries today operating for at least two years. Also, we did not receive any comments questioning the viability of these technologies for achieving the benzene reduction attributed to these technologies in the proposed rule. We therefore conclude that these technologies can feasibly achieve the benzene reductions that we attribute to them. We discuss the economics for each of these approaches to benzene reduction in more detail in section VIII.A. of this preamble, and we discuss their feasibility and cost in detail in Chapters 6 and 9 of the RIA.

We evaluated the benzene control level achievable without the use of credits by each refinery using either benzene saturation or extraction, since this would represent the maximum technologically feasible level of benzene control by each refinery. Our refinery cost model shows that based on the application of one or the other of these two benzene technologies, eight refineries would still not be able to achieve the final 0.62 vol% benzene average standard. We believe that these refineries would, however, be able to achieve the 1.3 vol% maximum average standard (which, as explained in section VI.A.1.d below, must be achieved without the use of credits) through the use of one of these technologies.

These eight refineries would be able to further reduce their gasoline benzene levels by treating the benzene contained in other gasoline blendstocks, particularly light straight run, light coker naphtha and light hydrocrackate. We believe that refiners could merge these streams with their reformate gasoline stream, so that these other sources of benzene would be treated along with the benzene in the reformate using either benzene saturation or benzene extraction. The results of this additional analysis summarized in the RIA show that these eight refineries would be able to meet the 0.62 vol% average standard if they were to apply one or more of these additional benzene control steps, though in some cases it may be at a considerably higher cost than through the purchase of credits. The cost and ultimate feasibility for controlling the benzene in light straight run, light coker naphtha and light hydrocrackate is very difficult to determine without detailed and comprehensive knowledge about how refineries are configured and operated today. It might be possible for a refinery to adjust existing distillation units, either operationally or with minor capital investments, to change the cutpoints for these streams. They might then route the benzene in these streams to the reformer, where a benzene control technology would be applied. On the other hand, changing the cutpoints to reroute the benzene might require the addition of a whole new distillation column, similar in function to a reformate splitter. Adding such grassroots distillation columns to make these splits would be much more costly. Finally we have not found any commercially demonstrated benzene control technologies that can reduce the benzene of FCC naphtha, the second largest contributor of benzene to the gasoline pool.

Impacts on Octane and Strategies for Recovering Octane Loss

All these benzene reduction technologies tend to cause a small reduction in the octane value of the final gasoline, since benzene is high in octane (about 101 octane number ((R+M)/2). Understanding how lost octane will be recovered is critical to determining the feasibility and cost of benzene control. Regular grade gasoline must comply with a minimum 87 octane number (or a sub-octane rating of 86 for driving in altitude), while premium grade gasoline must comply with an octane rating which ranges from 91 to 93 octane numbers. Gasoline must meet these octane ratings to be sold at retail. Routing the benzene precursors around the reformer reduces the octane of the six-carbon compound stream (by foregoing the formation of benzene) which normally exits the reformer with the rest of the reformate. Without these compounds in the reformate, our refinery model shows that a loss of octane in the gasoline pool of about 0.14 octane numbers will typically occur. If this rerouted stream can be sent to an isomerization unit additional octane loss will occur due to the saturation of

benzene [189]; however, as described below, the isomerization unit offsets a part of the octane loss caused by this combination of saturation and rerouting. Benzene saturation and benzene extraction both affect the octane of reformate and therefore of the gasoline pool. Our refinery model estimates that benzene saturation typically reduces the octane of gasoline by 0.24 octane numbers, and benzene extraction typically reduces the octane of gasoline by 0.14 octane numbers.

Refiners have several choices available to them for recovering the lost octane. One is to blend in ethanol. Ethanol has a very high octane number rating of 115. Thus, only a small amount of ethanol (one percent of the gasoline pool or less) would be necessary to offset the octane loss associated with benzene reductions. Moreover, ethanol blending will occur for reasons independent of the benzene control requirements (and attendant octane loss) of the present rule. As explained in the discussion of potential aromatics controls above, current market forces and state and federal policies (including the RFS program) will increase the volume of renewable fuels, including ethanol, which is to be blended into gasoline. The volume of renewable fuels must increase from around 4 billion gallons in 2004 to 7.5 billion gallons in 2012 when the renewable fuels provisions of the RFS are fully implemented. However, as part of the Annual Energy Outlook for 2006, the Energy Information Administration projects that the economics driven by higher crude oil prices will result in more like 9.6 billion gallons of ethanol use by 2012.

Octane may also be increased by increasing the severity of the reformer (which determines the final octane of the reformate). However, if the refiner is reducing benzene through precursor rerouting or saturation, this strategy can be somewhat counterproductive. This is because increased severity increases the amount of benzene in the reformate and thus increases the cost of saturation and offsets some of the benzene reduction of precursor rerouting. Increasing reformer severity also decreases the operating cycle life of the reformer, requiring more frequent regeneration. However, where benzene extraction is used, increased reformer severity can improve the economics of extraction because not only is lost octane replaced by other aromatic compounds, but more benzene is extracted and sold.

Refiners can also recover lost octane by increased use of isomerization and alkylate units. As discussed above, saturating benzene in the isomerization unit results in an octane loss, but the octane loss is partially offset by the simultaneous formation of branch-chain compounds in the isomerization unit. The isomerization unit would only offset a portion of the octane loss caused by saturating the benzene if the unit has sufficient capacity to treat both the five-carbon hydrocarbons normally sent to the unit as well as the newly rerouted six-carbon hydrocarbons. Also, many refineries produce a high-octane blendstock called alkylate. Refiners can alter their refineries to produce more alkylate or they may be able to purchase alkylate on the open market. Not only is alkylate moderately high in octane (93 or 94 octane numbers), but it converts four-carbon (i.e., butane) compounds that are too volatile to be blended in large amounts into the gasoline pool into heavier compounds that can be readily blended into gasoline, thus increasing gasoline volume.

All these means available to refiners for recovering the octane loss associated with gasoline benzene reductions are commercially demonstrated, and we did not receive any comments questioning our reliance on them at proposal for maintaining the octane of the gasoline pool in the proposal. Therefore, we conclude that it is feasible for refiners to recover the octane loss associated with benzene control.

ii. Appropriateness of the 0.62 vol% Average Benzene Content Standard

As discussed above, we received many comments about the proposed level of the benzene standard. Many commenters advocated a more stringent standard, generally pointing to refineries currently producing gasoline with benzene levels below the proposed 0.62 vol% standard and stating that the average standard should be sufficiently stringent that all refineries, especially those with higher benzene levels, would be required to use similar technologies and achieve similarly low levels. We also received broad support for the 0.62 vol% standard in the comments from the refining industry, although several small refiners opposed imposing a benzene standard and argued for relief for small refiners if EPA implemented the proposed standard. One importer was concerned that the standard of 0.62 vol% could make it more difficult for importers to find compliant gasoline shipments and proposed a standard of 1.0 vol%. None of the commenters opposing the 0.62 vol% standard provided analytical support for a less stringent standard or addressed how a less stringent standard might reflect the greatest emission reductions achievable based on the statutory factors.

In the proposal, EPA described in detail what we believe would be the consequences of average standards of different stringencies to the overall goals of the program (see 71 FR 15866–67). These anticipated consequences relate in large part to how we believe refiners would respond to the benzene averaging and benzene credit trading provisions that were integral to the proposed program. For the final rule, we have reassessed how we believe refiners would respond to different average standards. We continue to believe that increasing the stringency of the average benzene standard would have the effect of reducing the number of benzene credits generated, since fewer refineries are likely or able to take actions to significantly reduce benzene further than required by the standard. This would reduce the liquidity of the credit trading market. As discussed in section VI.A.2, a well functioning averaging, banking, and trading program is integral to the achievability of the benzene standard. With fewer credits available that are affordable as an alternative to immediate capital investment, investment in relatively expensive benzene saturation equipment would be necessary for a greater number of refiners. We specifically considered a level of 0.50 vol% for the average standard, which we expected would require all refineries to install the most expensive benzene control technologies. We concluded that this level would clearly not be achievable, considering cost. In a related analysis, we also showed that if, contrary to our expectations, credits were not easily available as a compliance option, there are several refineries for which it may be technologically feasible to reach benzene levels below 0.62 vol%, but only at costs far greater than for most other refiners.

Decreasing the stringency of the standard would fail to meet our obligation under 202(l)(2) to set the most stringent standard achievable considering costs and other statutory factors. First, over the last several years RFG benzene levels have already been averaging around 0.62 vol%, and we have no information to suggest that this level is not technologically feasible for the rest of the gasoline pool as well. In fact, our analysis shows that this level is feasible for the pool of gasoline as a whole. Commenters did not provide any analysis that a standard of 0.62 vol%

[189] The chemical process of benzene saturation in the isomerization unit is the same as the process that occurs in a benzene saturation unit, as described above.

was not the greatest achievable after considering cost and the other statutory factors. Second, a standard less stringent than 0.62 vol% would not achieve a number of important programmatic objectives. As shown in Table VI.C–1 below, a 0.62 vol% standard is necessary to satisfy the conditions on overall RFG toxics performance established by EPAct and thus to avoid the requirement for updated individual refinery baselines. We believe that any level for the standard above 0.62 vol% would require EPA to promulgate regulations requiring RFG refiners to continue to maintain individual refinery-specific baselines, adjusted to 2001–2 as required by EPAct. The refining industry believes that this would continue to penalize the cleanest refineries, constrain their flexibility, and cause market inefficiencies that increase costs. They have been strongly supportive of a program that eliminates the need for individual refinery baselines. EPA agrees with these concerns, and believes that the nationwide ABT program allowed under this program will remove these impacts. Another of EPA's policy objectives that has been strongly supported by the refining industry was establishing the same standard nationwide for the combined pool of RFG and CG. The level of 0.62 vol% allows us to establish a single combined program for RFG and CG. In addition, the level of 0.62 vol% for the standard allows us to streamline with confidence our toxics regulations for RFG and CG, so that this benzene program (along with the gasoline sulfur program) will become the regulatory mechanism used to implement the RFG and CG annual average toxics performance requirements and the annual average benzene content requirement for RFG. Further, we believe that with such a stringent benzene standard, refiners should have the certainty they need for their investment and planning decisions.

Many comments that supported a more stringent standard pointed to average costs projected in the proposal that are higher than for the proposed standard, but are not large on a per-gallon basis compared to other EPA fuel programs. However, these commenters did not address the wide range of compliance costs for individual refineries that we discuss in the proposal (see Chapter 9 of the proposed and final RIA documents). It is critical to recognize that as more stringent average standards are considered, the costs for many refineries begin to rise significantly, especially for some individual technologically-challenged refineries. This potential for high costs at more stringent average standards exists if, as we expect, the ABT program functions as it is designed to. If the ABT program operates less efficiently than projected, the costs for some individual refineries could be higher still. (We discuss issues related to the 1.3 vol% maximum average standard, which cannot be met through the use of credits, in section VI.A.1.d, ''Upper Limit Benzene Standard,'' below.)

Based on our analysis of the projected response of the refining industry to an average benzene standard, we are finalizing the 0.62 vol% standard as proposed. We believe that this average benzene standard of 0.62, in the context of the associated ABT program and the 1.3 vol% maximum average standard, results in the greatest reductions achievable, taking into account cost and the other statutory factors in CAA 202(l)(2).

iii. Timing of the Average Standard

Section 202(l)(2) requires that we consider lead time in adopting any fuel control for MSATs. We proposed that refiners and importers meet the 0.62 vol% average benzene standard beginning January 1, 2011 (January 1, 2015 for small refiners). This date was based on the industry experience that most of the technological approaches that we believe refiners will apply—rerouting of benzene precursors around the reformer and use of an existing isomerization unit—will take less than two years. The more capital intensive approaches—saturation and extraction—generally take two to three years to complete. The January 1, 2011 date provides nearly four years of lead time. We believe this is an appropriate amount of lead time, even taking into account that other fuel control programs (notably the Nonroad Diesel program) will be implemented in the same time frame.

Some commenters supported earlier start dates, referring in some cases to the experience of Canada in regulating gasoline benzene. However, these comments failed to acknowledge the less stringent Canadian standard (0.95 vol%) which naturally takes less lead time to implement. No commenter provided information that challenged our assessments of the technical lead time for the range of benzene control approaches that will be implemented. Other commenters, mostly from the refining industry, supported a start date that would be at least four years after the date of the final rule. For the reasons described above, we do not believe this additional time is necessary for this program. We are finalizing a start date of January 1, 2011, as proposed.

We discuss the lead time for the 1.3 vol% maximum average standard, which takes effect July 1, 2012 for non-small refiners and importers, and July 1, 2016 for small refiners, in the next section.

d. Upper Limit Benzene Standard

In the proposal, we discussed the potential concern that without an upper limit, some refiners may choose to allow their benzene levels to increase, or to remain unchanged indefinitely. However, we also said that once an average standard is in place, any increase in benzene levels will necessarily come at the cost of purchasing additional credits. We tentatively concluded that this downward pressure on benzene levels meant there would likely be no increases in benzene from any refinery, whether or not there was an upper limit. In fact, we concluded that this pressure would result in actual reductions at almost all refineries, especially into the future as refiners try to limit their reliance on credits as much as and whenever it is economical to do so (see 71 FR 15867–68).

We nonetheless considered the implications of an upper limit on the actual level of benzene in the gasoline that refiners produce (as opposed to the level achieved using credits). (See 71 FR 15678–79.) We considered an upper limit both in the form of a per-gallon benzene cap and a limit on the average of actual benzene in gasoline produced by a refinery (''maximum average standard''). Of these two approaches, we recognized that a per-gallon cap would be the more rigid. If every batch needed to meet the cap, there would be no opportunity to offset benzene spikes with lower-benzene production at other times. Even during times of normal operation, our review of refinery batch data indicated that unavoidable wide swings commonly occur in the benzene content of gasoline batches, even for refineries that have relatively low benzene levels on average. A per-gallon cap could result in refiners halting gasoline production during short-term shut-downs of benzene control equipment or in other temporary excursions in benzene levels. Unless a per-gallon limit were generous enough or included case-by-case exceptions (eroding the possible benefit of the cap), many refiners would likely need to implement much deeper and more costly reductions in benzene than would otherwise be necessary, simply to protect against such fluctuations. For some refiners, we concluded, a cap

could make complying with the program prohibitively expensive.

The other option on which we solicited comment, a maximum average standard, would be more flexible. A maximum average standard would limit the average benzene content of the actual production at each refinery over the course of the year, regardless of the extent to which credits may have been used to comply with the 0.62 vol% average standard. Thus, a maximum average standard would allow for short-term benzene fluctuations as long as the annual average benzene level of actual production was less than that upper limit.

Several commenters stated that an upper limit would add costs without resulting in additional benefits, and supported a program without upper limits. Other commenters, however, expressed serious concerns about the potential consequences of a program without upper limits. Several commenters were concerned that under the program as proposed, it would be possible for refiners to maintain benzene levels well above the standard indefinitely while complying through the use of credits, thus potentially reducing the benefits of the program where this gasoline is used. Some commenters noted that under the proposed program, gasoline in some areas could still have significantly higher benzene levels than in other parts of the country. These commenters believe that these projected disparities raise issues of fairness. While our modeling of the proposed average standard suggested that all refineries were likely to reduce their benzene levels to some extent and that there would be significant reductions in gasoline benzene levels in each PADD, the commenters noted that an upper limit would provide a guarantee of reduction to at least the level of the upper limit.

After evaluating the results of our updated refinery analysis and considering all of the comments, we have reconsidered the appropriateness of an upper limit standard. For the reasons discussed above, we continue to believe that a per-gallon cap for CG would be inappropriate for a benzene control program due to actions refineries would need to take to protect against common fluctuations in benzene content, and the related adverse cost and energy implications if refineries invest in deeper benzene reductions or need to temporarily shut down. In contrast, the per-gallon cap for RFG of 1.3 vol%, which is currently in place, functions differently than would a per-gallon cap that applied to both the RFG and CG pools. The per-gallon cap for RFG alone is appropriate because the CG pool provides an outlet for batches of higher benzene RFG. However, if such a cap were applied to CG as well, refiners would be left without an outlet. As we said in the proposal, any meaningful level for a per-gallon cap applying to CG would thus overly restrict the normal fluctuations in gasoline benzene (see 71 FR 15869).

On the other hand, we now believe that the program should include a maximum average benzene standard, set at an appropriate level. The maximum average standard has the strong advantage of ensuring that the benzene content of gasoline produced by each refinery (or imported by each importer) will average no higher than this standard, regardless of the use of credits, providing greater assurance that actual in-use benzene reductions more clearly reflect our modeled projections which form the basis for this rule. At the same time, the maximum average standard avoids the serious drawbacks of a per-gallon cap.

Our refinery modeling is state of the art, but it cannot predict with high confidence each refinery's actions and how benzene trading will occur in each instance. We have done a refinery-by-refinery assessment of the most economical decisions we believe the industry will make to comply with the standard. However, in developing the model, we did not have access to specific information on many refineries, much of which is confidential business information. To fill these gaps, we used broader industry average information for a number of key model input parameters (including benzene levels in crude oil and in gasoline blendstocks, individual refinery unit throughput and operating conditions, distillation ''cut points,'' and future refinery expansions). Since there is wide variation in these important parameters among different refineries that impacts their baseline benzene levels and their opportunities for control, our model's assumptions inherently vary from actual refinery circumstances. Furthermore, by necessity, our model assumes that all refineries will, in effect, work collectively to make the most economical investment decisions on a nationwide basis, as though each knew in advance the investment decisions of the others. In reality, each individual refinery will be making its decisions independently of each other, based on very limited information about other refineries' actions. In addition, our model assumes that refiners will limit their actions to only treat the principal benzene-containing stream (reformate). There are individual circumstances where it may be economical to also treat other refinery streams. If the benzene in these other streams is indeed treated by some refineries, it is possible that sufficient credits might be generated to allow more refineries to avoid benzene reductions altogether by simply purchasing credits. Consequently, although our refinery-by-refinery modeling predicts significant benzene reductions in all areas nationwide, individual refineries might continue to have gasoline with higher benzene levels than the model predicts. This may also result in higher regional variation in gasoline benzene levels than the model predicts. Thus, we cannot dismiss this possibility with a high degree of confidence.

For these reasons, we believe that the addition of a maximum average standard to the 0.62 average standard provides far greater assurance that refineries will control benzene in the future as projected—and certainly will not increase benzene levels to be greater than the level of the maximum average standard. Furthermore, through selection of an appropriate level for the maximum average standard, we believe that we are achieving this goal with a minimal impact on the overall costs of the program.

We did not originally propose a maximum average standard, largely because of our interpretation of our modeling done for the proposal. That modeling indicated that adding a maximum average standard would result in significantly more benzene reduction in some areas, but that these increases would cause other areas to experience slightly smaller benzene reductions (see 71 FR 15903). Our updated modeling results are similar. In the proposal, we considered this potential for smaller benzene reductions in some areas to be a reason not to propose a maximum average standard. However, upon further evaluation of these modeling results, given the level of uncertainty in the model to predict individual refinery and regional benzene levels (as discussed above), we do not have confidence in the size of any offsetting increases in benzene levels in other areas, or even whether they would occur. In addition, we recognize that some of the refiners that the model predicts would reduce benzene slightly less (creating the apparent offsetting regional effects) may in fact decide to overcomply with the standard in order to maintain a compliance ''safety margin,'' regardless of the presence of a maximum average standard, and regardless of the strength of the market for the generated credits.

In light of this, we do not think it warrants giving up the benefits resulting from the inclusion of the maximum average standard.

Absent concern about any measurable offsetting effects from a maximum average standard, we believe that the major benefit of such a standard can and should be pursued. That is, the program can achieve increased certainty that the significant gasoline benzene reductions across all parts of the nation that our modeling projects will indeed occur, and thus that regional variations in gasoline benzene levels will indeed be minimized as we project.

We believe that setting the maximum average standard at a level of 1.3 vol% accomplishes the goal of reasonably assuring lower benzene levels for all refineries while balancing the negative aspects of more- and less-stringent benzene standards. Virtually all the commenters who supported a maximum average standard agreed that 1.3 vol% would be a reasonable level for such a standard. EPA agrees. Implementing a maximum average standard lower than 1.3 vol% would begin to significantly increase the number of refineries that would need to install the more expensive benzene reduction equipment. This would quickly diminish the value of the flexibility provided by the ABT program and thus force an increasing number of refineries to make expenditures in benzene control that could otherwise be smaller or avoided entirely, significantly increasing the overall cost of the program. Conversely, a maximum average standard greater than 1.3 vol% would require progressively fewer refineries to take action to reduce their benzene levels. This would in turn provide less assurance that actual benzene levels would be broadly achieved. As shown in detail in Chapter 9 of the RIA, the addition of the 1.3 vol% standard has minimal impact on the overall costs of the program. It is for this reason that we find that the 0.62 vol% annual average standard, in tandem with the 1.3 vol% maximum average standard, represents the greatest benzene reductions achievable considering cost, energy supply, and other enumerated statutory factors.

We believe that it is very important to monitor levels of benzene as refiners and importers begin to respond to the average and maximum average standards. EPA currently collects information on benzene and several other gasoline parameters for every batch of gasoline produced in or imported into the U.S., and publishes it in aggregate form on the EPA Web site. By January 1, 2011, we plan to begin publishing a more detailed annual report on gasoline quality. We will present this data on a PADD-by-PADD basis (to the extent that protection of confidential business information allows). We expect that these reports will be a valuable tool to stakeholders and members of the public who are interested in following the real-world progress of this rule's gasoline benzene reductions.

Among other changes discussed in section VIII below, our updated refinery-by-refinery model uses year-round 2004 gasoline production data as a starting point (replacing 2003 summer production data used in the proposal) and incorporates updated crude oil and benzene prices. The model thus generates updated predictions of the responses of refineries to the benzene standards. Our updated analysis shows that with the 0.62 vol% average standard and the maximum average benzene standard of 1.3 vol%, benzene levels will be reduced very significantly in all parts of the country. However, a degree of variation will continue to exist, due to the wide variety of refinery configurations, crude oil supplies, and approaches to benzene control, among other factors. This remaining variation is clearly legally permissible, notwithstanding the reasonable objective of assuring that reductions occur both regionally and nationally, because we do not read CAA section 202(l)(2) as requiring uniform gasoline benzene levels in each area of the country, since the standard is to be technology-based considering costs and other factors which vary considerably by region and by refinery. On the other hand, the maximum average standard will have the appropriate effect of directionally providing a greater degree of geographic uniformity of gasoline benzene levels and these levels remain achievable considering cost and the other enumerated factors. Reducing gasoline benzene levels on both a national and regional basis is within the discretion of the Administrator, since section 202(l)(2) does not specify whether the maximum degree of emission reductions are to be achieved nationally, regionally, or both.

The 1.3 vol% maximum average standard will become effective 18 months after the 0.62 vol% average standard, on July 1, 2012, and on July 1, 2016 for small refiners. While there is ample lead time for non-small refiners to meet the 0.62 vol% standard by January 1, 2011, we believe that staggering the implementation dates will ensure that the implementation of the programs by the refining industry is as smooth and efficient as possible. An important aspect of the design of this program as proposed is the recognition that not all of the benzene reduction would occur at once. As discussed in detail in section VI.A.2.b below, we expect that individual refiners will use the ABT program to schedule their benzene control expenditures in the most efficient way, using the early credit and standard credit provisions. This will essentially create a gradual phasing-in of the reductions in gasoline benzene content, beginning well before the initial compliance date of January 1, 2011 and spreading out industry-wide compliance activities over several years. Since the 1.3 vol% standard may not be met using credits, we have set the implementation dates for this standard such that the credit program can continue to be fully utilized for an additional 18 months after the effective date of the 0.62 vol% average standard to allow the intended phasing-in of the program to occur (i.e., there will be 18 additional months during which the 0.62 vol% average standard may be achieved exclusively by using credits).

We acknowledge that by incorporating the 1.3 vol% maximum average standard into the program, we are creating additional compliance challenges for a small number of refineries that might have relied on credits but will now need to install capital equipment to meet the 1.3 vol% maximum average standard. Most refiners will need to take these steps by July 1, 2012. Small refiners will need to take these steps four years later, by July 1, 2016. Although we believe that most (possibly all) refiners will be able to install appropriate benzene control equipment by these future dates, there may be a small number of refiners that continue to face significant financial hurdles as these dates approach. We have considered this concern, and we believe that the leadtime provided, including the longer leadtime for small refiners, and the hardship relief provisions discussed below, are sufficient to address any circumstances of severe economic impacts on individual refineries. We are making clear that serious economic difficulties in meeting the 1.3 vol% maximum average standard may be a basis for granting relief under the ''extreme hardship'' provision discussed in sectionVI.A.3. below.

2. Description of the Averaging, Banking, and Trading (ABT) Program

a. Overview

We are finalizing a nationwide averaging, banking, and trading (ABT) program that allows us to set a more

stringent annual average gasoline benzene standard than would otherwise be justifiable. The ABT program allows refiners and importers to choose the most economical compliance strategy (investment in technology, credits, or both) for meeting the 0.62 vol% annual average benzene standard. The flexibility afforded by the program is especially significant and needed given the considerable variation in existing gasoline benzene levels, which reflects important differences in crude oil composition and individual refinery design.

From 2007–2010, refiners can generate ''early credits'' by making qualifying benzene reductions earlier than required. In 2011 and beyond, refiners and importers can generate ''standard credits'' by producing/importing gasoline with benzene levels below 0.62 volume percent (vol%) on an annual average basis. Credits may be used interchangeably towards compliance with the 0.62 vol% standard, ''banked'' for future use, and/or transferred nationwide to other refiners/importers subject to the standard. In addition to the 0.62 vol% standard, refiners and importers must also meet a 1.3 vol% maximum average benzene standard beginning July 1, 2012. To comply with the maximum average standard, gasoline produced by a refinery or imported by an importer may not exceed 1.3 vol% on an annual average basis. While the 1.3 vol% maximum average standard places a limitation on credit use, we believe that the ABT program still provides the refining industry with significant compliance flexibility as described below.

b. Credit Generation

i. Eligibility

Under the ABT program, U.S. refiners (including ''small refiners''[190]) who produce gasoline by processing crude oil and/or intermediate feedstocks through refinery processing units (see § 80.1270) are eligible to generate both early and standard benzene credits. Foreign refiners with individual refinery baselines established under § 80.910(d) who imported gasoline into the U.S. in 2004–2005 are also eligible to generate early credits. Importers, on the other hand, are only eligible to generate standard credits under the ABT program. As explained in the proposal, importers are precluded from generating early credits because, unlike refineries, they do not need additional lead time to comply with the standard since they are not investing in benzene control technology. Additionally, due to their variable operations, importers could potentially redistribute the importation of foreign gasoline to generate ''windfall'' early credits with no associated benzene emission reduction value (see 71 FR 15874).

Benzene credits may only be generated on gasoline which is subject to the benzene requirements as described at § 80.1235. This excludes California gasoline (gasoline produced or imported for use in California) but includes gasoline produced by California refineries for use outside of California. Despite the fact that California gasoline is not covered by this program, EPA sought comment on whether and how credits could be generated based on California gasoline benzene reductions and applied towards non-California gasoline compliance (see 71 FR 15873). We did not receive any substantive comments on this matter but nonetheless considered the feasibility of such a program (described in more detail in the Summary and Analysis of Comments). We concluded that such a program could be very problematic to implement and, based on the apparent lack of interest by California gasoline refineries, it is likely that there would be very few participants. As a result, we have decided to maintain the proposed ABT provision which excludes California gasoline from generating credits.

ii. Early Credit Generation

To encourage early innovation in gasoline benzene control technology, refiners are eligible to generate early credits for making qualifying benzene reductions prior to the start of the program. Refiners must first establish individual benzene baselines for each refinery planning on generating early credits (discussed further in section VI.B.1). Benzene baselines are defined as the annualized volume-weighted benzene content of gasoline produced at a refinery from January 1, 2004 through December 31, 2005. To qualify to generate early credits, refineries must make operational changes and/or improvements in benzene control technology to reduce gasoline benzene levels in accordance with § 80.1275. Additionally, a refinery must produce gasoline with at least ten percent less benzene (on a volume-weighted annual average basis) than its 2004–2005 baseline. The first early credit generation period is from June 1, 2007 through December 31, 2007, and subsequent early credit generation periods are the 2008, 2009, and 2010 calendar years (2008 through 2014 calendar years for small refiners).

We are setting a ten percent reduction trigger point for early credits to ensure that changes in gasoline benzene levels result from real refinery process improvements. Without a substantial trigger point, refiners could earn credits for the normal year-to-year fluctuations in benzene level at a given refinery allowed under MSAT1. These windfall credits could negatively impact the ABT program because—as reflections of normal variability—they would have no associated benzene emission reduction value. As described in the proposal, we believe that a percent reduction trigger point, as opposed to an absolute level or fixed reduction trigger point, is the most appropriate early credit validation tool considering the wide range in starting benzene levels. In addition, we believe that ten percent is an appropriate value for the trigger point because it prevents most windfall credit generation, yet is not so restrictive as to discourage refineries from making early benzene reductions (see 71 FR 15875).

Once the ten percent reduction trigger point is met, refineries can generate credits based on the entire gasoline benzene reduction. For example, if in 2008 a refinery reduced its annual average benzene level from a baseline of 2.00 vol% to 1.50 vol% (below the trigger point of $0.90 \times 2.00 = 1.80$ vol%), its early benzene credits would be determined based on the difference in annual benzene content ($2.00 - 1.50 = 0.50$ vol%) divided by 100 and multiplied by the gallons of gasoline produced in 2008 (expressed in gallons of benzene).

We proposed that refiners be prohibited from moving gasoline or gasoline blendstock streams from one refinery to another in order to generate early credits (see 71 FR 15875). We received comments indicating that many refiners trade blending components between refineries to maximize gasoline production while minimizing cost, and that such companies should not be prohibited from generating early credits. In fact, we are not prohibiting these types of normal refinery activities, nor are we prohibiting such refineries from participating in the early credit program. We are simply requiring that all refineries make real operational changes and/or improvements in benzene control technology to reduce gasoline benzene levels in order to be eligible to generate early credits. In most cases, moving gasoline blendstocks from one refinery to another does not result in a net benzene reduction (one refinery gets cleaner at the expense of another

[190] Refiners approved as small refiners under § 80.1340.

getting dirtier). Accordingly, refineries that lower their benzene levels exclusively through blendstock trading (no additional qualifying reductions) are not eligible to generate early credits under the ABT program. An exception exists for refineries that transfer benzene-rich reformate streams for processing at other refineries with qualifying post-treatment capabilities, e.g., extraction or benzene saturation units. Under this scenario, the transferring refinery would be eligible to generate early credits because a real operational change to reduce gasoline benzene levels has been made. The regulations at § 80.1275 have been modified to more clearly reflect our intended early credit eligibility provisions, and specifically address blendstock trading.

iii. Standard Credit Generation

Refiners and importers may generate standard credits for overcomplying with the 0.62 vol% gasoline benzene standard on a volume-weighted annual average basis in 2011 and beyond (2015 and beyond for small refiners).[191] For example, if in 2011 a refinery's annual average benzene level is 0.52, its standard benzene credits would be determined based on the margin of overcompliance with the standard (0.62 − 0.52 = 0.10 vol%) divided by 100 and multiplied by the gallons of gasoline produced during the 2011 calendar year (expressed in gallons of benzene). Likewise, if in 2012 the same refinery were to produce the same amount of gasoline with the same average benzene content, they would earn the same number of credits. The standard credit generation opportunities for overcomplying with the standard continue indefinitely (see 71 FR 15872).

c. Credit Use

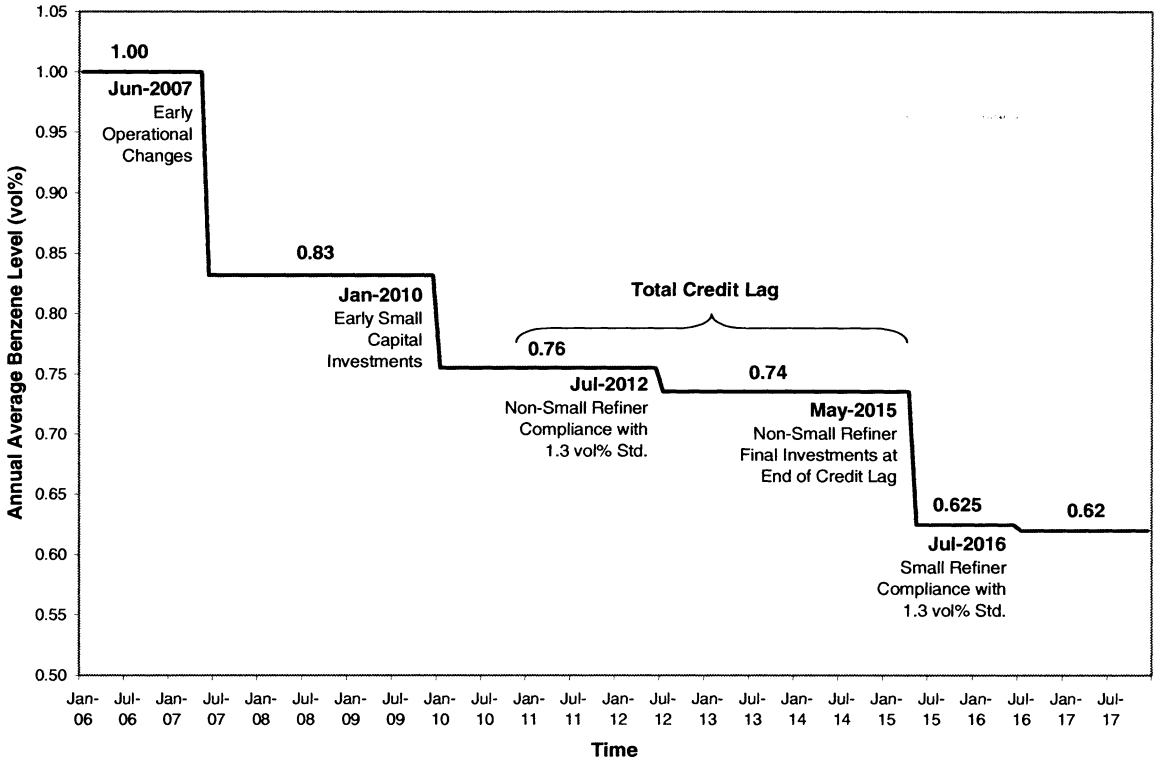
As proposed, we are finalizing a program where refiners and importers can use benzene credits generated or obtained under the ABT program to meet the 0.62 vol% annual average standard in 2011 and beyond (2015 and beyond for small refiners). We are also finalizing a 1.3 vol% maximum average standard which takes effect in July 2012 (July 2016 for small refiners). The maximum average standard must be met based on actual refinery benzene levels, essentially placing a cap on total credit use. As discussed above in section VI.A.1.d, we believe this is an appropriate strategy for addressing the current disparity in gasoline benzene levels throughout the country.

Overall, the ABT program will allow for a more gradual phase-in of the 0.62 vol% benzene standard and a more cost-effective program. The early credit program gives refiners an incentive to make initial gasoline benzene reductions sooner than required. The early credits generated can be used to provide refiners with additional lead time to make their final (more expensive) investments in benzene control technology. As a result, some benzene reductions will occur prior to the start of the program while others will lag (within the realms of the credit life provisions described below). We anticipate that there will be enough early credits generated to allow refiners to postpone their final investments by up to three years, which coincides with the maximum time afforded by the early credit life provisions. In addition, we predict that standard credits generated during the early credit lag period will allow for an additional 16 months of lead time. The result is a gradual phase-in of the 0.62 vol% benzene standard beginning in June 2007 and ending in July 2016, as shown below in Figure VI.A–1. Without early credits, refineries would be immediately constrained by the 0.62 vol% standard and likely forced to make their final investments sooner (including those necessary to meet the 1.3 vol% maximum average standard).

[191] Standard credit generation begins in 2011, or 2015 for small refiners, regardless of whether a refinery pursues early compliance with the 0.62 vol% standard under § 80.1334.

Figure VI.A-1

Benzene Level vs. Time



In addition to earlier benzene reductions and a more gradual phase-in of the 0.62/1.3 vol% standards (as shown above), the ABT program results in a more cost-effective program for the refining industry. Our modeling shows that allowing refiners to average benzene levels nationwide to meet the 0.62 vol% standard reduces ongoing compliance costs by about 50% from 0.51 to 0.27 cents per gallon (refer to RIA Section 9.6.2). Our modeling further shows that the early credit program we are finalizing results in the lowest possible compliance costs during the phase-in period. Without an early credit program, the total amortized capital and operating costs incurred by the refining industry during the phase-in period is estimated to be $905 million (2003 dollars).[192] With an early credit program, the total cost incurred during the same phase-in period is reduced to $608 million, providing about $300 million in savings. In the absence of an ABT program altogether, the total cost incurred during the phase-in period would be $1.7 billion. As a result, the ABT program in its entirety could save the refining industry up to $1.1 billion in compliance costs from 2007–2015. For a more detailed discussion on compliance costs, refer to section VIII.A. For more information on how the cost savings associated with the ABT program were derived, refer to RIA Section 6.5.5.12.

Under the ABT program, early and standard benzene credits can be used interchangeably towards compliance with the 0.62 vol% standard (within the realms of the credit life provisions described below). Each credit (expressed in gallons of benzene) can be used on a one-for-one basis to offset the same volume of benzene produced/imported in gasoline above the standard. For example, if in 2011 a refinery's annual average benzene level was 0.72, the number of benzene credits needed to comply would be determined based on the margin of undercompliance with the standard (0.72 − 0.62 = 0.10 vol%) divided by 100 and multiplied by the gallons of gasoline produced during the 2011 calendar year. The credits needed would be expressed in gallons of benzene.

To enable enforcement of the program, the ABT program we are finalizing includes a limit on credit life (for both early and standard credits), a limit on the number of times credits may be traded, and a prohibition on outside parties taking ownership of credits. We believe that these provisions are necessary to ensure that the full benzene reduction potential of the program is realized and that the credit trading program is equitably administered among all participants. In the proposal, we acknowledged concerns that credit use limitations might in some circumstances unnecessarily hamper the credit market. Specifically, we requested comment on ways that some of the provisions might be reduced or eliminated while still maintaining an enforceable program (see 71 FR 15872). Although we received many comments on the proposed ABT program, we did not receive any substantive comments indicating that the proposed credit provisions would be a significant burden on refiners or importers. Likewise, we did not receive

[192] ABT program cost calculations consider future gasoline growth and the time value of money. The gasoline growth rate from 2004–2012 was estimated by the refinery cost model and future growth rates were obtained from EIA's AEO 2006. The costs and resulting cost savings estimated for the phase-in period were calculated based on compliance costs presented in RIA Section 9.6.2 and adjusted back to 2007 to account for the time-value of money based on a 7% average rate of return.

any substantive comments suggesting that the removal of such restrictions would greatly improve the efficiency of the ABT program. For these reasons, we are finalizing such provisions for credit use (described in more detail below).

i. Early Credit Life

Early credits must be used towards compliance within three years of the start of the program; otherwise they will expire and become invalid. In other words, early credits generated or obtained under the ABT program must be applied to the 2011, 2012, or 2013 compliance years. Similarly, early credits generated/obtained and ultimately used by small refiners must be applied to the 2015, 2016, or 2017 compliance years. The result is that no early credits may be used toward compliance with the 2014 year. This break in the early credit application period may help funnel surplus early credits facing expiration to small refiners in need.

ii. Standard Credit Life

Standard credits must be used within five years from the year they were generated (regardless of when/if they are traded). For example, standard credits generated in 2011 would have to be applied towards the 2012 through 2016 compliance year(s); otherwise they would expire and become invalid. To encourage trading to small refiners, there is a credit life extension for standard credits traded to and ultimately used by small refiners. These credits may be used towards compliance for an additional two years, giving standard credits a maximum seven-year life. For example, the same above-mentioned standard credits generated in 2011, if traded and used by a small refiner, would have until 2018 to be applied towards compliance before they would expire.

iii. Consideration of Unlimited Credit Life

Since compliance with the gasoline benzene standards is determined at the refinery or importer level, there are no enforceable downstream standards associated with this rulemaking. Thus, it is critical that EPA be able to conduct enforcement at the refinery or importer level. Additionally, since EPA enforcement activities are limited by the five-year statute of limitations in the Clean Air Act, allowing credit life beyond five years poses serious enforcement issues. As a result, we are finalizing three-year early credit life and five-year standard credit life provisions (as just described above). We believe that these credit life provisions are limited enough to satisfy enforcement and trading concerns yet sufficiently long to provide necessary program flexibility. However, we recognize that extending credit life might result in increased program flexibility. Accordingly, in the proposal, EPA sought comment on different ways to structure the program that would allow for unlimited credit life. Specifically, we asked for comment on how unlimited credit life could be beneficial to the program and/or how the associated increase in recordkeeping and enforcement issues could be mitigated (see 71 FR 15872). Comments received provided no support for why unlimited credit life would improve program flexibility or how enforcement issues could be addressed. Furthermore, we did not receive any comments suggesting that the proposed credit life provisions would significantly hamper trading. As such, we are finalizing the credit life provisions as proposed.

iv. Credit Trading Provisions

It is possible that benzene credits could be generated by one party, subsequently transferred or used in good faith by another, and later found to have been calculated or created improperly or otherwise determined to be invalid. If this occurs, as in past programs, both the seller and purchaser will have to adjust their benzene calculations to reflect the proper credits and either party (or both) could be determined to be in violation of the standards and other requirements if the adjusted calculations demonstrate noncompliance with the 0.62 vol% standard.

Credits must be transferred directly from the refiner or importer generating them to the party using them for compliance purposes. This ensures that the parties purchasing them are better able to assess the likelihood that the credits are valid. An exception exists where a credit generator transfers credits to a refiner or importer who inadvertently cannot use all the credits. In this case, the credits can be transferred a second time to another refiner or importer. After the second trade, the credits must be used or terminated. In the proposal, we requested comment on whether more than two trades should be allowed—specifically, whether three or four trades were more appropriate and/or more beneficial to the program (see 71 FR 15876). We did not receive any comments providing analytical support for an additional number of trades. We are finalizing a maximum of two trades, consistent with other recent rulemakings, in order to provide flexibility while still maintaining enforceability as discussed in the proposal.

There are no prohibitions against brokers facilitating the transfer of credits from one party to another. Any person can act as a credit broker, regardless of whether such person is a refiner or importer, as long as the title to the credits is transferred directly from the generator to the user. This prohibition on outside parties taking ownership of credits was promulgated in response to problems encountered during the unleaded gasoline program and has since appeared in subsequent fuels rulemakings. To reevaluate potential stakeholder interest in removing this prohibition, EPA sought comment on this provision in the proposal—specifically, whether there were potential benefits to allowing other parties to take ownership of credits and how such a program would be enforced (see 71 FR 15876). We did not receive any comments on this issue and continue to believe that our proposal is appropriate. Therefore, to maintain maximum program enforceability and consistency with all of our other ABT programs for mobile sources and their fuels, we are maintaining our existing prohibition on outside parties taking ownership of credits.

We are not imposing any geographic restrictions on credit trading. Credits may be traded nationwide between refiners or importers as well as within companies to meet the 0.62 vol% national average benzene standard. We believe that restricting credit trading could reduce refiners' incentive to generate credits and hinder trading essential to this program. In addition, since there are no fuel-availability issues associated with this rule (as opposed to the case of the ultra-low sulfur diesel program), there is no need to impose a geographic restriction.

3. Provisions for Small Refiners and Refiners Facing Hardship Situations

In developing the MSAT2 program, we evaluated the need for and the ability of refiners to meet the proposed benzene standards as expeditiously as possible. We continue to believe that it is feasible and necessary for the vast majority of the program to be implemented in the time frame stated above to achieve the air quality benefits as soon as possible. Further, we believe that refineries owned by small businesses generally face unique hardship circumstances as compared to larger refiners. We are also finalizing provisions for other refiners to allow them to seek limited relief from hardship situations on a case-by-case

basis. These provisions are discussed in detail below.

a. Provisions for Small Refiners

We proposed several special provisions for refiners that are approved as small refiners (see VI.A.3.a.ii below). This is due to the fact that small refiners generally have greater difficulty than larger companies (including those large companies that own small-capacity refineries) in raising capital for investing in benzene control equipment. Small refiners are also likely to have more difficulty in competing for engineering resources and in completing construction of the needed benzene control (and any necessary octane recovery) equipment in time to meet the required standards (see also the more detailed discussion at 71 FR 15877).

As explained in the discussion of our compliance with the Regulatory Flexibility Act below in section XII.C and in the Final Regulatory Flexibility Analysis in Chapter 14 of the RIA, we carefully considered the impacts of the regulations on small businesses. Most of our analysis of small business impacts was performed as a part of the work of the Small Business Advocacy Review Panel (''SBAR Panel'', or ''the Panel'') convened prior to the proposed rule, pursuant to the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). (The final report of the Panel is available in the docket.)

For the SBREFA process, EPA conducted outreach, fact-finding, and analysis of the potential impacts of our regulations on small businesses. Based on these factors and analyses by all Panel members, the Panel concluded that small refiners in general would likely experience a significant and disproportionate financial hardship in reaching the objectives of the MSAT2 program. We proposed many of the provisions recommended by the Panel and we are finalizing these provisions in this action.

i. Definition of Small Refiner for Purposes of the MSAT2 Small Refiner Provisions

The criteria to qualify for small refiner status for this program are in most ways the same as those required in the Gasoline Sulfur and the Highway and Nonroad Diesel rules. However, there are some differences; as stated in our more recent fuels programs, we believe that it is necessary to limit relief to those small entities most likely to experience adverse economic impacts from fuel regulations. We are finalizing the following provisions for determining small refiner status.

To qualify as a small refiner, a refiner must demonstrate that it meets all of the following criteria: (1) Produced gasoline from crude during calendar year 2005; (2) had no more than 1,500 employees, based on the average number of employees for all pay periods from January 1, 2005 to January 1, 2006; and, (3) had an average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2005. We are likewise finalizing the provision requiring refiners to apply for, and for EPA to approve, a refiner's status as a ''small refiner''.

Small refiner provisions are limited to refiners of gasoline from crude because they are the entities that bear the investment burden and the consequent economic hardship. Therefore, blenders, importers, and additive component producers are not eligible. For these same reasons, small refiner status is limited to those refiners that owned and operated the refinery during the period from January 1, 2005 through December 31, 2005. This is consistent with the approach taken in the Nonroad Diesel rule, but we are revising the text to be more clear on this issue.

In determining its crude oil capacity and total number of employees, a refiner must include the crude oil capacity and number of employees of any subsidiary companies, any parent companies, any subsidiaries of the parent companies, and any joint venture partners. As stated in the proposal, there was confusion in past rules regarding ownership. Thus, we proposed defining a parent company as any company (or companies) with controlling ownership interest, and a subsidiary of a company as any company in which the refiner or its parent(s) has a controlling ownership interest (see 71 FR 15878). We requested comment on these clarifications in the proposal, but did not receive any comments on these aspects of the small refiner definition. Therefore, we are finalizing the definition of parent company and related clarifying provisions such that the employees and crude capacity of all parent companies, and all subsidiaries of all parent companies, must be taken into consideration when evaluating compliance with these criteria.

We received comments regarding the small refiner employee count and crude capacity criteria. These commenters stated that they believed that EPA's criteria fail to provide relief to a small number of refiners whom they believe are similar in many respects to those refiners that will qualify as small under our criteria. The commenters pointed to recent Congressionally enacted programs, specifically the Energy Policy Act of 2005 (EPAct) and the American Jobs Creation Act of 2004 (Jobs Act), which use definitions that are different from the SBA definition, and from the criteria EPA is adopting in this rule. The EPAct focuses on refinery size rather than company size, and the Jobs Act focuses on refinery-only employees rather than employees company-wide. EPA has established the criteria for qualifying for small refiner relief based on the Small Business Administration's (SBA) small business definition (per 13 CFR 121.201).

We do not believe that it would be appropriate to change the proposed small refiner employee count or crude capacity limit criteria to fit the definitions used in either of the two recent statutes. While Congress is able to establish special provisions for subsets of the industry in programs like those mentioned above, EPA appropriately focuses, under SBREFA and in this rulemaking, on consideration of relief on those refining companies that we believe are likely to face serious economic hardship as a result of compliance with the rule. Under programs subject to the EPAct and Jobs Act definitions, relief would be granted to refineries that are owned by larger companies, or companies that have additional sources of revenue (indicated by more employees and/or refining capacity), and also refineries owned by foreign governments. These definitions do not focus as directly on refiners which, due to their size, could incur serious adverse economic impact from fuel regulations; and EPA consequently is not adopting either of them in this rule. Further, SBA established its small business definition to set apart those companies which are most likely to be at an inherent economic disadvantage relative to larger businesses. We agree with the assessment that refiners of this size may be afforded special consideration under regulatory programs that have a significant economic impact on them (insofar as is consistent with Clean Air Act requirements). We continue to believe that it is most appropriate to remain consistent with our previous fuels programs and retain the criteria to qualify for small refiner status that have been used in the past (with some minor clarifications to avoid confusion), since these criteria best identify the class of small refiner which may incur disproportionate regulatory impact under the rule. We are therefore finalizing the small refiner qualification criteria that were proposed.

As previously stated, our intent has been, and continues to be, limiting the small refiner relief provisions to the

small subset of refiners that are likely to be seriously economically challenged as a result of the new regulations. We assume that new owners that purchase a refinery after December 31, 2005 do so with full knowledge of the proposed regulation. Given that they have the resources available to purchase the refinery assets, they are not in an economic hardship situation. Therefore, they should include compliance planning as part of their purchase decision. Similar to earlier fuel rules, we are finalizing a provision that a refiner that restarts a refinery in the future is eligible for small refiner status. In such cases, we will judge eligibility under the employment and crude oil capacity criteria based on the most recent 12 consecutive months before the application, unless we conclude from data provided by the refiner that another period of time is more appropriate. However, unlike past fuel rules, this will be limited to a company that owned the refinery at the time that it was shut down. New purchasers will not be eligible for small refiner status for the reasons described above. Companies with refineries built after January 1, 2005 will also not be eligible for the small refiner hardship provisions, again for the reasons given above.

Similar to previous fuel sulfur programs, we also proposed that refiners owned and controlled by an Alaska Regional or Village Corporation organized under the Alaska Native Claims Settlement Act are also eligible for small refiner status, based only on the refiner's employee count and crude oil capacity (see 71 FR 15878). We did not receive any comments on this provision, and we are finalizing it in this action.

ii. Small Refiner Status Application Requirements

A refiner applying for status as a small refiner under this program is required to apply and provide EPA with several types of information by December 31, 2007. (The application requirements are summarized in section VI.B.2, below.) A refiner seeking small refiner status under this program must apply for small refiner status, regardless of whether the refiner had been approved or rejected for small refiner status under another fuel program. As with applications for relief under other rules, applications for small refiner status under this rule that are later found to contain false or inaccurate information will be void ab initio.

iii. Small Refiner Provisions

Delay in the Effective Date of the Standards

We proposed that small refiners be allowed to postpone compliance with the 0.62 vol% benzene standard until January 1, 2015, four years after the general program would begin (see 71 FR 15878). At such time, approved small refiners would be required to meet the 0.62 vol% benzene standard. As stated in the proposal, this additional lead time is justified because small refiners face disproportionate challenges, which the additional lead time will help to mitigate. We requested comment on this proposed provision, and we received many comments supporting it and none opposing it.

Normally a period of two to three years of lead time is required for a refiner to secure necessary financing and to carry out capital improvements for benzene control (see VI.A.1.c.i. above). Commenters specifically noted that additional lead time would allow small refiners to more efficiently obtain financing and contracts to carry out necessary capital projects (or to obtain credits) with less direct competition with non-small refiners for financing and for contractors to carry out capital improvements. Some commenters noted that they generally supported the proposed program of a 0.62 vol% benzene standard with no upper limit and the proposed small refiner relief. While we did not propose an upper limit, as discussed above in section VI.A.1, we have chosen to finalize a 1.3 vol% refinery maximum average.

The additional lead time also allows EPA to make programmatic adjustments, if necessary, before small refiners are required to comply with the benzene standards. As discussed below, we are finalizing a requirement that EPA review the program in 2012, leaving a number of years to adjust the program before small refiners are required to meet the benzene standards. The additional lead time for small refiners will also provide these refiners with three years of lead time following the review to take the review results into account in completing capital projects if necessary or desirable to meet the benzene standards. Based on these assessments, we are therefore finalizing a four-year period of additional lead time for small refiners for compliance with the 0.62 vol% benzene standard, until January 1, 2015 (and small refiners would continue to meet the requirements of MSAT1 until January 1, 2015). Further, we are finalizing an additional 4 years of lead time for small refiners to comply with the 1.3 vol% maximum average benzene standard, until July 1, 2016.

Early ABT Credit Generation Opportunities

During the development of the proposal, we anticipated that many small refiners would likely find it more economical to purchase credits for compliance than to comply by making capital investments to reduce gasoline benzene. However, some small refiners indicated that they would make reductions to their gasoline benzene levels to fully or partially meet the proposed 0.62 vol% benzene standard. Therefore, we proposed that small refiners that take steps to meet the benzene requirement before January 1, 2015 would be eligible to generate early credits (see 71 FR 15879). Current and previous fuels programs allow for credit generation opportunities to encourage early compliance, and extending this opportunity to small refiners, based on the small refiner effective date, is consistent with this objective. Small refiners generally supported this provision and we did not receive any adverse comments on it.

Early credit generation opportunities will provide more credits for the MSAT2 ABT program and will help to achieve the air quality goals of the MSAT2 program earlier than otherwise required. We are therefore finalizing an early credit generation provision for small refiners. This is similar to the general early credit generation provision that is provided to all refiners, except that small refiners may generate early credits until January 1, 2015. As discussed in section VI.A.2.b.ii above, refineries must reduce their 2004–2005 benzene levels by at least ten percent to generate early credits. This ten percent threshold is being set to ensure that changes in gasoline benzene levels result from real refinery process improvements, not just normal fluctuations in benzene levels at a given refinery (allowed under MSAT1). The small refiner early credit generation period will be from June 1, 2007 to December 31, 2014, after which standard credits may be generated indefinitely for those that overcomply with the 0.62 vol% annual average standard.

Extended Credit Life

During the SBREFA process, many small refiners expressed interest in relying upon credits as an ongoing compliance strategy for meeting the 0.62 vol% gasoline benzene standard. However, several small refiners voiced concerns surrounding the idea of relying on the credit market to avoid large

capital costs for benzene control. One of their primary concerns was that credits might not be available and/or traded to small refiners in need. To increase the certainty that credits would be available, we proposed a two-year credit life extension for credits generated by or traded to small refiners (see 71 FR 15879). Not only does this provision encourage trading to small refiners, it creates a viable outlet for credits facing expiration. Most small refiners supported the proposed credit life provision. However, one refiner suggested that we finalize unlimited credit life for credits traded to small refiners. Although unlimited credit life could have some perceived benefits, overall it poses serious enforcement problems. Therefore, for the reasons described above in VI.A.2.c.iii, we are not finalizing unlimited credit life for credits traded to small refiners. Further, we are finalizing a slightly modified version of the proposed small refiner extended credit life provision to better reflect its intended purpose. First, the two-year credit life extension pertains only to standard credits. The extension does not apply to early credits because refiners already have an incentive to trade early credits to small refiners. Based on the nature of the early credit life program (three-year life based on the start of the program) and small refiners' delayed program start date (2015 as opposed to 2011), early credits traded to small refiners are already valid for an additional four years. Second, the two-year credit life extension applies only to standard credits traded to small refiners. There is no need to extend credit life for credits generated by small refiners, because in this event, the small refiner would already have the utmost certainty that the credits would be available for use.

ABT Program Review

We proposed that we would perform a review of the ABT program (and thus, the small refiner flexibility options) by 2012, one year after the general program begins (see 71 FR 15879). Coupled with the small refiner four-year additional lead time provision, the ABT program review after the first year of the overall program will provide small refiners with roughly three years, after learning the results of the review, to obtain financing and perform engineering and construction. We are committing to this provision today. The review will take into account the number of early credits generated industry-wide each year prior to the start of the MSAT2 program, as well as the number of credits generated and transferred during the first year of the overall benzene control program. In part to support this review, we are requiring that refiners submit pre-compliance reports, similar to those required under the highway and nonroad diesel programs. In addition, the first compliance report that refiners submit (for the 2011 compliance period) will provide important information on how many credits are actually being generated or utilized during the first year of the program.

The ABT pre-compliance reports will be due annually on June 1 from 2008 through 2011. The reports must include projections of how many credits will be generated and how many credits will need to be used at each refinery. The reports must also contain information on a refiner's plans (for each refinery) for compliance with the benzene standard, including whether or not the refiner will utilize credits alone to comply with the standard. Refiners must also report any early credits that may have been transferred to another entity prior to January 1, 2011 and the sale price of those credits.

In addition, ABT compliance reports will be due annually beginning February 28, 2012. For any refiner expecting to participate in the credit trading program (under § 80.1275 and/or § 80.1290, the report must include information on actual credit generation and usage. Refiners must also provide any updated information regarding plans for compliance. EPA will publish the results of these refinery compliance reports and the results of our review as soon as possible to provide small refiners with information on the ABT program roughly three years prior to the small refiner compliance date. EPA will maintain the confidentiality of information from individual refiners submitted in the reports. We will present generalized summaries of the reports annually.

If, following the review, EPA finds that the credit market is not adequate to support the small refiner provisions, we will revisit the provisions to determine whether or not they should be altered or whether EPA can assist the credit market (and small refiners' access to credits). For example, the Panel suggested that EPA could consider actions such as: (1) The ''creation'' of credits by EPA that would be introduced into the credit market to ensure that there are additional credits available for small refiners; (2) a requirement that a percentage of all credits to be sold be set aside and only made available for small refiners; and (3) a requirement that credits sold, or a certain percentage of credits sold, be made available to small refiners before they are allowed to be sold to any other refiners.

Further, we are finalizing an additional hardship provision to assist small refiners. This hardship provision would be for the case of a small refiner for which compliance with the 0.62 vol% benzene standard would be feasible only through the purchase of credits, but for whom purchase of credits is not economically feasible. This hardship provision will only be available following the ABT program review, since EPA wishes to use the most accurate information to assess credit availability and the working of the credit market. The provision will only be afforded to a small refiner on a case-by-case basis, and must be based on a showing by the refiner of the practical or economic difficulty in acquiring credits for compliance with the 0.62 vol% benzene standard (or some other type of similar situation that would render its compliance with the standard not economically feasible). The relief offered under this hardship provision is a further delay, on an individual refinery basis, for up to two years. Applications for relief under this provision must meet the requirements set out in § 80.1343. Following the two years, a small refiner will be allowed to request one or more extensions of the hardship until the refinery's material situation has changed. Finally, if a small refiner is unable to comply with the 1.3 vol% refinery maximum average, it may apply for relief from this standard under the general hardship provisions discussed below in section VI.A.3.b. Applications for relief from the 1.3 vol% refinery maximum average must be received by January 1, 2013 and must meet the requirements set out in § 80.1335.

iv. The Effect of Financial and Other Transactions on Small Refiner Status and Small Refiner Relief Provisions

We believe that the effects of financial (and other) transactions are also relevant to this action. We proposed these provisions (see 71 FR 15880) and did not receive any comments on them. We continue to believe that these provisions are appropriate and are finalizing the provisions discussed below.

Large Refiner Purchasing a Small Refiner's Refinery

One situation involves a ''non-small'' refiner that wishes to purchase a refinery owned by an approved small refiner. The small refiner may not have completed or even begun any necessary planning to meet the MSAT2 standards, since it would likely have planned to make use of the special small refiner

relief provisions. We assume that the refiner would have incorporated financial planning for compliance into its purchase decision. However, we recognize that a limited amount of time would be required for the physical completion of the refinery upgrades for compliance. (This situation would be similar to that addressed in the Nonroad Diesel program (96 FR 39051).)

We therefore believe that an appropriate period of lead time for compliance with the MSAT2 requirements is warranted where a refiner purchases any refinery owned by a small refiner, whether by purchase of a refinery or purchase of the small refiner entity. A refiner that acquires a refinery from an approved small refiner will be provided with 30 additional months from the date of the completion of the purchase transaction (or until the end of the applicable small refiner relief interim period if it is within 30 months). During this 30-month period, production at the newly-acquired refinery may remain at the benzene levels that applied to that refinery for the previous small refiner owner, and all existing small refiner provisions and restrictions will also remain in place for that refinery. At the end of this period, the refiner must comply with the ''non-small refiner'' standards. There will not be an adverse environmental impact of this provision, since the small refiner would already have been provided relief prior to the purchase and this provision would be no more generous.

We expect that in most (if not all) cases, the 30 months of additional lead time will be sufficient for the new refiner-owner to accomplish the necessary planning and any needed refinery upgrades. If a refiner nonetheless believes that the technical characteristics of its plans would require additional lead time, the refiner may apply for additional time and EPA will consider such requests on a case-by-case basis. Based on information provided in such an application and other relevant information, EPA will decide whether additional time is technically necessary and, if so, how much additional time would be appropriate. As discussed above, in no case will compliance dates be extended beyond the time frame of the applicable small refiner relief.

Small Refiner Losing Its Small Refiner Status Due To Merger or Acquisition

Another type of potential transaction involves a refiner with approved small refiner status that later loses its small refiner status because it no longer meets the small refiner criteria. An approved small refiner that exceeds the small refiner employee or crude capacity limit due to merger or acquisition will lose its small refiner status. This includes exceedances of the employee or crude capacity criteria caused by acquisitions of assets such as plants and equipment, as well as acquisitions of business entities.

Our intent has been, and continues to be, to limit the small refiner relief provisions to a small subset of refiners that are most likely to be significantly economically challenged, as discussed above. At the same time, it is also our intent to avoid stifling normal business growth. Therefore, under this program, a refiner will be disqualified from small refiner status if it exceeds the small refiner criteria through its involvement in transactions such as being acquired by or merging with another entity, through the small refiner itself purchasing another entity or assets from another entity, or when it ceases to process crude oil. However, if a small refiner grows through normal business practices, and exceeds the employee or crude capacity criteria without merger or acquisition, it will retain its small refiner status for this program.

In the sole case of a merger between two approved MSAT2 small refiners, both small refiners will be allowed to retain their small refiner status under this program. As in past fuel rulemakings, we believe the justification for continued small refiner relief for each of the merged entities remains valid. Small refiner status for the two entities of the merger will not be affected, and hence the original compliance plans of the two refiners should not be impacted. Moreover, no environmental detriment will result from the two small refiners maintaining their small refiner status within the merged entity as they would have likely maintained their small refiner status had the merger not occurred. We did not receive any comments on this provision.

We recognize that a small refiner that loses its small refiner status because of a merger with, or acquisition of, a non-small refiner would face the same type of technical lead time concerns discussed above for a non-small refiner acquiring a small refiner's refinery. Therefore, we are also providing the 30 months of additional lead time described above for non-small refiners purchasing a small refiner's refinery.

b. Provisions for Refiners Facing Hardship Situations

The MSAT2 program includes a nationwide credit trading program of indefinite duration for the 0.62 vol% annual average benzene standard, and we expect that credits will be available at a reasonable cost industry-wide. However, as explained in the proposal (71 FR 15880–15881), there could be circumstances when refiners would need hardship relief. We reiterate this conclusion here, especially given the 1.3 vol% refinery maximum average benzene standard in the final rule. These hardship provisions are available to all refiners, small and non-small, with relief being available on a case-by-case basis following a showing of certain requirements (as described in the regulations at sections 80.1335 and 80.1336). We believe that the inclusion of hardship provisions for refiners is a necessary part of adopting the benzene requirements as the maximum reduction achievable considering costs. Without a mechanism to consider economic hardship to particular refineries, the overall level of the standards would need to be higher to reflect the potential increased costs. Note, however, that we do not intend for these hardship waiver provisions to encourage refiners to delay planning and investments they would otherwise make.

We are finalizing two forms of hardship relief: the first applies to situations of extreme and unusual hardship, and the second applies to situations where unforeseen circumstances prevent the refiner from meeting the benzene standards. These provisions are similar to the hardship provisions that were proposed, but with some modification because this final rule includes a 1.3 vol% refinery maximum average benzene standard, which cannot be satisfied through the use of credits. While we sought comment in the proposal on such a standard, we did not propose it, and therefore also did not propose any hardship relief specific to it.

As discussed further below, the application requirements and potential relief available differ somewhat depending upon whether a refiner applies for hardship relief for the 0.62 vol% benzene standard, the 1.3 vol% refinery maximum average, or both (a refiner may apply for relief from both standards, but EPA will address them independently). This is partly due to the fact that a refiner may use credits to meet the 0.62 vol% benzene standard, but credits cannot be used for compliance with the 1.3 vol% refinery maximum average standard. EPA can impose appropriate conditions on any hardship relief. Note also that any hardship relief granted under this rule will be separate and apart from EPA's authority under the Energy Policy Act to issue temporary waivers for extreme and unusual supply circumstances, under amended section 211(c)(4). In general,

commenters stated that they supported the inclusion of hardship provisions, but they did not provide any specific comments regarding these provisions.

i. Temporary Waivers Based on Extreme Hardship Circumstances

We are finalizing the proposed hardship relief provisions based on a showing of extreme hardship circumstances, with some slight modifications from the proposed extreme hardship relief provision (see 71 FR 15881). We did not receive comment on the proposed hardship provision.

Extreme hardship circumstances could exist based on severe economic or physical lead time limitations of the refinery to comply with the benzene standards required by the program. Such extreme hardship may be due to an inability to physically comply in the time available, an inability to secure sufficient financing to comply in the time available, or an inability to comply in the time available in a manner that would not place the refiner at an extreme competitive disadvantage sufficient to cause extreme economic hardship. A refiner seeking such hardship relief under this provision will have to demonstrate that these criteria were met. In addition to showing that unusual circumstances exist that impose extreme hardship in meeting the benzene standards, the refiner must show: (1) Circumstances exist that impose extreme hardship and significantly affect the ability to comply with the gasoline benzene standards by the applicable date(s); and (2) that it has made best efforts to comply with the requirements. Refiners seeking additional time must apply for hardship relief, and the hardship applications must contain the information required under § 80.1335.

For relief from the 0.62 vol% benzene standard in extreme hardship circumstances, an aspect of the demonstration of best efforts to comply is that severe economic or physical lead time limitations exist and that the refinery has attempted, but was unable, to procure sufficient credits. EPA will determine an appropriate extended deficit carry-forward time period based on the nature and degree of the hardship, as presented by the refiner in its hardship application, and on our assessment of the credit market at that time. Moreover, because we expect the credit program to be operating and robust, we believe that circumstances under which we would grant relief from the 0.62 vol% benzene standard will be rare, and should we grant relief, it would likely be for less than three years. Further, we may impose additional conditions to ensure that the refiner was making best efforts to comply with the benzene standards while offsetting any loss of emission control from the program (due to extended deficit carry-forward).

For relief from the 1.3 vol% refinery maximum average benzene standard in extreme hardship circumstances, a refiner must show that it could not meet the 1.3 vol% standard, despite its best efforts, in the timeframe required due to extreme economic or technical problems. Extreme hardship relief from the 1.3 vol% refinery maximum average standard is available for both non-small and small refiners. This provision is intended to address unusual circumstances that should be apparent now, or well before the standard takes effect. Thus, refiners must apply for such relief by January 1, 2008, or January 1, 2013 for small refiners. If granted, such hardship relief would consist of additional time to comply with the 1.3 vol% refinery maximum average. The length of such relief and any conditions on that relief will be granted on a case-by-case basis, following an assessment of the refiner's hardship application, but could be for a longer period than for relief from the 0.62 vol% standard since credits cannot be used for compliance with the 1.3 vol% refinery maximum average.

ii. Temporary Waivers Based on Unforeseen Circumstances

We are also finalizing the proposed temporary hardship provision based on unforeseen circumstances, which, at our discretion, will permit any refiner or importer to seek temporary relief from the benzene standards under certain rare circumstances (see 71 FR 15880). This waiver provision is similar to provisions in prior fuel regulations. It is intended to provide refiners and importers relief in unanticipated circumstances—such as a refinery fire or a natural disaster—that cannot be reasonably foreseen now or in the near future. We did not receive comments on this proposed hardship provision.

To receive hardship relief based on unforeseen circumstances, a refiner or importer will be required to show that: (1) The waiver is in the public interest; (2) the refiner/importer was not able to avoid the noncompliance; (3) the refiner/importer will meet the benzene standard as expeditiously as possible; (4) the refiner/importer will make up the air quality detriment associated with the nonconforming gasoline, where practicable; and (5) the refiner/importer will pay to the U.S. Treasury an amount equal to the economic benefit of the noncompliance less the amount expended to make up the air quality detriment. These conditions are similar to those in the RFG, Tier 2 gasoline sulfur, and the highway and nonroad diesel regulations, and are necessary and appropriate to ensure that any waivers that are granted will be limited in scope. Such a request must be based on the refiner or importer's inability to produce compliant gasoline at the affected facility due to extreme and unusual circumstances outside the refiner or importer's control that could not have been avoided through the exercise of due diligence.

For relief from the 0.62 vol% benzene standard based on unforeseen circumstances, the hardship request must also show that other avenues for mitigating the problem, such as the purchase of credits toward compliance under the credit provisions, had been pursued and yet were insufficient or unavailable. Hardship relief from that standard will allow a deficit to be carried forward for an extended, but limited, time period (more than the one year allowed by the rule). The refiner or importer must demonstrate that the magnitude of the impact was so severe as to require such an extension. EPA will determine an appropriate extended deficit carry-forward time period based on the nature and degree of the hardship, as presented by the refiner or importer in its hardship application, and on our assessment of the credit market at that time.

For relief from the 1.3 vol% refinery maximum average benzene standard based on unforeseen circumstances, the hardship request must show that, despite its best efforts, the refiner or importer cannot meet the standard in the timeframe required. Relief will be granted on a case-by-case basis, following an assessment of the refiner's hardship application.

c. Option for Early Compliance in Certain Circumstances

We are finalizing an option that would allow a refinery to begin compliance with the MSAT2 benzene standards earlier than 2011 instead of maintaining compliance with its MSAT1 baseline. See 71 FR 15881 for the proposal's discussion of this option.[193] We are providing this option because refineries that meet the criteria discussed below are already providing the market with very clean gasoline from a mobile source air toxics

[193] The 1.3 vol% maximum average standard was not discussed in the proposal vis-a-vis this early compliance option. However, any refinery approved for this option should easily meet the 1.3 vol% standard.

perspective. In the proposal, we took comment on such an option, stating that eligibility for this option would be limited to those that have historically better than average toxics performance, lower than average benzene and sulfur levels, and a significant volume of gasoline impacted by the phase-out of MTBE use. However, in order to qualify for this option, a refinery must produce gasoline by processing crude and other intermediate feedstocks and not merely be a blender or importer of gasoline, as discussed later.

A refinery that is approved for this option would comply with the 0.62 vol% annual average and 1.3 vol% maximum average benzene standards and would not be required to continue to comply with its applicable toxics performance requirements, i.e., its MSAT1 baseline and its anti-dumping or RFG toxics performance standards. We believe this option is appropriate because if qualifying refineries had to continue to comply with MSAT1 [194] until 2011, they would likely be forced to reduce gasoline output in order to comply, while other refineries or importers, most likely with less clean MSAT1 baselines, would provide the replacement gasoline. The result would be less supply of these refineries' cleaner gasoline and more supply of fuel with higher toxics emissions, leading to a net detrimental effect on overall MSAT emissions in the surrounding region.

We chose 2003 as the period for determining eligibility for this option because State MTBE bans began taking effect in 2004. Refiners who had used MTBE generally now use ethanol as the replacement source for oxygen. Although RFG no longer has an oxygen requirement [195], MSAT1 baselines were established when that requirement was still in place. Even some CG producers used significant amounts of MTBE as reflected in their MSAT1 baselines. Ethanol provides less toxics reduction benefits than MTBE, and so the refinery must take other actions in order to continue to meet its MSAT1 standard. Consequently, while MSAT1 baseline adjustments in the past were limited to RFG, it may be possible for a refinery to also qualify to adopt MSAT2 early for its CG pool. Both qualification and the ability to adopt MSAT2 are allowed separately for RFG and CG. For example, a refinery that qualifies to adopt MSAT2 early for RFG will be permitted to do so for RFG alone while maintaining its MSAT1 baseline for its CG, or vice versa.

As mentioned in the proposal, the criteria for eligibility for early compliance are similar in concept to those EPA has used in granting refinery-specific adjustments to MSAT1 baselines, that is, significantly cleaner than the national average for toxics, benzene, and sulfur, and relatively high MTBE use. We re-evaluated those criteria to determine the numerical criteria that a refinery would have to meet in order to qualify for this option. Specifically, a refinery must at minimum meet the following criteria:

—2003 annual average benzene level less than or equal to 0.62 vol%
—2003 annual average MTBE use greater than 6.0 vol%
—2003 annual average sulfur level less than 140 ppm
—MSAT1 RFG baseline greater than 30.0% reduction or CG less than 80 mg/mile

Many refineries can reduce benzene and sulfur levels to reduce toxics emissions. However, those that used a significant amount of MTBE and already have low benzene and sulfur levels also have fairly stringent toxics emissions performance standards. As a result, they may have little ability to further reduce sulfur or benzene or make other refinery changes to offset the impact of switching from MTBE to ethanol. Refineries that are not in this situation are not so constrained. We believe that the criteria above are an appropriate screening to delineate between these two groups.

To qualify for this provision we believe it is appropriate for a refinery to have used at least 6.0 vol% MTBE in their gasoline in their 2003 baseline; when the oxygen provided by this amount of MTBE is provided instead by ethanol, a substantial loss in toxics performance results. A benzene average of less than or equal to the 0.62 vol% standard is appropriate because if a refinery's average benzene is higher, they would have to further reduce benzene to comply with the MSAT2 standard early. However, to qualify for this provision to switch to MSAT2 early, a refinery should have no viable options for reducing benzene further to continue to meet their MSAT1 baseline. We chose the 140 ppm sulfur level because we found that even for refineries with significant MTBE use (in the 6–13 vol% range), the sulfur reductions brought about by the Tier 2 gasoline sulfur standard provided sufficient benefit to offset much of the increase in toxics emissions that results from eliminating MTBE and replacing it with ethanol. Finally, refineries should have had MSAT1 baseline toxics performance significantly cleaner than the average in order to qualify. The MSAT1 baseline toxics performance thresholds listed above were set based on past experience with baseline adjustments where we found that only those with significantly clean baselines (in addition to low benzene, low sulfur, and high MTBE use) would have to reduce production in order to comply with their MSAT1 standard in the face of MTBE bans. Thus, we are limiting this provision to those with relatively clean baselines as our goal is preventing the perverse outcome that refineries with cleaner gasoline may be forced to reduce their production volume only to have it be made up by refineries with dirtier baselines. The threshold helps ensure that only those refineries in situations where such an outcome could realistically have otherwise occurred are permitted to exercise this option. Refineries that do not fulfill all of the threshold requirements may have to take further refinery processing-related actions to meet their MSAT1 baseline, but are unlikely to have to reduce production and/or have that production replaced by someone with a less clean standard.

In addition to meeting the screening criteria mentioned, a refinery would still have to apply to EPA to use this compliance option and would need to demonstrate that it cannot further reduce its benzene or sulfur levels, nor make other refinery processing changes in order to maintain compliance with its MSAT1 baseline due to the impact of switching from MTBE to ethanol. Details of the application requirements and approval process are provided in section 80.1334 of the regulations. We estimate that less than 10 refineries may meet the screening criteria and thus potentially qualify for this option based on our analysis of their 2003 data and MSAT1 baselines. Note that this early compliance option will apply only to the type of gasoline that qualifies—RFG or CG—not to the refinery's total pool. In 2011, the MSAT2 benzene standards will apply to the refinery's total applicable gasoline pool.

We are limiting this compliance option to refineries that produce gasoline by processing crude and intermediate feedstocks through refinery processing equipment. Thus, this option is not available to gasoline blenders and importers. While gasoline blenders and importers may have gasoline with significantly cleaner than average toxics

[194] While refineries are subject to MSAT1 and anti-dumping or RFG toxics performance requirements depending on the gasoline type (CG and/or RFG) they produce, in almost all cases, the MSAT1 standard is more stringent than the corresponding anti-dumping or RFG toxics standard.

[195] 71 FR 26691, May 8, 2006.

performance, benzene and sulfur levels, and may have used large amounts of MTBE, they have more options in the marketplace for obtaining qualifying gasoline and gasoline blending components. Refineries have comparatively less ability to adjust their refining operations, without significantly reducing volume, in order to accommodate the change from MTBE to ethanol.

Few comments were received regarding this provision. All commenters supported the provision. Many of those suggested that it be available to any refinery. We continue to believe that this provision should apply only to those entities that meet the criteria above. Those that do not meet the criteria have the ability to further adjust their benzene and sulfur content values to be able to comply with their MSAT1 baselines. If this provision was available to all refineries, it could result in an overall nationwide backsliding on MSAT1. The intent of this provision is to provide appropriate relief to a limited number of entities that have unique challenges, while at the same time ensuring that the net result is cleaner gasoline in the marketplace than would otherwise be there.

EPA also took comment on when entities that are approved for this option should be allowed to begin compliance with the MSAT2 benzene standards. We received comment supporting allowing such compliance for the entire calendar year 2007, even though the rule will not be final until partway into that year. Other suggested options include the next calendar year, and partial year compliance for 2007. This latter option would likely be unworkable under MSAT1 due to differences between summer and winter MSAT performance. Thus, we decided that refineries that are approved for this option will be allowed to comply with the MSAT2 benzene standard for the entire 2007 period. We have also decided against requiring approved refineries to wait until the 2008 compliance period because we want to ensure that gasoline production from these refineries is maximized, and waiting until 2008 would not achieve that goal. Because this is an optional program for those that qualify, approved refiners may choose to comply with MSAT2 beginning in 2007, or beginning in 2008.

As a final note on this subject, we also proposed that refineries that meet the criteria and are approved for early compliance with the MSAT2 benzene standards would not be allowed to generate early benzene credits (see 71 FR 15881). A few commenters thought that such refineries should be allowed to generate early credits. However, the criteria for generating early credits require that the refinery reduce benzene by 10% below its 2004–2005 baseline benzene level. The early compliance provision is predicated on the fact that an approved refinery has almost no ability to reduce benzene in order to maintain compliance with its MSAT1 baseline. If such a refinery were able to further reduce benzene, it would negate its need for early compliance with the MSAT2 benzene standard. Therefore, we are finalizing this early compliance option with this limitation as proposed.

B. How Will the Gasoline Benzene Standard Be Implemented?

This section summarizes the main implementation provisions in the regulations and provides additional clarification in a few cases.

1. General Provisions

Compliance with the 0.62 vol% annual average and 1.3 vol% maximum average benzene standards is determined over a refiner's or importer's total gasoline pool, RFG and conventional gasoline (CG) combined. For the 0.62 vol% standard, the first annual compliance period for non-small refiners and for importers is 2011. For the 1.3 vol% standard, the first compliance period for these entities is July 1, 2012 through December 31, 2013. Thereafter, compliance is determined annually. Small refiners will comply with the 0.62 vol% on an annual basis beginning in 2015. Compliance with the 1.3 vol% maximum average standard commences for small refiners on July 1, 2016. For small refiners, the first compliance period for the 1.3 vol% standard is July 1, 2016 through December 31, 2017. Thereafter, compliance is determined annually.

Compliance with the benzene standards is achieved separately for each refinery of a refiner.[196] For an importer, compliance is achieved over its total volume of imports, regardless of point of entry. As discussed in the proposal, gasoline produced by a foreign refiner is included in the compliance calculation of the importer of that gasoline, with certain exceptions for early credit generation and small foreign refiners.

Finished gasoline and gasoline blendstock that becomes finished gasoline solely upon the addition of oxygenate are included in the compliance determination. Gasoline produced for use in California is not included. Gasoline produced for use in the American territories—Guam, Northern Mariana Islands, American Samoa—is not subject to the benzene standard. Gasoline produced for use in these areas is currently exempt from the MSAT1 standards, and for the same reasons we discussed in the MSAT1 final rule[197], including distance from gasoline producers, low gasoline use, and distinct environmental conditions, we are exempting gasoline produced for these areas from this rule.

Oxygenate and butane blenders are not subject to the benzene standard unless they add other gasoline blending components beyond oxygenates and butane. Similarly, transmix processors are not subject to the benzene standard. We proposed that transmix processors would be subject to the benzene standard if they add gasoline blending components to the gasoline produced from transmix (see 71 FR 15891). One commenter suggested that only the blending component added to the gasoline produced from transmix should be subject to the standard because the transmix processor has no control over the benzene level in the gasoline produced from transmix, and the benzene in the gasoline produced from transmix would have already been accounted for by another entity. We agree with this comment, and have modified the final rule accordingly.

As discussed earlier, this benzene program has both an early credit generation period and a standard credit generation period that begins when the program takes effect. Early credits may be generated from January 1, 2007 through December 31, 2010 by refineries with approved benzene baselines. For small refiners, early credit generation extends through December 31, 2014 for their refineries with approved benzene baselines. Benzene baselines are based on a refinery's 2004–2005 average benzene content, and refiners can begin applying for benzene baselines as early as March 1, 2007. Although there is no single cut-off date for applying for a baseline, refiners planning to generate early credits must submit individual refinery baseline applications at least 60 days prior to beginning credit generation at that refinery.

As explained earlier, in order to generate early credits, a refinery's annual average benzene level must be at least 10 percent lower than its baseline benzene level, and the refinery must show that its low benzene levels result, in part, from operational changes and/

[196] Aggregation of facilities for compliance is not allowed under this benzene control program. However, as pointed out in the proposal, the ABT program's credit generation and transfer provisions provide compliance flexibility similar to that provided by aggregation.

[197] 66 FR 17253, March 29, 2001.

or improvements in benzene control technology since the baseline period. Foreign refiners who sent gasoline to the U.S. during 2004–2005 under their foreign refiner baseline may generate early credits if they are able to establish a benzene baseline and agree to comply with other requirements that help to ensure enforcement of the regulation at the foreign refinery. Early credits generated or obtained under the ABT program must be used towards compliance within three years of the start of the program; otherwise they will expire and become invalid. In other words, early credits must be applied to the 2011, 2012, or 2013 compliance years. In the case of small refiners, early credits must be applied to the 2015, 2016, or 2017 compliance years.

Standard credits may be generated by refiners and importers beginning with the 2011 compliance period. Standard credits may be generated by small refiners beginning with the 2015 compliance period. For refiners, credits are generated on a refinery-by-refinery basis for each facility. For importers, credits are generated over the total volume imported, regardless of point of entry. Foreign refiners are not allowed to generate standard credits because compliance for their gasoline is the responsibility of the importer. In order to generate standard credits, a refinery's or importer's annual average benzene level must be less than 0.62 vol%. Standard credits are valid for five years from the year they were generated. A credit life extension exists for standard credits traded to and ultimately used by small refiners. These credits may be used towards compliance for an additional two years, giving standard credits a maximum seven-year life.

Compliance with the 0.62 vol% standard is based on the annual average benzene content of the refinery's or importer's gasoline production or importation, any credits used, and any compliance deficit carried forward from the previous year. Credits may be used in any quantity and combination (i.e., early or standard credits) to achieve compliance with the 0.62 vol% benzene standard beginning with the first compliance period in 2011, or 2015 for approved small refiners. For the 2011 and 2012 compliance periods, credits may be used in any amount, and from any starting average benzene level. For example, if the refinery's annual average benzene level at the end of 2011 is 1.89 vol%, it may use credits to meet the 0.62 vol% standard for that compliance period. If its average benzene level at the end of 2012 is 1.45 vol%, it may likewise use credits to meet the 0.62 vol% standard for that period.

The first averaging period for the 1.3 vol% standard for non-small refiners and importers begins July 1, 2012 and ends December 31, 2013, an 18-month period. Similarly, the first averaging period for the 1.3 vol% standard for small refiners begins July 1, 2016 and ends December 31, 2017. Credits may not be used to achieve compliance with the 1.3 vol% standard at any time. A refinery must make capital improvements and/or operational or blending practice changes such that it achieves an actual average benzene level of no greater than 1.3 vol% for the initial (18-month) compliance period, and each annual compliance period thereafter. (An importer must bring in gasoline with benzene levels that will average to 1.3 vol% or less during these same compliance periods.) Continuing from our previous example, if at the end of 2012, the refinery's average benzene level is 1.45 vol%, no further action is yet needed to meet the 1.3 vol% standard. However, the refinery must make capital improvements and/or operational or blending practice changes such that it achieves an actual average benzene level of no greater than 1.3 vol% for the 18-month period July 1, 2012-December 31, 2013. We will assume for this example that the refinery has a 1.0 vol% average benzene level at the end of 2013. The refinery can then use credits to meet the 0.62 vol% standard.

Lack of compliance with the 0.62 vol% standard creates a deficit that may be carried over to the next year's compliance determination. Lack of compliance with the 0.62 vol% standard could occur for a number of reasons, for example, a refinery or importer may choose not to use (buy) sufficient offsetting credits. However, in the next year, the refinery or importer must make up the deficit (through credit use and/or refining or import improvements) and be in compliance with the 0.62 vol% standard.[198] There is no deficit carry-forward provision associated with the 1.3 vol% standard. If a refinery or importer is out of compliance with the 1.3 vol% standard, it is subject to enforcement action immediately.

2. Small Refiner Status Application Requirements

A refiner applying for status as a small refiner under this program is required to apply to and to provide EPA with several types of information by December 31, 2007. The application requirements are summarized below. A refiner seeking small refiner status under this program would need to apply to EPA for that status, regardless of whether or not the refiner had been approved for small refiner status under another fuel program. As with applications for relief under other rules, applications for small refiner status under this rule that are later found to contain false or inaccurate information would be void ab initio. Requirements for small refiner status applications include:

—The total crude oil capacity as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) for the most recent 12 months of operation. This would include the capacity of all refineries controlled by a refiner and by all subsidiaries and parent companies and their subsidiaries. We will presume that the information submitted to EIA is correct. In cases where a company disagreed with this information, the company could petition EPA with appropriate data to correct the record when the company submitted its application for small refiner status. EPA could accept such alternate data at its discretion.

—The name and address of each location where employees worked from January 1, 2005 through December 31, 2005; and the average number of employees at each location during this time period. This must include the employees of the refiner and all subsidiaries and parent companies and their subsidiaries.

—In the case of a refiner who reactivated a refinery that was shutdown or non-operational between January 1, 2005, and January 1, 2006, the name and address of each location where employees worked since the refiner reactivated the refinery and the average number of employees at each location for each calendar year since the refiner reactivated the refinery.

—The type of business activities carried out at each location.

—The small refiner option(s) the refiner intends to use for each refinery.

—Contact information for a corporate contact person, including: name, mailing address, phone and fax numbers, e-mail address.

—A letter signed by the president, chief operating officer, or chief executive officer of the company (or a designee) stating that the information contained in the application was true to the best of his/her knowledge and that the company owned the refinery as of January 1, 2007.

[198] An extension of the period of deficit carryover may be allowed in certain hardship situations, as discussed in section A.3.

3. Administrative and Enforcement Provisions

Most of the administrative and enforcement provisions are similar to those in effect for other gasoline programs, as discussed in the proposal. The discussion below highlights those areas that we wish to clarify and those that received significant comment.

a. Sampling/Testing

Because compliance with this program and with the gasoline sulfur program will become the compliance mechanism for certain RFG and anti-dumping requirements, some reporting simplifications will occur, as described below. However, sampling, testing, and reporting of all of the current fuel parameters will continue to be required. It is important to continue to monitor how refiners continue to achieve the toxics control required of RFG and CG through fuel composition changes, and how other toxics emissions may be affected by this MSAT2 benzene rule. Continued collection of all of the fuel parameters will facilitate future toxics evaluation activities.

We proposed to require every-batch sampling for CG under this program, but indicated that results would not have to be available before the batch leaves the refinery (see 71 FR 15893). RFG already is every-batch tested, and the results must be available before the batch leaves the refinery because of RFG's 1.3 vol% per gallon cap. Several commenters stated that every-batch testing for CG was unnecessary because the benzene standard is an average standard, and that it would be costly, especially for small refiners. These commenters requested that continued composite sampling be allowed for conventional gasoline.[199] Nevertheless, we are concerned about potential downstream benzene addition. Requiring every-batch testing for CG will allow for closer monitoring of the movement of high benzene streams. In this program, we are relying on there being no significant incentive to dump benzene-rich streams into gasoline downstream of the refinery where the benzene levels are originally measured. With every-batch benzene testing of all gasoline, we will be able to better discern if high benzene batches originated at the refinery, or downstream. With composite testing, it would be significantly more difficult to determine the source of the high benzene streams. Thus, we are finalizing every-batch benzene testing for all gasoline.

b. Recordkeeping/Reporting

This program will require some new records to be kept, such as the benzene baseline, credits generated, and credit transactions, and new reports to be filed (e.g., benzene pre-compliance reports). However, because the current regulations for RFG and anti-dumping toxics controls and MSAT1 controls are being removed, certain recordkeeping and reporting requirements will be reduced or eliminated, as detailed in the regulations. Because the program will not be fully implemented until small refiners are also subject to both the 0.62 vol% and the 1.3 vol% benzene standards, the process of streamlining the reporting forms will not be complete until that time.

As mentioned above, in order to provide an early indication of the credit market for refiners and importers planning on relying upon benzene credits as a compliance strategy in 2011 and beyond, we are requiring refiners to submit pre-compliance reports to us in the years leading up to start of the program. Pre-compliance reporting has proven to be an indispensable mechanism in implementing the gasoline and diesel sulfur programs, and we expect this to be the case in this program as well. Refiners are required to submit annual pre-compliance reports on June 1st of every year beginning in 2008 and continuing through 2011 (2015 for small refiners). The pre-compliance reports must contain engineering and construction plans as well as actual/projected gasoline production levels, actual/projected gasoline benzene levels, and actual/projected credit generation and use.

Several commenters suggested that the RFG NO_X retail survey be discontinued after 2006, and that the RFG toxics retail survey be discontinued after 2010. The surveys use fuel parameters of RFG sampled from retail stations to estimate VOC, NO_X, and toxics emissions. There are also fuel benzene and oxygen content surveys. If a survey is ''failed'', gasoline sent to the area must meet a more stringent standard. Because we are finalizing, as proposed, provisions that make the gasoline sulfur program the sole regulatory mechanism used to implement gasoline NO_X requirements, and the benzene control program the sole regulatory mechanism used to implement the toxics requirements of RFG[200] and anti-dumping, we agree that the NO_X and toxics surveys are no longer needed. A discussion of the origin of the survey program, and how the toxics and NO_X requirements for CG and RFG will be met under the MSAT2 program is provided in Chapter 6.13 of the RIA for this rulemaking.

C. How Will the Program Relate to Other Fuel-Related Toxics Programs?

In the proposal we presented an analysis that examined quantitatively how the fuel performance under the new gasoline content standard and vehicle emissions standard as proposed would compare to current toxics performance requirements and to performance as modified by the Energy Policy Act of 2005. This analysis suggested that the fuel standard alone would exceed previous performance for RFG, and significantly exceed it for CG.

We have updated the results of this analysis, using better estimates of future ethanol use developed for the RFS final rulemaking, as well as the updated benzene projections from the refinery-by-refinery analysis done for this final rulemaking. As shown in Table VI.C–1, these updated analyses continue to support the conclusion that the MSAT2 fuel program will provide greater toxics reductions for both CG and RFG.

TABLE VI.C–1.—ESTIMATED ANNUAL AVERAGE TOTAL TOXICS PERFORMANCE OF LIGHT DUTY VEHICLES IN MG/MI UNDER CURRENT AND PROJECTED SCENARIOS.[a]

Regulatory scenario	Fleet year	RFG by PADD			CG by PADD				
		I	II	III	I	II	III	IV	V
MSAT1 Baseline[b] (1998–2000)	2002	112	129	97	114	145	107	145	156
EPAct Baseline[b] (RFG: 2001–2002)	2002	104	121	87	114	145	107	145	156
EPAct Baseline, 2011[c]	2011	67	78	52	62	83	54	82	88
MSAT2 program, 2011[c] (Fuel standard only)	2011	66	76	52	60	77	52	74	81

[199] Section 80.101(i).

[200] The 1.3 vol% per gallon cap on RFG benzene remains.

TABLE VI.C–1.—ESTIMATED ANNUAL AVERAGE TOTAL TOXICS PERFORMANCE OF LIGHT DUTY VEHICLES IN MG/MI UNDER CURRENT AND PROJECTED SCENARIOS.[a]—Continued

Regulatory scenario	Fleet year	RFG by PADD			CG by PADD				
		I	II	III	I	II	III	IV	V
MSAT2 program, 2011[c] (Fuel + vehicle standards)	2011	64	72	48	56	74	47	70	78
MSAT2 program, 2025[c] (Fuel + vehicle standards)	2025	39	45	31	36	45	31	44	48

[a] Total toxics performance for this analysis includes overall emissions of 1,3-butadiene, acetaldehyde, acrolein, benzene and formaldehyde as calculated by MOBILE6.2. Although POM appears in the Complex Model, it is not included here. However, it contributes a small and relatively constant mass to the total toxics figure (~4%), and therefore doesn't make a significant difference in the comparisons. Toxics performance figures here are for representative cities in each PADD, and therefore some geographical variation is not captured here.

[b] Baseline figures generated in this analysis were calculated differently from the regulatory baselines determined as part of the MSAT1 program, and are only intended to be a point of comparison for future year cases.

[c] Future year scenarios include (in addition to the MSAT2 standards, where stated) effects of the Tier 2 vehicle and gasoline sulfur standards, and vehicle fleet turnover with time, as well as estimated effects of the renewable fuels standard and the phase-out of ether blending as developed in the RFS rulemaking.

D. How Does This Program Satisfy the Statutory Requirements of Clean Air Act Section 202(l)(2)?

As discussed earlier in this section, we have concluded that the most effective and appropriate program for MSAT emission reduction from gasoline is a benzene control program. We are finalizing, as proposed, an average benzene content standard of 0.62 vol% along with a specially-designed ABT program, as well as a maximum average annual standard of 1.3 vol%. In sections VI.A.1.c and d above, we summarize our evaluation of the feasibility of the program, and in section VIII.A we summarize our evaluation of the costs of the program. The analyses supporting our conclusions in these sections are discussed in detail in Chapters 6 and 9 of the RIA.

Taking all of this information into account, we believe that a more stringent program would not be achievable, taking costs into consideration. As we have discussed, making the 0.62 vol% standard more stringent would require more refiners to install the more expensive benzene control equipment, with very little incremental decrease in benzene emissions. Also, we have shown that refinery costs increase very rapidly as the level of the average standard is made more stringent, especially for certain individual technologically-challenged refineries. We discuss the costs of this program in detail in section VIII.A of this preamble and in Chapter 9 of the RIA. Moreover, the 0.62 vol% standard achieves significant reductions in benzene levels nationwide, and achieves significant reductions in each PADD. The 1.3 vol% annual average standard makes it more certain that the predicted emission reductions will in fact occur.

Conversely, we believe that a less stringent national average standard than 0.62 vol% would not satisfy our statutory obligation to promulgate the most stringent standard achievable considering cost and other factors along with technological feasibility. Furthermore, as discussed in section VI.A, less stringent standards would not accomplish several important programmatic objectives, such as avoiding the triggering of the provisions in the 2005 EPAct to adjust the MSAT1 baseline for RFG. We have also considered energy implications of the proposed program, as well as noise and safety, and we believe that the MSAT2 program will have very little impact on any of these factors (although, as explained in section VI.A above, some of the alternative toxic control strategies urged by commenters could have adverse energy supply implications). Analyses supporting these conclusions are also found in Chapter 9 of the RIA. We carefully considered lead time in establishing the stringency and timing of the proposed program (see section VI.A above).

We have carefully reviewed the technological feasibility (see section VI.A.1.c.i above and chapter 6 of the RIA) and costs of this program. Based on the considerations outlined in this section VI, we conclude that this program meets the requirements of section 202(l)(2) of the Clean Air Act, reflecting ''the greatest degree of emission reduction achievable through the application of technology which is available, taking into consideration * * * the availability and costs of the technology, and noise, energy, and safety factors, and lead time.''

VII. Portable Fuel Containers

As described in this section, we are adopting new HC emissions standards for portable gasoline containers (gas cans) essentially as proposed. We are also finalizing the same requirements for portable diesel and kerosene containers, containers which could easily be used for gasoline. Manufacturers must begin meeting the new requirements on January 1, 2009. These new emissions control requirements will reduce HC emissions from uncontrolled gasoline containers by about 75%, including reducing spillage losses. The final rule also includes new certification and compliance requirements that will help ensure that the containers achieve emissions control in use over the life of the container. The standards and program requirements we are finalizing are very similar to those adopted by California in 2005, so that manufacturers will be able to sell 50-state products. Overall, commenters were very supportive of the proposed new emissions control program for portable fuel containers.

We are establishing the portable fuel container (PFC) standards and emissions control requirements under section 183(e) of the Clean Air Act, which directs EPA to study, list, and regulate consumer and commercial products that are significant sources of VOC emissions. In 1995, after conducting a study and submitting a Report to Congress on VOC emissions from consumer and commercial products, EPA published an initial list of product categories to be regulated under section 183(e). Based on criteria that we established pursuant to section 183(e)(2)(B), we listed for regulation those consumer and commercial products that we considered at the time to be significant contributors to the ozone nonattainment problem, but we did not include PFC emissions.[201] After analyzing the emissions inventory impacts of these containers, we published a **Federal Register** notice that added PFCs to the list of consumer

[201] 60 FR 15264 ''Consumer and Commercial Products: Schedule for Regulation,'' March 23, 1995.

products to be regulated.[202] We requested comment on the data underlying the listing but did not receive any comments.[203] We continue to believe that the standards we proposed and are finalizing for fuel containers represent ''best available controls'' as required by section 183(e)(3)(A). Determination of the ''best available controls'' requires EPA to determine the degree of reduction achievable through use of the most effective control measures (which includes chemical reformulation, and other measures) after considering technological and economic feasibility, as well as health, energy, and environmental impacts.[204]

A. What Are the New HC Emissions Standards for PFCs?

1. Description of Emissions Standard

We are finalizing as proposed a performance-based standard of 0.3 grams per gallon per day (g/gal/day) of HC to control evaporative and permeation losses. The standard will be measured based on the emissions from the container over a diurnal test cycle. The cans will be tested as a system with their spouts attached. Manufacturers will test the containers by placing them in an environmental chamber which simulates summertime ambient temperature conditions and cycling the containers through the 24-hour temperature profile (72–96 °F), as discussed below. The test procedures, which are described in more detail below, ensure that containers meet the emissions standard over a range of in-use conditions such as different temperatures, different fuels, and taking into consideration factors affecting durability. EPA received only supportive comments on the proposed emissions standards.

2. Determination of Best Available Control

We continue to believe that the 0.3 g/gal/day emissions standard and associated test procedures reflect the performance of the best available control technologies including durable permeation barriers, auto-closing spouts, and a can that is well-sealed to reduce evaporative losses. The standard is both economically and technologically feasible. To comply with California's program, gas can manufacturers have developed gas cans with low VOC emissions at a reasonable cost (see section XIII. for costs). Testing of cans designed to meet CARB standards has shown the new standards to be technologically feasible. When tested over cycles very similar to those we are adopting, emissions from these cans have been in the range of 0.2–0.3 g/gal/day.[205] These cans have been produced with permeation barriers representing a high level of control (over 90 percent reductions) and with auto-closing spouts, which are technologies that represent best available controls for gas cans. Establishing the standard at 0.3 g/gal/day will require the use of best available technologies. As discussed in the proposal, we are finalizing a level at the upper end of the tested performance range to account for product performance variability (see 71 FR 15896). In addition, we believe that current best designs can achieve these levels, so we do not believe that the standard forecloses use of any of the existing performing product designs. Our detailed feasibility analysis is provided in the Regulatory Impact Analysis. We did not receive any comments on our feasibility analysis.

In addition to considering technological and economic feasibility, section 183(e)(1)(A) requires us to consider ''health, environmental, and energy impacts'' in assessing best available controls. Environmental and health impacts are discussed in section III. Moreover, control of spillage from containers may reduce fire hazards as well because cans would stay tightly closed if tipped over. We expect the energy impacts of gas can control to be positive, because the standards will reduce evaporative fuel losses.

3. Diesel, Kerosene and Utility Containers

Diesel and kerosene containers are manufactured by the same manufacturers as are gasoline containers and are identical to gasoline containers except for color (diesel containers are yellow and kerosene containers are blue). In the proposal, we requested comment on applying the emissions control requirements being proposed for gasoline containers to diesel and kerosene containers (see 71 FR 15897). California included diesel and kerosene cans in their regulations largely due to the concern that they would be purchased as substitutes for gasoline containers. We received only supportive comments for including these containers in the program. Several states and state organizations urged EPA to include these containers in the EPA program, viewing their omission as a significant difference between the California program and EPA's proposed program.

We recognize that using uncontrolled diesel and kerosene containers as a substitute for gasoline containers would result in a loss of emissions reductions. California collected limited survey data which indicated that about 60 percent of kerosene containers were being used for gasoline. In addition, keeping gasoline in containers marked for other fuels could lead to misfueling of equipment and possible safety issues. Finally, not including these containers would likely be viewed as a gap in EPA's program, resulting in states adopting or retaining their own emissions control program for PFCs. This would hamper the ability of manufacturers to have a 50-state product line. For these reasons, we are including diesel and kerosene containers in the program.

We are also clarifying that utility jugs are considered portable gasoline containers and therefore are subject to the program. They are designed and marketed for use with gasoline, often to fuel recreational equipment such as all-terrain vehicles and personal watercraft. This interpretation is consistent with the scope of the California program. California recently issued a clarification that these containers are covered by their program, after some utility jug manufacturers failed to meet the existing California requirements.

4. Automatic Shut-Off

We received a few comments encouraging EPA to consider or evaluate spillage control requirements. California's original program which began in 2001 required automatic shut-off as a way to reduce spillage. However, for reasons discussed in the proposal, we did not propose and are not finalizing automatic shut-off requirements (see 71 FR 15896). Automatic shut-off is supposed to stop the flow of fuel when the fuel reaches the top of the receiving tank in order to prevent over-filling. However, due to a wide variety of receiving fuel tank designs, the auto shut-off spouts do not work well with a variety of equipment types. In California, this problem led to spillage and consumer dissatisfaction, and California has removed automatic shut-off requirements from their program.

[202] 71 FR 28320 ''Consumer and Commercial Products: Schedule for Regulation,'' May 16, 2006.

[203] See not only the notice cited in the previous note, but also 71 FR 15894 (''EPA will afford interested persons the opportunity to comment on the data underlying the listing before taking final action on today's proposal'').

[204] See section 183(e)(1); see also section 183(e)(4) providing broad authority to include ''systems of regulation'' in controlling VOC emissions from consumer products.

[205] ''Quantification of Permeation and Evaporative Emissions From Portable Fuel Container'', California Air Resources Board, June 2004.

We continue to believe that including an automatic shut-off requirement would be counterproductive at this time. We believe that the automatic closing cans, even without automatic shut-off requirements, will lead to reduced spillage. Consumers will be able to watch the fuel rise in the receiving tank and stop fuel flow using the automatic close features prior to overfill. As discussed in the proposal, automatic closure keeps the cans closed when they are not in use and provides more control to the consumer during use. We believe consumers will appreciate this feature and see it as an improvement over existing cans, whereas an automatic shut-off that worked with only some equipment types would not be acceptable.

B. Timing of Standard

We are finalizing as proposed a start date for the new PFC standards of January 1, 2009. We received comments from state organizations recommending that the program start on January 1, 2008. In the proposal we recognized that adequate lead time is a key aspect of the standard's technological feasibility. Manufacturers have developed the primary technologies to reduce emissions from gas cans but will need a few years of lead time to certify products and ramp up production to a national scale. The certification process will take at least six months due to the required durability demonstrations described below, and manufacturers will need time to procure and install the tooling needed to produce gas cans with permeation barriers for nationwide sales. Commenters did not provide any new information to counter these points and we continue to believe for these reasons that the January 1, 2009 start date is appropriate.

The standards apply to containers manufactured on or after the start date of the program and do not affect cans produced before the start date. As proposed, as of July 1, 2009, manufacturers and importers must not enter into U.S. commerce any products not meeting the emissions standards. This provides manufacturers with a 6-month period to clear any stocks of containers manufactured prior to the January 1, 2009 start of the program, allowing the normal sell-through of these cans to the retail level. Retailers may sell their stocks of containers through the course of normal business without restriction. Containers are required by this rule to be stamped with their production date (consistent with current industry practices), which will allow EPA to determine which cans are required to meet the new standards. We did not receive any comments on these aspects of the proposal or comments suggesting that the proposed lead times would not be adequate.

C. What Test Procedures Would Be Used?

As proposed, we are finalizing a system of regulations for containers that includes test conditions designed to assure that the intended emission reductions occur over a range of in-use conditions such as operating at different temperatures, with different fuels, and considering factors affecting durability. These test procedures are authorized under section 183(e)(4) as part of a system of regulations to achieve the appropriate level of emissions reductions. Emission testing on all containers that manufacturers produce is not feasible due to the high annual production volumes and the cost and time involved with emissions testing. Instead, before the containers are introduced into commerce, the manufacturer will need to receive a certificate of conformity from EPA that the containers conform to the emissions standards, based on manufacturers' applications for certification. Manufacturers must submit test data on a sample of containers that are prototypes of the products the manufacturer intends to produce. The certificate issued by EPA will cover the range of production containers represented by the prototype container. As part of the application for certification, manufacturers also need to declare that their production cans will not deviate in materials or design from the prototype cans that are tested. If the production containers do deviate, then they will not be coved by the certificate and it will be a violation of the regulations to introduce such uncertified containers into commerce. Manufacturers must obtain their certification from EPA prior to introducing their products into commerce. The test procedures and certification requirements are described in detail below. Unless otherwise noted below, we did not receive comments on these test procedures.

We are requiring that manufacturers test cans in their most likely storage configuration. The key to reducing evaporative losses from gasoline containers is to ensure that there are no openings on the cans that could be left open by the consumer. Traditional cans have vent caps and spout caps that are easily lost or left off cans, which leads to very high evaporative emissions. We expect manufacturers to meet the evaporative standards by using automatic closing spouts and by removing other openings that consumers could leave open. However, if manufacturers choose to design cans with an opening that does not close automatically, we are requiring that containers be tested in their open condition. If the containers have any openings that consumers could leave open (for example, vents with caps), these openings thus would need to be left open during testing. This applies to any opening other than where the spout attaches to the can. We believe it is important to take this approach because these openings could be a significant source of in-use emissions and there is a realistic possibility that these openings would be inadvertently left open in use.

Except for pressure cycling, discussed below, spouts would be in place during testing because this would be the most likely storage configuration for the emissions compliant cans. Spouts would still be removable so that consumers would be able to refill the cans, but we would expect the containers to be resealed by consumers after being refilled in order to prevent spillage during transport. We do not believe that consumers would routinely leave spouts off cans because spouts are integral to the cans' use and it is obvious that they need to be sealed.

1. Diurnal Test

We are finalizing as proposed a test procedure for diurnal emissions testing where the containers are placed in an environmental chamber or a Sealed Housing for Evaporative Determination (SHED), the temperature is varied over a prescribed temperature and time profile, and the hydrocarbons escaping from the can are measured. Containers are to be tested over the same 72–96 °F (22.2–35.6 °C) temperature profile used for automotive applications. This temperature profile represents a hot summer day when ground level ozone emissions would be highest. Three containers must be tested, each over a three-day test. Testing three cans for certification will help address variability in products or test measurements. All three cans must individually meet the standard. As noted above, cans must be tested in their most likely storage configuration.

The final results are to be reported in grams per gallon, where the grams are the mass of hydrocarbons escaping from the container over 24 hours and the gallons are the nominal can capacity. The daily emissions will then be averaged for each can to demonstrate compliance with the standard. This test captures hydrocarbons lost through permeation and any other evaporative

losses from the container as a whole. The grams of hydrocarbons lost may be determined by either weighing the gas can before and after the diurnal test cycle or measuring emissions directly using the SHED instrumentation.

Consistent with the automotive test procedures, we are requiring that the testing take place using 9 pounds per square inch (psi) Reid Vapor Pressure (RVP) certification gasoline, which is the same fuel required by EPA to be used in its other evaporative test programs. We are requiring testing be done using E10 fuel (10% ethanol blended with the gasoline described above) to help ensure in-use emission reductions on ethanol-gasoline blends, which tend to have increased evaporative emissions with certain permeation barrier materials. We continue to believe that including ethanol in the test fuel will lead to the selection of materials by manufacturers that are consistent with ''best available control'' requirements for all likely contained gasolines, and is clearly appropriate given the expected increase over time of the use of ethanol blends of gasoline under the renewable fuel provisions of the Energy Policy Act of 2005.

Diurnal emissions are not only a function of temperature and fuel volatility, but of the size of the vapor space in the container as well. We are finalizing as proposed that the fill level at the start of the test be 50% of the nominal capacity of the can. This would likely be the average fuel level of the gas can in-use. Nominal capacity of the cans is defined as the volume of fuel, specified by the manufacturer, to which the can could be filled when sitting on level ground. The vapor space that normally occurs in a container, even when ''full,'' would not be considered in the nominal capacity of the can. All of these test requirements are meant to represent typical in-use storage conditions for containers, on which EPA can base its emissions standards. The above provisions for diurnal testing are included as a way to implement the standards effectively, which, in conjunction with the new emissions standard, will lead to the use of best available technology at a reasonable cost. We did not receive comment on these test procedures.

Before testing for certification, the container must be run through the durability tests described below. Within 8 hours of the end of the soak period contained in the durability cycle, the cans are to be drained and refilled to 50 percent nominal capacity with fresh fuel, and then the spouts re-attached. When the can is drained, it must be immediately refilled to prevent it from drying out. The timing of these steps is needed to ensure that the stabilized permeation emissions levels are retained. The can will then be weighed and placed in the environmental chamber for the diurnal test. After each diurnal, the can must be re-weighed. In lieu of weighing the container, manufacturers may opt to measure emissions from the SHED directly. For any in-use testing of containers, the durability procedures will not be run prior to testing.

California's test procedures are very similar to those described above. However, the California procedure contains a more severe temperature profile of 65–105 °F. As proposed, we will allow manufacturers to use this temperature profile to test cans as long as other parts of the EPA test procedures are followed, including the durability provisions below.

2. Preconditioning to Ensure Durable In-Use Control

a. Durability Cycles

As proposed, we are specifying three durability aging cycles to help ensure durable permeation barriers: slosh, pressure-vacuum cycling, and ultraviolet (UV) exposure. They represent conditions that are likely to occur in-use for gas cans, especially for those cans used for commercial purposes and carried on truck beds or trailers. The purpose of these deterioration cycles is to help ensure that the technology chosen by manufacturers is durable in-use, representing best available control, and the measured emissions are representative of in-use permeation rates. Fuel slosh, pressure cycling, and ultraviolet (UV) exposure each impact the durability of certain permeation barriers, and we believe these cycles are needed to ensure long-term emissions control. Without these durability cycles, manufacturers could choose to use materials that meet the standard when they are new but have degraded performance in-use, leading to higher emissions. We do not expect these procedures to adversely impact the feasibility of the standards, because there are permeation barriers available at a reasonable cost that do not deteriorate significantly under these conditions (these permeation barriers are examples of best available controls).

For slosh and pressure cycling, we are finalizing durability tests that are based on draft recommended SAE practice for evaluating permeation barriers.[206] For slosh testing, the container is to be filled to 40 percent capacity with E10 fuel and rocked for 1 million cycles. The pressure-vacuum testing contains 10,000 cycles from −0.5 to 2.0 psi. This pressure may be applied through the opening where the spout attaches, in order to avoid the need to drill a hole in the container. The third durability test is intended to assess potential impacts of ultraviolet (UV) sunlight (0.2 μm–0.4 μm) on the durability of a surface treatment. In this test, the container must be exposed to a UV light of at least 0.40 Watt-hour/meter^2/minute on the container surface for 15 hours per day for 30 days. Alternatively, containers may be exposed to direct natural sunlight for an equivalent period of time. We have also established these same durability requirements as part of our program to control permeation emissions from recreational vehicle fuel tanks.[207] While there are obvious differences in the use of gas cans compared to the use of recreational vehicle fuel tanks, we believe the test procedures offer assurance that permeation controls used by manufacturers will be robust and will continue to perform as intended when in use.

Manufacturers may also do an engineering evaluation, based on data from testing on their permeation barrier, to demonstrate that one or more of these factors (slosh, UV exposure, and pressure cycle) do not impact the permeation rates of their fuel containers and therefore that the durability cycles are not needed. Manufacturers may use data collected previously on gas cans or other similar containers made with the same materials and processes to demonstrate that the emissions performance of the materials does not degrade when exposed to slosh, UV, and/or pressure cycling. The test data must be collected under equivalent or more severe conditions as those noted above. EPA must approve an alternative demonstration method prior to its use for certification.

b. Preconditioning Fuel Soak

It takes time for fuel to permeate through the walls of containers. Permeation emissions will increase over time as fuel slowly permeates through the container wall, until the permeation finally stabilizes when the saturation point is reached. We want to evaluate emissions performance once permeation

[206] Draft SAE Information Report J1769, ''Test Protocol for Evaluation of Long Term Permeation Barrier Durability on Non-Metallic Fuel Tanks,'' (Docket A–2000–01, document IV–A–24).

[207] Final Rule, ''Control of Emissions from Nonroad Large Spark-ignition engines, and Recreational Engines (Marine and Land-based)'', 67 FR 68287, November 8, 2002.

emissions have stabilized, to ensure that the emissions standard is met in-use. Therefore, as proposed, prior to testing the containers, the cans need to be preconditioned by allowing the cans to sit with fuel in them until the hydrocarbon permeation rate has stabilized. Under this step, the container is filled with a 10-percent ethanol blend in gasoline (E10), sealed, and soaked for 20 weeks at a temperature of 28 ± 5 °C. As an alternative, the fuel soak may be performed, for example, for 10 weeks at 43 ± 5 °C to shorten the test time, if the certifier can demonstrate that the hydrocarbon permeation rate has stabilized. During this fuel soak, the container must be sealed with the spout attached. This is representative of how the gas cans would be stored in-use. We have established these soak temperatures and durations based on protocols EPA has established to measure permeation from fuel tanks made of HDPE.[208] These soak times should be sufficient to achieve stabilized permeation emission rates. However, if a longer time period is necessary to achieve a stabilized rate for a given container, the manufacturer must use a longer soak period (and/or higher temperature) consistent with good engineering judgment.

Durability testing that is performed with fuel in the container may be considered part of the fuel soak provided that the container continuously has fuel in it. This approach would shorten the total test time. For example, the length of the UV and slosh tests may be considered as part of the fuel soak provided that the container is not drained between these tests and the beginning of the fuel soak. In such cases, manufacturers must use the 40 percent fill level for the soak period. The reduced fill level will not affect the permeation rate of the container because the vapor space in the container will be saturated with fuel vapor.

c. Spout Actuation

In its recently revised program for PFCs, California included a durability demonstration for spouts. We are finalizing as proposed a durability demonstration consistent with California's procedures. Automatically closing spouts are a key part of the emissions controls expected to be used to meet the new standards. If these spouts stick or deteriorate, in-use emissions could remain very high, at essentially uncontrolled levels. California requires manufacturers to actuate the spouts 200 times prior to the soak period and 200 times near the conclusion of the soak period to simulate spout use. The spouts' internal components would be required to be exposed to fuel by tipping the can between each cycle. Spouts that stick open or leak during these cycles would be considered failed. The total of 400 spout actuations represents about 1.5 actuations per week on average over the average container life of 5 years. In the absence of data, we believe this number of actuations appears to reasonably replicate the number that can occur in-use for high-end usage and will help ensure quality spout designs that do not fail in-use. We also believe that finalizing requirements consistent with California will help manufacturers to avoid duplicate testing.

One commenter stated that 400 actuations over a short period of time is not representative of real life and that many containers will last 15–25 years. In response, we understand that 5 years is an estimate of the average life and that some containers will be used longer than 5 years. However, we continue to believe that the approach we are finalizing is reasonable. This provision is meant to help ensure that spouts are made of quality materials so that the emissions performance will not deteriorate readily during normal use. The provision also helps to ensure that spouts will not break easily or stick open during normal use, and helps to identify issues during the certification process prior to sale. In addition, this approach balances the need to ensure quality designs with the manufacturers' need to be able to conduct certification testing in a reasonable amount of time. This type of ''accelerated aging'' of components is a necessary part of many of EPA's mobile source emissions control programs.

D. What Certification and In-Use Compliance Provisions Is EPA Adopting?

1. Certification

Section 183(e)(4) authorizes EPA to adopt appropriate systems of regulations to implement the program, including requirements ranging from registration and self-monitoring of products, to prohibitions, limitations, economic incentives and restrictions on product use. We are finalizing as proposed a certification mechanism pursuant to these authorities. Manufacturers are required to apply for and receive an EPA certificate of conformity, using the certification process specified in the regulations, before entering their containers into U.S. commerce. To have their products certified, manufacturers must first define their emission families. This is generally based on selecting groups of products that have similar emissions. For example, co-extruded containers of various geometries could be grouped together. The manufacturer must select a worst-case configuration for testing, such as the thinnest-walled container. Manufacturers may group gasoline, diesel, and kerosene containers together as long as the containers do not differ materially in a way that could be anticipated to cause differences in emissions performance. These determinations must be made using good engineering judgment and are subject to EPA review. Testing with those products, as specified above, must show compliance with emission standards. The manufacturers must then send us an application for certification. As proposed, we define the manufacturer as the entity that is in day-to-day control of the manufacturing process (either directly or through contracts with component suppliers) and responsible for ensuring that components meet emissions-related specifications. Importers are not considered a manufacturer under this program, and thus would not receive certificates. The manufacturers of the PFCs they import would have to certify the cans. Importers will only be able to import PFCs that are certified.

After reviewing the information in the application, if all the required information is provided and it demonstrates compliance with the standards, then we will issue a certificate of conformity allowing manufacturers to introduce into commerce the containers from the certified emission family. We expect EPA review to typically take about 90 days or less, but could be longer if we have questions regarding the application. The certificate of conformity will be for a production period of up to 5 years. Manufacturers are allowed to carry over certification test data if no changes are made to their products that would affect emissions performance. We may revoke or void a certificate if we find that data and information on which it is based is false or inaccurate. We will notify the manufacturer in writing and the manufacturer may request a hearing. Changes to the certified products that affect emissions require reapplication for certification. Manufacturers wanting to make changes without doing testing are required to present an engineering

[208] Final Rule, ''Control of Emissions from Nonroad Large Spark-ignition engines, and Recreational Engines (Marine and Land-based)'', 67 FR 68287, November 8, 2002.

evaluation demonstrating that emissions are not affected by the change.

The manufacturer is responsible for meeting applicable emission standards. Importers are also responsible for the product meeting the standards. While we are not including requirements for manufacturers to conduct production-line testing, we may pursue EPA in-use testing of certified products to evaluate compliance with emission standards. If we find that containers do not meet emissions standards in use, we would consider the new information during future product certification. Also, we may require certification prior to the end of the 5-year production period otherwise allowed between certifications. The details of the certification process are provided in the regulatory text. We did not receive any comments on the certification procedures described above.

EPA is authorized under the Independent Offices Appropriation Act of 1952 to establish fees for Government services and things of value that it provides. This provision encourages Federal regulatory agencies to recover, to the fullest extent possible, costs provided to identifiable recipients. The agency currently collects fees for compliance programs administered by EPA including those for certification of motor vehicles and motor vehicle engines. At this time, we are not finalizing a fee program for PFC certification. However, we may establish a certification fee for PFCs in a future rulemaking.

2. Emissions Warranty and In-Use Compliance

We are finalizing as proposed an emissions warranty period of one year to be provided by the manufacturer of the PFC to the consumer. The warranty covers emissions-related materials defects and breakage under normal use. For example, the warranty covers failures related to the proper operation of the auto-closing spout or defects with the permeation barriers. We are also requiring that manufacturers submit a warranty and defect report documenting successful warranty claims and the reason for the claim to EPA annually so that EPA may monitor the program. Unsuccessful claims will not need to be submitted. We believe that this warranty will encourage designs that work well for consumers and are durable. Although it does not fully cover the average life of the product, it is not typical for very long consumer warranties to be offered with such products and therefore we believe a one-year warranty is reasonable. Also, the warranty period is more similar to the expected life of gas cans when used in commercial operations, which would need to be considered by the manufacturers in their designs. We did not receive any comments on these warranty provisions.

EPA views this aspect of the final rule as another part of the ''system of regulation'' it is finalizing to control VOC emissions from PFCs. A warranty will promote the objective of the rule by providing consumers with an opportunity to replace containers that have failed in use. The warranty provides an obvious remedy to consumers if issues arise. The provision also helps to ensure that manufacturers will ''stand behind'' their product if they fail in use, thus improving product design and performance. Similarly, the defect reporting requirement will promote product integrity by allowing EPA to readily monitor in-use performance by tracking successful warranty claims.

Gas cans have a typical life of about 5 years on average before they are scrapped. We are including durability provisions as part of certification testing to help ensure containers perform well in use. Under this final rule, we could test containers within their five-year useful life period to monitor in-use performance and take steps to correct in-use failures, including denying certification, for container designs that are consistently failing to meet emissions standards. (This provision thus would work in tandem with the warranty claim reporting provision contained in the preceding paragraph.)

3. Labeling

Since the requirements will be effective based on the date of manufacture of the container, we are requiring as proposed that the date of manufacture must be indelibly marked on the can. This is consistent with current industry practices. This is needed so that we and others can recognize whether a unit is regulated or not. In addition, we are requiring a label providing the manufacturer name and contact information, a statement that the can is EPA certified, citation of EPA regulations, and a statement that it is warranted for one year from the date of purchase. The manufacturer name and contact information is necessary to verify certification. Indicating that a one-year warranty applies will ensure that consumers have knowledge of the warranty and a way to contact the manufacturer. Enforcement of the warranty is critical to the defect reporting system. In finalizing this labeling requirement, we further believe, pursuant to CAA section 183(e)(8), that these labeling requirements will be useful in meeting the NAAQS for ozone. They provide necessary means of implementing the various measures described above which help ensure that VOC emission reductions from the proposed standard will in fact occur in use. We did not receive any comments on these labeling requirements.

E. How Would State Programs Be Affected By EPA Standards?

Several states have adopted emissions control programs for PFCs. California implemented an emissions control program for PFCs in 2001. Fifteen other states, mostly in the northeast, have adopted or are considering adopting the California program.[209] In 2005, California adopted a revised program, which will go into effect on July 1, 2007. The revised California program is very similar to the program we are finalizing. We believe that although a few aspects of the program we are finalizing are different, manufacturers will be able to meet both EPA and CARB requirements with the same container designs and therefore sell a single product in all 50 states. In most cases, we believe manufacturers will take this approach. By closely aligning with California where possible, we will allow manufacturers to minimize research and development (R&D) and emissions testing, while potentially achieving better economies of scale. It may also reduce administrative burdens and market logistics from having to track the sale of multiple can designs. We consider these to be important factors under CAA section 183(e) which requires us to consider economic feasibility of controls.

States that have adopted the original California program will likely choose to either adopt the new California program or eliminate their state program in favor of the federal program. Because the programs are similar, we expect that most states will eventually choose to rely on implementation of the EPA program rather than continue their own program. Including diesel and kerosene containers in our final program further aligns the two programs and several states commented in support of this approach. We expect very little difference in the emissions reductions provided by the EPA and California programs in the long term.

[209] Delaware, Maine, Maryland, Pennsylvania, New York, Connecticut, Massachusetts, New Jersey, Rhode Island, Vermont, Virginia, Washington DC, Texas, Ohio, and New Hampshire.

F. Provisions for Small PFC Manufacturers

As discussed in previous sections, prior to issuing our proposal for this rulemaking, we analyzed the potential impacts of these regulations on small entities. As a part of this analysis, we convened a Small Business Advocacy Review Panel (SBAR Panel, or ''the Panel''). During the Panel process, we gathered information and recommendations from Small Entity Representatives (SERs) on how to reduce the impact of the rule on small entities, and those comments are detailed in the Final Panel Report which is located in the public record for this rulemaking (Docket EPA–HQ–OAR–2005–0036). Based upon these comments, we proposed to include flexibility and hardship provisions for container manufacturers. Since nearly all manufacturers are small entities and they account for about 60 percent of sales, the Panel recommended that we extend the flexibility options and hardship provisions to all manufacturers. Our proposal was consistent with that recommendation. We did not receive any comments on our proposed flexibilities and are finalizing them as proposed. The flexibility provisions are incorporated into the program requirements described earlier in sections VII.B through VII.D. The hardship provisions are described below. For further discussion of the Panel process, see section X.C of this rule and/or the Final Panel Report.

The Panel recommended and we are finalizing two types of hardship provisions for container manufacturers. These entities could, on a case-by-case basis, face hardship, and we are finalizing these provisions to provide what could prove to be needed safety valves for these entities. Thus, the hardship provisions are as follows:

1. First Type of Hardship Provision

Container manufacturers may petition EPA for limited additional lead-time to comply with the standards. A manufacturer would have to demonstrate that it has taken all possible business, technical, and economic steps to comply but the burden of compliance costs prevents it from meeting the requirements of this subpart by the required compliance date and not having an extension would jeopardize the company's solvency. Hardship relief may include requirements for interim emission reductions.

2. Second Type of Hardship Provision

Container manufacturers are permitted to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e., an ''Act of God,'' a fire at the manufacturing plant, or the unforeseen shut down of a supplier with no alternative available), and if failure to sell the subject containers would jeopardize the company's solvency. The terms and timeframe of the relief will depend on the specific circumstances of the company and the situation involved.

For both types of hardship provisions, the length of the hardship relief will be established, during the initial review, for not more than one year and will be reviewed annually thereafter as needed. As part of its application, a company is required to provide a compliance plan detailing when and how it will achieve compliance with the standards.

VIII. What Are the Estimated Impacts of the Rule?

A. Refinery Costs of Gasoline Benzene Reduction

The benzene control program we are finalizing today is expected to result in many refiners investing in benzene control hardware and changing the operations in their refineries to reduce their gasoline benzene levels. The finalized benzene control program requires refiners and importers to reduce their gasoline benzene levels on average down to 0.62 vol% benzene. The averaging, banking and trading (ABT) provisions being finalized along with the 0.62 vol% average benzene control standard allows refineries that reduce their gasoline benzene levels below 0.62 vol% to earn credits and transfer those credits to other refineries which would find it more expensive to reduce their benzene levels down to the average standard. The ABT program will allow refiners to optimize their investments, which we believe will result in achieving the average benzene control standard nationwide at much lower costs. The final benzene control program also puts into place a 1.3 vol% benzene maximum average standard which requires each refinery to reduce its gasoline benzene levels to or below this standard and will increase the benzene control costs only slightly compared to a benzene control program which does not contain a maximum average standard. We estimate that the national average refinery costs incurred to comply with the fully phased-in benzene control program will be 0.27 cents per gallon, averaged over all gasoline. This estimate includes the capital costs, which are amortized over the volume of gasoline produced.

In this section we summarize the methodology used to estimate the costs of benzene control (including changes we have made since the proposal) and our estimated costs for the program. In addition we evaluate the cost estimate provided by the American Petroleum Institute. A detailed discussion of all of these analyses is found in Chapter 9 of the RIA.

1. Methodology

a. Overview of the Benzene Program Cost Methodology

The basic methodology we used to estimate the cost of benzene control for the final rule is the same as that used for the proposed rule. Using a refinery-by-refinery cost model that we developed for this rulemaking, we projected which refineries implement what benzene control technology, and the cost of each refinery's benzene control step, to estimate compliance with the final benzene control program. We aggregated the individual refinery costs to develop a national average cost estimate for the final benzene control program. Based on the flexibilities offered by the ABT program, refiners are expected to come very close to achieving the 0.62 vol% average benzene standard on average with little overcompliance. For this reason, we modeled refiners achieving the average standard without any overcompliance. To the extent that any overcompliance does occur the costs and benefits of the benzene program will increase.

b. Changes to the Cost Estimation Methodology Used in the Proposed Rule

In deriving the cost estimate for the final rule, we identified and made a number of changes to the refinery modeling methodology used for the proposed rule. One of the primary changes was to base the future year fuel prices on the Annual Energy Outlook (AEO) 2006 instead of AEO 2005, which increased the crude oil price used in the analysis from $27 per barrel to $47 per barrel. Other changes included: (1) Updating the refinery modeling base year to 2004 (used for calibrating each refinery's gasoline benzene levels); (2) modeling the baseline benzene levels and reductions on an annual basis instead of on a summer-only basis; (3) increasing the tax-hurdle rate of return to 15 percent from the 10 percent hurdle used in the proposed rule, and (4) including the treatment of the benzene in natural gasoline, which was assumed to be left untreated in the proposed rule analysis.

In addition, we also made some adjustments that were based on comments we received on the cost analysis that we conducted for the proposal, as well as the peer review process that we undertook for the proposal's refinery cost model. One of the peer reviewers for the refinery-by-refinery cost model, and API in its comments on the proposed rule, provided capital cost estimates for the benzene control technologies.[210] We reviewed these capital cost estimates and made some adjustments to somewhat increase the capital cost figures used in the final rule analysis. These changes were partially responsible for the higher costs reported here compared to those reported in the proposed rule. More complete descriptions of these and other changes made to the refinery cost model are contained in Chapter 9 the RIA.

c. Linear Programming Cost Model

We considered performing our cost assessments using a linear programming (LP) cost model. LP cost models are based on a set of complex mathematical representations of refineries which, for national analyses, are usually conducted on a regional basis. This type of refining cost model has been used by the government and the refining industry for many years for estimating the cost and other implications of changes to fuel quality.

The design of LP models lends itself to modeling situations where every refinery in a region is expected to use the same control strategy and/or has the same process capabilities. As we began to develop a gasoline benzene control program with an ABT program, it became clear that LP modeling was not well suited for evaluating such a program. Because refiners will be choosing a variety of technologies for controlling benzene, and because the program will be national and will include an ABT program, we initiated development of a more appropriate cost model, as described below. However, the LP model remained important for providing many of the inputs into the cost model developed for this rulemaking.

d. Refinery-by-Refinery Cost Model

In contrast to LP models, refinery-by-refinery cost models are useful when individual refineries are expected to respond to program requirements in different ways and/or have significantly different process capabilities. Thus, in the case of modeling gasoline benzene control programs, we needed a model that could accurately simulate the variety of decisions refiners will make at different refineries, especially in the context of a nationwide ABT program. For this and other related reasons, we developed a refinery-by-refinery cost model specifically to evaluate the benzene control program.

Our refinery-by-refinery benzene cost model incorporates the capacities of all the major units in each refinery in the country, as reported by the Energy Information Administration and in the Oil and Gas Journal. Regarding operational information, we know less about how specific refineries use the various units to produce gasoline and about such factors as octane and hydrogen costs for individual refineries. We used the LP model to estimate these factors on a regional basis, and we applied the average regional result to each refinery in that region (PADD). We calibrated the model for each individual refinery based on 2004 gasoline volumes and benzene levels (from the RFG data base), which was the most recent year for which data was available. After calibration, each refinery's gasoline volume and benzene level closely matched their actual gasoline volumes and benzene levels. We also compared cost estimates of similar benzene control cases from both the refinery-by-refinery model and the LP model, and the results were in close agreement.[211]

Refinery-by-refinery cost models have been used in the past by both EPA and the oil industry for such programs as the highway and nonroad diesel fuel sulfur standards, and they are a proven means for estimating the cost of compliance for fuel control programs. For this refinery-by-refinery benzene cost model, we conducted a peer review process, and have received some comments on the design of our model. We summarize some of these comments here, and they are summarized and addressed in detail in the RIA. (See Chapter 9 of the RIA for our responses to these peer-review comments.) The oil industry has also conducted similar analyses using a refinery-by-refinery modeling technique, including the oil industry's cost analysis carried out for this rulemaking.

Based on our understanding of the primary benzene control technologies (see section VI.A.1.c.i. above), the cost model assumes that four technologies will be used, as appropriate, for reducing benzene levels. All of these technologies focus on addressing benzene in the reformate stream. They are (1) routing the benzene precursors around the reformer (also called light naphtha splitting and reformer feed fractionation); (2) routing benzene precursors to an existing isomerization unit, if available; (3) benzene extraction (extractive distillation); and (4) benzene saturation. For the proposed rulemaking we assumed that only the usual feed or the product stream of the reformer will be processed by these benzene control technologies. However, since the proposal, we learned that another refinery stream—natural gasoline—contains some benzene and will likely be treated by the saturation and extraction processes in refineries if they have or install these units. For the proposal, we assumed that natural gasoline would be blended directly into gasoline and not be treated by refiners if faced with a benzene control standard. However, most refiners have been combining natural gasoline with their crude oil to enable treating the sulfur in natural gasoline to help comply with the Tier 2 gasoline sulfur standard. Because the natural gasoline will be refined along with crude oil, the benzene in natural gasoline can and will be treated along with the benzene in crude oil.

The nationwide ABT program is intended to optimize benzene reduction by allowing each refinery to individually choose the most cost-effective means of complying with the program. To model this phenomenon, we first established an estimated cost for the array of technologies that could be employed by each refinery to reduce its gasoline benzene levels. We then deployed these technologies to refineries with baseline benzene levels above the 1.3 vol% benzene maximum average standard to bring them into compliance with this standard. Next we ranked the refineries in order from lowest to highest benzene control cost per gallon of gasoline and estimated the impact of their projected benzene

[210] An important reason for the discrepancy between our capital cost estimate and that by API (which was about three times higher) was that we only estimated the capital costs related to the benzene control technologies, not those related to octane recovery and increased hydrogen production needed for saturation or to replace the octane lost due to reduced benzene production by the reformer. For the final rule, we estimated these additional capital costs and included them in our capital cost estimates.

[211] Despite our commitment to accurately model the baseline operations of each refinery, we recognize that without detailed refinery-specific operations information at our disposal, that our modeling may not be accurate in some specific cases. Particular refineries may choose a different benzene control path than that estimated by our analysis for a number of reasons, including differences in the baseline and our lack of knowledge for investment and ABT program use preferences for each refiner. We believe, though, that overall our refinery cost model captures the strategies and costs for complying with the benzene control program.

control strategies on refinery benzene levels. The model then follows this ranking, starting with the lowest-cost refineries, and adds refineries and their associated control technologies one-by-one until the projected national average benzene level reaches 0.62 vol% benzene. This modeling strategy projects the benzene control technology that will be used by each refinery, as well as identifies those refineries that are expected to generate credits and those that are expected to use credits in lieu of investing in benzene control. The sum of the costs of the refineries expected to invest in benzene control provides the projected overall cost of the program.

Finally, we projected how the ABT program will affect the program cost and benzene levels starting in 2007, when early credits can be generated. We assumed that refiners will use operational changes (benzene precursor rerouting, with isomerization if available) to the maximum extent possible in mid-2007, when they are able to start to generate credits. We also assumed that refiners will choose to accumulate additional early credits by making their initial lowest-cost capital investments for reducing their gasoline benzene levels, and that these changes will take effect in 2010. We modeled compliance by nonsmall and small refiners with the maximum average standard taking effect in mid-2012 and the beginning of 2015, respectively, as well as the final benzene control step to meet the 0.62 vol% standard—the phase-in of which depends on the aggregate amount of credits generated.[212]

e. Price of Chemical Grade Benzene

The price of chemical grade benzene is critical to the benzene control program because it defines the opportunity cost for benzene removed using benzene extraction and sold into the chemicals market. According to 2004 World Benzene Analysis authored by Chemical Market Associates Incorporated (CMAI), during the consecutive five-year period ending with 2004, the price of benzene averaged 24 dollars per barrel higher than regular grade gasoline. During the three consecutive year period ending with 2004, the price of benzene averaged 28 dollars per barrel higher than regular grade gasoline. However, during the first part of 2004, the price of benzene relative to gasoline rose steeply, primarily because of high energy prices adding to the cost of extracting benzene. The 2004 benzene price averaged 78 dollars per barrel higher than regular grade gasoline. Since early 2006, CMAI has been projecting that the future price of benzene relative to gasoline will return to more historic levels, in the range of 30 dollars per barrel higher than regular grade gasoline (in 2005, CMAI was projecting that the benzene price would be 20 dollars per barrel higher than gasoline). We have based our modeling for the final rule on the 30 dollar per barrel value.

2. Summary of Costs

a. Nationwide Costs of the Final Benzene Control Program

We have used the refinery-by-refinery cost model to estimate the costs of the benzene control program being finalized today. In general, the cost model indicates that among the four primary reformate-based technologies, benzene precursor rerouting will be the most cost-effective. The next most cost-effective technologies are isomerization of the rerouted light straight run material, revamped extraction units and new installations of large extraction units. The model indicates that benzene saturation and small installations of new extraction units will be the least cost-effective.

Based on the results of our analysis using the refinery-by-refinery model, we estimate that when the benzene control program is fully phased in, 78 refineries of the total 104 gasoline-producing refineries in the U.S. (outside of California) will have to put in new capital equipment or change their refining operations to reduce the benzene levels in their gasoline. Of these refineries, we estimate that 17 will use benzene precursor removal, 28 refineries will use benzene precursor removal coupled with isomerization, 16 will use extraction, and 17 will use benzene saturation. We project that 52 refineries will continue to produce gasoline with benzene levels greater than the average standard and will need to purchase credits to comply. Including the refineries with benzene levels currently below 0.62, we project that there will be a total of 50 refineries that will produce gasoline with benzene levels at 0.62 or lower and will generate credits for sale to other refineries. Finally, the model projects that 26 refineries will take no steps to reduce their gasoline benzene levels, which includes those which remain above the average benzene standard as well as those already below the average standard.

Based on the results of our cost analysis, we estimate that the final benzene control program will cost 0.27 cents per gallon when it is fully phased in, assuming that capital investments are amortized at a 7 percent return on investment before taxes and expressed in 2003 dollars. Our cost analysis projects that the ABT program will result in a phase-in of the benzene control standard from mid-2007 to early in 2015. Starting in mid-2007 we believe that refiners will take the opportunity to achieve modest benzene reductions to generate early credits using simple operational changes. We project that these actions taken in mid-2007 will result in a reduction of the average U.S. gasoline benzene level from 0.99 to 0.81 vol% at an average cost of 0.04 cents per gallon.

To take full advantage of the flexibility provided to refiners by the ABT program to delay more expensive capital investments, refiners are expected to make additional early benzene reductions to generate more early credits, requiring modest investments in capital. Because of the time it takes to assess, design and install the capital equipment, we project that these additional early benzene reductions will not occur until the beginning of 2010, although in reality these investments and associated benzene reductions would likely occur before and after the beginning of 2010. These benzene reductions are expected to further reduce the average benzene level of U.S. gasoline to 0.74 vol% and cost 0.05 cents per gallon averaged over all U.S. gasoline. Refiners are expected to make $324 million of capital investments to achieve this benzene reduction. In 2011 when the 0.62 vol% benzene control standard takes effect, we do not anticipate any further reduction in benzene because we project that the refining industry will be able to comply using early credits.

In mid-2012, when refineries with high benzene levels need to comply with the 1.3 vol% maximum average standard, we anticipate that U.S. gasoline benzene levels will decline further, to 0.73 vol% benzene, and cost an additional 0.04 cents per gallon averaged over all U.S. gasoline. Refiners are expected to make another $153 million in capital investments. Although the early credit use period terminates at the end of 2013, refiners will again have flexibility in scheduling their most expensive capital

[212] The ABT analysis assumed that small refiners would comply with the 1.3 vol% maximum average standard in January 2015 at the same time as the 0.62 vol% annual average standard. We are finalizing a later maximum average standard implementation date (July 2016), which will have very little effect on the overall program and therefore has not been incorporated into this analysis.

investments by using standard credits (which will have been accruing since the start of 2011). Because we expect that refiners will first use their early credits, the standard credits will be banked and will start to be used in 2014 to show compliance with the 0.62 vol% benzene standard. Our analysis suggests that the U.S. refining industry will be able to delay their highest capital investments until May 2015, when the standard credits accumulated since the beginning of 2011 run out. Small refiners must meet the 1.3 vol% maximum average standard which was assumed to occur at the beginning of 2015 so they also will be reducing their gasoline benzene levels to that standard or below.[213] Taken together, these reductions in 2015 will bring the U.S. gasoline pool down to the 0.62 vol% benzene standard at an average cost of 0.14 cents per gallon averaged over all U.S. gasoline, based on the addition of $634 million in capital investments.

To comply with the fully phased-in final benzene control program, refiners are expected to have made a total of $1110 million in capital investments. This will amount to an average of $14 million in capital investment in each refinery that adds such equipment.

We also estimated annual aggregate costs, including the amortized capital costs, associated with the new fuel standard. As shown in Table VIII.A–1, these costs are projected to begin at $28 million in 2007 and increase to $363 million in 2015 when the benzene program is fully phased in. These aggregated costs continue to increase over time as fuel demand increases.

TABLE VIII.A–1.—PER-GALLON AND ANNUAL AGGREGATE FUEL COSTS FOR THE FINAL BENZENE CONTROL PROGRAM

(7% ROI before taxes and 2003 dollars)

Year	Per-gallon cost (c/gal)	Aggregate cost ($million)
2007	0.02	28
2008	0.04	49
2009	0.04	50
2010	0.09	101
2011	0.09	104
2012	0.11	133
2013	0.13	164
2014	0.13	166
2015	0.27	363
2020	0.27	388
2025	0.27	412
2030	0.27	437
2035	0.27	464

Several observations can be made from these results of our nationwide cost analysis. First, significantly reducing gasoline benzene levels to low levels, coupled with the flexibility of an ABT program, will incur fairly modest aggregate program costs. This is primarily because we expect that refiners will optimize their benzene control strategies, resulting in large benzene reductions at a relatively low overall program cost. With higher benzene prices relative to those of gasoline projected to continue (even if they drop from the recent very high levels), extraction is expected to be a very low-cost technology—the primary reason why the cost of the overall program is very low. Also, precursor rerouting, either with or without isomerization in an existing unit, is a low-cost technology requiring little or no capital to realize. The model concludes that even the higher-cost benzene saturation technology will be fairly cost-effective overall because larger refineries that install this technology will take advantage of their economies of scale.

b. Regional Costs

The benzene reductions estimated by the cost model and associated costs vary significantly by region. Table VIII.A–2 summarizes the estimated per-gallon costs for complying with the benzene control standard by PADD region.

TABLE VIII.A–2.—PROJECTED BENZENE CONTROL COSTS BY PADD FOR THE FINAL BENZENE CONTROL PROGRAM

(2003 dollars, 7% ROI before taxes)

	PADD					U.S.
	1	2	3	4	5 (w/o CA)	
Cost (c/gal)	0.14	0.35	0.15	0.55	1.21	0.268

Table VIII.A–2 shows that the PADD-average costs are highest in PADD 5 followed next by PADD 4. In PADDs 1, 2 and 3, where reformulated gasoline programs have already forced gasoline benzene levels lower, the benzene control costs are lower. Extraction is the technology most used in PADDs 1 and 3, resulting in lower benzene control cost in these regions. Individual refineries show a wider range of control costs than the PADD-average costs. There are 20 refineries for which we estimate benzene control costs lower than 0.20 cents per gallon. Also, there are 11 refineries, all of which are very small refineries, with costs in the range of 3 to 7 cents per gallon range.

c. Refining Industry Cost Study

The American Petroleum Institute (API) conducted its own refinery modeling study to evaluate the cost of benzene control. The API study analyzed the cost of three different benzene control programs. Two of the benzene control programs analyzed by API were very different than our final benzene control program and we will not discuss them here (see Chapter 9 of the RIA). The third program analyzed by API was nearly identical to the final benzene control standard, and we have carefully compared API's cost analysis to ours.

API analyzed a benzene control program with a nationwide 0.60 vol% benzene standard and with an ABT program and with no upper benzene limit. API also assumed that credits will not be traded freely, but instead that refining companies would hold onto 10 percent of their credits in case they have a future problem with their benzene control unit. Including the compliance margin and the 10 percent credit margin, the API study estimated that under its modeled benzene control program and associated assumptions that U.S. gasoline would average 0.56 vol% benzene. The API study estimates the cost of complying with its modeled benzene control program to be 1.00 cent

[213] The ABT analysis assumed that small refiners would comply with the 1.3 vol% maximum average standard in January 2015 at the same time as the 0.62 vol% annual average standard. We are finalizing a later maximum average standard implementation date (July 2016), which will have very little effect on the overall program and therefore has not been incorporated into this analysis.

per gallon.[214] This estimated benzene control cost is substantially higher than our estimated 0.27 cents per gallon cost for our nearly identical program. After comparing their methodology to ours we identified three primary differences which explain the large difference in costs.

The first difference is that API modeled a somewhat lower benzene control standard and assumed a credit generation margin which resulted in refiners achieving a much lower benzene level than the 0.62 vol% benzene control standard. A primary reason why the refining industry study modeled overcompliance with the benzene standard is due to an assumption that refiners will want to hold onto a substantial quantity of credits, yet the API cost study did not provide a justification for the accumulation of credits. EPA does not believe that refiners will significantly overcomply with the average benzene standard. This is because the 0.62 vol% benzene standard is an averaging standard which is met across the entire industry, not a cap standard, and can be met by the accumulation of gasoline batches with benzene levels higher or lower than the standard. Thus, if a refinery produced gasoline with lower or higher gasoline benzene levels over the first part of the year, the operations could be adjusted to balance out the gasoline benzene levels for the rest of the year. Also, our program includes several provisions which give refiners significant flexibility for compliance. For example, refiners could overcomply slightly with the standard early on in the program's implementation and hold onto the credits for up to five years before they expire. If a refinery's benzene control unit goes down, the refiner would be able to use those accumulated credits, the refiner could purchase credits from other refineries, or the refiner could create a benzene reduction deficit at that refinery and make it up the following year. With this degree of flexibility, any significant overcompliance with the 0.62 vol% average benzene standard is unnecessary.

The second reason why the API costs are much higher than ours is because API used a more restrictive assumption with respect to benzene extraction—a more cost-effective benzene control technology than benzene saturation, as discussed above. API assumed that no new grassroots benzene extraction capacity will be installed in the future, but that existing extraction units could be expanded. We agree that existing units will likely be expanded. However, we also believe that several refineries will install new grassroots extraction units. Our premise is supported by CMAI projections of a robust benzene market in the future with benzene priced higher than its historical margin above gasoline. Higher benzene price margins will provide an incentive to refiners to add grassroots benzene extraction units, even in areas where benzene markets are smaller. For example, one refiner has indicated to us that if the proposed gasoline benzene standard was to be finalized, it would install a grassroots benzene extraction unit at one of its refineries in the Midwest, where the benzene market is small with less room for increased supply (although this benzene could be shipped down to the Gulf Coast). This is a strong indicator that new grassroots benzene extraction units will also be installed on the Gulf and East Coasts, where benzene markets are much larger with much more room to absorb increased supply.

The third reason why the API benzene control costs are much higher than ours is their very high octane control costs. For both studies, the octane loss that occurs due to the modeled application of the various benzene control technologies is accounted for by assigning a dollar per octane-barrel cost to the octane loss. However, API's costs for restoring octane are higher than the future octane recovery costs that we are projecting. The octane costs used by API are higher because API used the rack price differential between premium and regular grade gasolines as summarized by the Energy Information Administration. However, the rack price differential between premium and regular grade gasolines reflects a significant amount of profit. For example, the cost difference to produce premium gasoline is usually only a few cents per gallon more than for producing regular grade gasoline, yet refiners and marketers usually charge 20 to 30 cents more per gallon for premium gasoline at retail. Some of this inflated price appears at the rack price differential between regular and premium grades of gasoline. In addition, future octane control costs, when the benzene control standard takes effect, are expected to be much lower due to the very large volume of ethanol that is expected to enter the gasoline market by then.

Overall, we have carefully evaluated the differences between our cost analysis and that provided by API. Except for the differences described above, the assumptions used and the conclusions reached were very similar. We believe our revised analysis provides a more accurate assessment of the costs of the benzene control program.

B. What Are the Vehicle Cost Impacts?

In assessing the economic impact of setting cold temperature emission standards, we have made a best estimate of the necessary vehicle modifications and their associated costs. In making our estimates we have relied on our own technology assessment, which includes information supplied by individual manufacturers and our own in-house testing. Estimated costs typically include variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). All costs are presented in 2003 dollars. Full details of our cost analysis can be found in Chapter 8 of the RIA.

As described in section V, we are not expecting hardware changes to Tier 2 vehicles in response to new cold temperature standards. Tier 2 vehicles are already being equipped with very sophisticated emissions control systems. We expect manufacturers to use these systems to minimize emissions at cold temperatures. We were able to demonstrate significant emissions reductions from a Tier 2 vehicle through recalibration alone. In addition, the standard we are finalizing is based on averaging which allows some vehicles to be above the numeric standard as long as those excess emissions are offset by vehicles below the standard. Averaging will help manufacturers in cases where they are not able to achieve the numeric standard for a particular vehicle group, thus helping manufacturers avoid costly hardware changes. The phase-in of standards and emissions credits provisions also help manufacturers avoid situations where expensive vehicle modifications will be needed to meet the new cold temperature NMHC standard. Therefore, we are not projecting hardware costs or additional assembly costs associated with meeting new cold temperature NMHC emissions standards.

Manufacturers will incur research and development (R&D) costs associated with a new cold temperature standard, and some likely will need to upgrade testing facilities to handle an increased number of cold tests during vehicle development. We have estimated the fixed costs associated with R&D and test facilities. We project that manufacturers will recover R&D costs over a five-year

[214] This cost estimate includes an adjustment we made to convert the API capital cost amortization from the after-tax 10 percent rate of return that was the basis for the estimated costs in their report to a before-tax 7 percent rate of return, which is how our rules are estimated.

period and their facilities costs over a ten-year period. Long-term impacts on engine costs are expected to decrease as manufacturers fully amortize their fixed costs. Because manufacturers recoup fixed costs over a large volume of vehicles, average per vehicle costs due to the new cold temperature NMHC standards are expected to be low. We project that the average incremental costs associated with the new cold temperature standards will be less than $1 per vehicle.

We did not receive comments on the methodology we used to derive average cost estimates. However, we did receive comments from one manufacturer with a limited product line who believes new hardware will be needed on its vehicles to meet the new cold temperature standards. Other manufacturers did not comment that hardware changes would be needed, and they generally supported our lead-time, phase-in, and other transitional provisions as providing the flexibility needed to meet the standards. We continue to believe that manufacturers will be able to meet the standards through vehicle development without additional hardware. However, we conducted a sensitivity analysis in response to this comment, assuming the commenter would use new hardware to meet the cold temperature standard. If one percent of new vehicles required additional hardware costing $100–$200 per vehicle, the average cost would increase from less than $1 to the range of $1.60–$2.60 per vehicle. The commenter did not provide cost information in their comments and we believe that the costs used in our sensitivity analysis are conservatively high, given the lead time provided for vehicle development and market pressures to keep costs in line with those of competitors. In any event, we believe the costs associated with the program are reasonable. Additional discussion of the comments received on the vehicle cold temperature standard is provided in Chapter 3 of the Summary and Analysis of Comments for this rule.

We are not anticipating additional costs for the new evaporative emissions standard. As discussed in section V, we expect that manufacturers will continue to produce 50-state evaporative systems that meet LEV II standards. Therefore, harmonizing with California's LEV–II evaporative emission standards will streamline certification and be an ''anti-backsliding'' measure. It also codifies the approach manufacturers have already indicated they are taking for 50-state evaporative systems.

We also estimated annual aggregate costs associated with the new cold temperature emissions standards. These costs are projected to increase with the phase-in of standards and peak in 2014 at about $13.4 million per year, then decrease as the fixed costs are fully amortized. The projected aggregate costs are summarized below, with annual estimates provided in Chapter 8 of the RIA.

TABLE VIII.B–1.—ANNUAL AGGREGATE COSTS

2010	2012	2014	2016	2018	2020
$11,119,000	$12,535,000	$13,406,000	$12,207,000	$10,682,000	$0

C. What Are the PFC Cost Impacts?

For PFCs, we have made a best estimate of the necessary technologies and their associated costs. Estimated costs include variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). The analysis also considers fuels savings associated with low emission PFCs. Cost estimates based on the projected technologies represent an expected change in the cost of PFCs as they begin to comply with new emission standards. All costs are presented in 2003 dollars. We did not receive comments on estimated costs for PFCs controls. Full details of our cost analysis, including fuel savings, can be found in Chapter 10 of the RIA.

Table VIII.C–1 summarizes the projected near-term and long-term per unit average costs to meet the new emission standards. Long-term impacts on PFCs are expected to decrease as manufacturers fully amortize their fixed costs. We project that manufacturers will generally recover their fixed costs over a five-year period, so these costs disappear from the analysis after the fifth year of production. These estimates are based on the manufacturing cost rather than predicted price increases.[215] The table also shows our projections of average fuel savings over the life of the PFC when used with gasoline. Fuel savings can be estimated based on the VOC emissions reductions due to controls.

TABLE VIII.C–1.—ESTIMATED AVERAGE PER UNIT PFC COSTS AND LIFETIME FUEL SAVINGS

	Cost
Near-Term Costs	$2.69
Long-Term Costs	1.52
Fuel Savings (NPV)	4.24

With current and projected estimates of PFC sales, we translate these costs into projected direct costs to the nation for the new emission standards in any year. A summary of the annual aggregate costs to manufacturers is presented in Table VIII.C–2. The annual cost savings due to fuel savings start slowly, then increase as greater numbers of compliant PFCs enter the market. Table VIII.C–2 also presents a summary of the estimated annual fuel savings. Aggregate costs are projected to peak in 2013 at about $61 million and then drop to about $34 million once fixed costs are recovered. The change in numbers beyond 2015 occurs due to projected growth in sales and population.

TABLE VIII.C–2.—TOTAL ANNUALIZED COSTS AND FUEL SAVINGS

	2009	2013	2015	2020
Costs	$58,070,000	$60,559,000	$34,004,000	$37,543,000

[215] These costs numbers may not necessarily reflect actual price increases as manufacturer production costs, perceived product enhancements, and other market impacts will affect actual prices to consumers.

TABLE VIII.C–2.—TOTAL ANNUALIZED COSTS AND FUEL SAVINGS—Continued

	2009	2013	2015	2020
Fuel Savings	15,347,000	83,506,000	102,523,000	109,589,000

D. Cost per Ton of Emissions Reduced

We have calculated the cost per ton of HC, benzene, total MSATs, and PM emissions reductions associated with the fuel, vehicle, and PFC programs using the costs described above and the emissions reductions described in section IV. More detail on the costs, emissions reductions, and cost per ton estimates can be found in the RIA. We have calculated the costs per ton using the net present value of the annualized costs of the program, including PFC gasoline fuel savings, from 2009 through 2030 and the net present value of the annual emission reductions through 2030. We have also calculated the cost per ton of emissions reduced in the year 2030 using the annual costs and emissions reductions in that year alone. This number represents the long-term cost per ton of emissions reduced. For fuels, the cost per ton estimates include costs and emission reductions that will occur from all motor vehicles and nonroad engines fueled with gasoline.[216]

For vehicles and PFCs, we are establishing NMHC and HC standards, respectively, which will also reduce benzene and other VOC-based toxics. For vehicles, we are also expecting direct PM reductions due to the NMHC standard.[217] Section IV above provides an overview of how we are estimating benzene and PM reductions resulting from the NMHC standards for vehicles and benzene reductions resulting from the HC standard for PFCs. We have not attempted to apportion costs across these various pollutants for purposes of the cost per ton calculations since there is no distinction in the technologies, or associated costs, used to control the pollutants. Instead, we have calculated costs per ton by assigning all costs to each individual pollutant. If we apportioned costs among the pollutants, the costs per ton presented here would be proportionally lowered depending on what portion of costs were assigned to the various pollutants.

The results for HC for vehicles and PFCs are provided in Table VIII.D–1 using both a three percent and a seven percent social discount rate. Again, this analysis assumes that all costs are assigned to HC control. The discounted cost per ton of HC reduced for the final rule as a whole would be $0 because the gasoline fuel savings from PFCs offsets the costs of PFC and vehicle controls. The table presents these as $0 per ton, rather than calculating a negative value that has no clear meaning. For vehicles in 2030, the cost per ton is $0 because by 2030 all fixed costs have been recovered and there are no variable costs estimated for the new vehicle program.[218]

The cost per ton estimates for each individual program are presented separately in the tables below, and are part of the justification for each of the programs. For informational purposes, we also present the cost per ton for the three programs combined.

TABLE VIII.D–1.—HC AGGREGATE COST PER TON AND LONG-TERM ANNUAL COST PER TON

[$2003]

	Discounted lifetime cost per ton at 3%	Discounted lifetime cost per ton at 7%	Long-Term cost per ton in 2030
Vehicles	$14	$18	$0
PFCs (without fuel savings)	240	270	190
PFCs (with fuel savings)	0	0	0
Combined (with fuel savings)	0	0	0

The cost per ton of benzene reductions for fuels, vehicles, and PFCs are shown in Table VIII.D–2 using the same methodology as noted above for HC. The results are calculated by assigning all costs to benzene control.

TABLE VIII.D–2.—BENZENE AGGREGATE COST PER TON AND LONG-TERM ANNUAL COST PER TON

[$2003]

	Discounted lifetime cost per ton at 3%	Discounted lifetime cost per ton at 7%	Long-term cost per ton in 2030
Fuels	$22,400	$23,100	$22,500
Vehicles	270	360	0
PFCs (without fuels savings)	74,500	82,900	56,200
PFCs (with fuel savings)	0	0	0

[216] The proposed standards do not apply to nonroad engines, since section 202(l) authorizes controls only for ''motor vehicles,'' which term does not include nonroad vehicles (CAA section 216(2)). However, we are reducing benzene in all gasoline, including that used in nonroad equipment. Therefore, we are including both the costs and the benzene emissions reductions associated with the fuel used in nonroad equipment.

[217] Again, although gasoline PM is not a mobile source air toxic, the rule will result in emission reductions of gasoline PM, which reductions are accounted for in our analysis.

[218] We note that in determining whether the new vehicle controls represent the greatest emissions reductions achievable considering costs, we have considered the new cold-start standards separately from any other new control program. Similarly, in considering whether the new controls for PFCs represent the best available control considering economic feasibility, we considered the PFC standards separately from any other new control program.

TABLE VIII.D–2.—BENZENE AGGREGATE COST PER TON AND LONG-TERM ANNUAL COST PER TON—Continued

[$2003]

	Discounted lifetime cost per ton at 3%	Discounted lifetime cost per ton at 7%	Long-term cost per ton in 2030
Combined (with fuel savings)	8,200	8,600	5,900

The cost per ton of reductions of all MSAT reductions for fuels, vehicles, and PFCs are shown in Table VIII.D–3 using the same methodology as noted above for HC and benzene. The results are calculated by assigning all costs to MSAT control.

TABLE VIII.D–3.—MSAT AGGREGATE COST PER TON AND LONG-TERM ANNUAL COST PER TON

[$2003]

	Discounted lifetime cost per ton at 3%	Discounted lifetime cost per ton at 7%	Long-term cost per ton in 2030
Fuels	$22,400	$23,100	$22,500
Vehicles	42	54	0
PFCs (without fuel savings)	2,800	3,100	2,200
PFCs (with fuel savings)	0	0	0
Combined (with fuel savings)	1,700	1,800	1,100

We have also calculated a cost per ton for direct PM reductions for vehicles. Again, this analysis assigns all related costs to direct PM reductions.

TABLE VIII.D–4.—DIRECT PM AGGREGATE COST PER TON AND LONG-TERM ANNUAL COST PER TON

[$2003]

	Discounted lifetime cost per ton at 3%	Discounted lifetime cost per ton at 7%	Long-term cost per ton in 2030
Vehicles	$650	$870	$0

E. Benefits

This section presents our analysis of the health and environmental benefits that will occur as a result of the final standards throughout the period from initial implementation through 2030. In terms of emission benefits, we expect to see significant reductions in mobile source air toxics (MSATs) from the vehicle, fuel and PFC standards; reductions in VOCs (an ozone and $PM_{2.5}$ precursor) from the cold temperature vehicle and PFC standards; and reductions in direct $PM_{2.5}$ from the cold temperature vehicle standards. When translating emission benefits to health effects and monetized values, however, we quantify only the PM-related benefits associated with the cold temperature vehicle standards.

The reductions in $PM_{2.5}$ from the cold temperature vehicle standards will result in significant reductions in premature deaths and other serious human health effects, as well as other important public health and welfare effects. We estimate that in 2030, the benefits we are able to monetize will be approximately $6.3 billion using a 3 percent discount rate and $5.7 billion using a 7 percent discount rate. Total social costs of the entire rule for the same year (2030) are $400 million. Details on the costs of the final standards are in section VIII.F. These estimates, and all monetized benefits presented in this section, are in year 2003 dollars.

The $PM_{2.5}$ benefits are scaled based on relative changes in direct $PM_{2.5}$ emissions between this rule and the proposed Clean Air Nonroad Diesel (CAND) rule.[219] As explained in Section 12.2.1 of the RIA for this rule, the $PM_{2.5}$ benefits scaling approach is limited to those studies, health impacts, and assumptions that were used in the proposed CAND analysis. As a result, PM-related premature mortality is based on the updated analysis of the American Cancer Society cohort (ACS; Pope *et al.*, 2002). However, it is important to note that since the CAND rule, EPA's Office of Air and Radiation (OAR) has adopted a different format for its benefits analyses in which characterization of the uncertainty in the concentration-response function is integrated into the main benefits analysis. This new approach follows the recommendation of NRC's 2002 report ''Estimating the Public Health Benefits of Proposed Air Pollution Regulations'' to begin moving the assessment of uncertainties from its ancillary analyses into its main benefits presentation through the conduct of probabilistic analyses. Within this context, additional data sources are available, including a recent expert elicitation and updated analysis of the Six-Cities Study cohort (Laden *et al.*, 2006). Please see the PM NAAQS RIA for an indication of the sensitivity of our results to use of alternative concentration-response functions.

We also demonstrate that the final standards will reduce cancer and noncancer risk from reduced exposure to MSATs (as described in Section IV of this preamble). However, we do not

[219] Due to time and resource constraints, EPA scaled the final CAND benefits estimates from the benefits estimated for the CAND proposal. The scaling approach used in that analysis, and applied here, is described in the RIA for the final CAND rule.

translate this risk reduction into benefits. We also do not quantify the benefits related to ambient reductions in ozone and $PM_{2.5}$ due to the VOC emission reductions associated with the final standards. The following section describes in more detail why these benefits are not quantified.

1. Unquantified Health and Environmental Benefits

This benefit analysis estimates improvements in health and human welfare that are expected as a result of the final standards, and monetizes those benefits. The benefits will come from reductions in emissions of air toxics (including benzene, 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, naphthalene, and other air toxic pollutants discussed in section III), ambient ozone (as a result of VOC controls), and direct $PM_{2.5}$ emissions.

While there will be benefits associated with air toxic pollutant reductions, notably with regard to reductions in exposure and risk (see section IV), we do not attempt to monetize those benefits. This is primarily because available tools and methods to assess air toxics risk from mobile sources at the national scale are not adequate for extrapolation to incidence estimations or benefits assessment. The best suite of tools and methods currently available for assessment at the national scale are those used in the National-Scale Air Toxics Assessment (NATA; these tools are discussed in Chapter 3 of the RIA). The EPA Science Advisory Board specifically commented in their review of the 1996 NATA that these tools were not yet ready for use in a national-scale benefits analysis, because they did not consider the full distribution of exposure and risk, or address sub-chronic health effects.[220] While EPA has since improved the tools, there remain critical limitations for estimating incidence and assessing benefits of reducing mobile source air toxics. We continue to work to address these limitations, and we are exploring the feasibility of a quantitative benefits assessment for air toxics through a benzene case study as part of the revised study of ''The Benefits and Costs of the Clean Air Act'' (also known as the ''Section 812'' report).[221] In this case study, we are attempting to monetize the benefits of reduced cancer incidence, specifically leukemia, and are not addressing other cancer or noncancer endpoints.

We also do not estimate the monetized benefits of VOC controls in this benefits analysis. Though VOCs will be demonstrably reduced as a result of the cold temperature vehicle standards, we assume that these emissions will not have a measurable impact on ozone formation since the standards will reduce VOC emissions at cold ambient temperatures and ozone formation is primarily a warm ambient temperature issue. The PFC controls will likely result in ozone benefits, though we do not attempt to monetize those benefits. This is primarily due to the magnitude of, and uncertainty associated with, the estimated changes in ambient ozone associated with the final standards. In Section IV.C., we discuss that the ozone modeling conducted for the final PFC standards results in a net reduction in ambient ozone concentrations within the modeled domain (37 Eastern states and the District of Columbia). The net improvement is very small, however, and will likely lead to negligible monetized benefits. Instead, we acknowledge that this analysis may underestimate the benefits associated with reductions in ozone precursor emissions achieved by the various standards. We discuss these benefits qualitatively within the RIA.

The VOC reductions resulting from the cold temperature vehicle standards and PFC standards will also likely reduce secondary $PM_{2.5}$ formation. However, we did not quantify the impacts of these reductions on ambient $PM_{2.5}$ or estimate any resulting benefits. As described further below, we estimated PM benefits by scaling from a previous analysis, and this analysis did not examine the relationship between VOC reductions and ambient PM. As a result, we did not quantify PM benefits associated with this rule's VOC reductions, and we acknowledge that this analysis may therefore underestimate benefits.

Table VIII.E–1 lists each of the MSAT and ozone health and welfare effects that remain unquantified because of current limitations in the methods or available data. This table also includes the PM-related health and welfare effects that also remain unquantified due to current method and data limitations. Chapter 12 of the RIA for the final standards provides a qualitative description of the health and welfare effects not quantified in this analysis.

TABLE VIII.E–1.—UNQUANTIFIED AND NON-MONETIZED EFFECTS

Pollutant/effects	Effects not included in primary estimates—changes in:
Ozone Health [a]	Premature mortality: short-term exposures [b].
	Hospital admissions: respiratory.
	Emergency room visits for asthma.
	Minor restricted-activity days.
	School loss days.
	Asthma attacks.
	Cardiovascular emergency room visits.
	Acute respiratory symptoms.
	Chronic respiratory damage.
	Premature aging of the lungs.
	Non-asthma respiratory emergency room visits.
	Exposure to UVb (+/-) [e].
Ozone Welfare	Decreased outdoor worker productivity.
	Agricultural yields for
	—commercial forests.
	—some fruits and vegetables.
	—non-commercial crops.
	Damage to urban ornamental plants.
	Impacts on recreational demand from damaged forest aesthetics.
	Ecosystem functions.
	Exposure to UVb (+/-) [e].
PM Health [c]	Premature mortality—short-term exposures [d].
	Low birth weight.
	Pulmonary function.
	Chronic respiratory diseases other than chronic bronchitis.
	Non-asthma respiratory emergency room visits.
	Exposure to UVb (+/-) [e].
PM Welfare	Visibility in many Class I areas.
	Residential and recreational visibility in non-Class I areas.
	Soiling and materials damage.
	Damage to ecosystem functions.
	Exposure to UVb (+/-) [e].
MSAT Health [f]	Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde, naphthalene).
	Anemia (benzene).
	Disruption of production of blood components (benzene).
	Reduction in the number of blood platelets (benzene).
	Excessive bone marrow formation (benzene).
	Depression of lymphocyte counts (benzene).
	Reproductive and developmental effects (1,3-butadiene).

[220] Science Advisory Board. 2001. NATA—Evaluating the National-Scale Air Toxics Assessment for 1996—an SAB Advisory. *http://www.epa.gov/ttn/atw/sab/sabrev.html.*

[221] The analytic blueprint for the Section 812 benzene case study can be found at *http://www.epa.gov/air/sect812/appendixi51203.pdf.*

TABLE VIII.E–1.—UNQUANTIFIED AND NON-MONETIZED EFFECTS—Continued

Pollutant/effects	Effects not included in primary estimates—changes in:
	Irritation of eyes and mucus membranes (formaldehyde).
	Respiratory irritation (formaldehyde).
	Asthma attacks in asthmatics (formaldehyde).
	Asthma-like symptoms in non-asthmatics (formaldehyde).
	Irritation of the eyes, skin, and respiratory tract (acetaldehyde).
	Upper respiratory tract irritation and congestion (acrolein).
	Neurotoxicity (n-hexane, toluene, xylenes).
MSAT Welfare [f].	Direct toxic effects to animals.
	Bioaccumulation in the food chain.
	Damage to ecosystem function.
	Odor.

[a] In addition to primary economic endpoints, there are a number of biological responses that have been associated with ozone health effects including increased airway responsiveness to stimuli, inflammation in the lung, acute inflammation and respiratory cell damage, and increased susceptibility to respiratory infection.

[b] Recent analyses provide evidence that short-term ozone exposure is associated with increased premature mortality. As a result, EPA is considering how to incorporate ozone mortality benefits into its benefits analyses as a separate estimate of the number of premature deaths that would be avoided due to reductions in ozone levels.

[c] In addition to primary economic endpoints, there are a number of biological responses that have been associated with PM health effects including morphological changes and altered host defense mechanisms. The public health impact of these biological responses may be partly represented by our quantified endpoints.

[d] While some of the effects of short-term exposures are likely to be captured in the estimates, there may be premature mortality due to short-term exposure to PM not captured in the cohort study upon which the primary analysis is based. However, the PM mortality results derived from the expert elicitation do take into account premature mortality effects of short-term exposures.

[e] May result in benefits or disbenefits.

[f] The categorization of unquantified toxic health and welfare effects is not exhaustive.

2. Quantified Human Health and Environmental Effects of the Final Cold Temperature Vehicle Standard

In this section we discuss the benefits of the final cold temperature vehicle standard related to reductions in directly emitted $PM_{2.5}$. To estimate $PM_{2.5}$ benefits, we rely on a benefits transfer technique. The benefits transfer approach uses as its foundation the relationship between emission reductions and ambient $PM_{2.5}$ concentrations modeled across the contiguous 48 states (and DC) for the Clean Air Nonroad Diesel (CAND) proposal.[222] For a given future year, we first calculate the ratio between CAND direct $PM_{2.5}$ emission reductions and direct $PM_{2.5}$ emission reductions associated with the final cold temperature vehicle control standard (cold temperature vehicle emission reductions/CAND emission reductions). We multiply this ratio by the percent that direct $PM_{2.5}$ contributes towards population-weighted reductions in total $PM_{2.5}$ due to the CAND standards. This calculation results in a ''benefits apportionment factor'' for the relationship between direct PM emissions and primary $PM_{2.5}$, which is then applied to the BenMAP-based incidence and monetized benefits from the CAND proposal. In this way, we apportion the results of the proposed CAND analysis to its underlying direct PM emission reductions and scale the apportioned benefits to reflect differences in emission reductions between the two rules.[223] This benefits transfer method is consistent with the approach used in other recent mobile and stationary source rules.[224]

Table VIII.E–2 presents the estimates of reduced incidence of $PM_{2.5}$-related health effects for the years 2020 and 2030 for the final cold temperature vehicle control strategies. In 2030, we estimate that $PM_{2.5}$-related annual benefits will result in approximately 880 fewer premature fatalities, 600 fewer cases of chronic bronchitis, 1,600 fewer non-fatal heart attacks, and 900 fewer hospitalizations (for respiratory and cardiovascular disease combined). In addition, we estimate that the emission controls will reduce days of restricted activity due to respiratory illness by about 600,000 days and reduce work-loss days by about 100,000 days. We also estimate substantial health improvements for children from reduced upper and lower respiratory illness, acute bronchitis, and asthma attacks.

It is important to note that since the CAND rule, EPA's Office of Air and Radiation (OAR) has adopted a different format for its benefits analysis in which characterization of the uncertainty in the concentration-response function is integrated into the main benefits analysis. Within this context, additional data sources are available, including a recent PM-related premature mortality expert elicitation and updated analysis of the Six-Cities Study cohort (Laden et al., 2006). Please see the PM NAAQS RIA for an indication of the sensitivity of our results to use of alternative concentration-response functions.

TABLE VIII.E–2.—ESTIMATED ANNUAL REDUCTIONS IN INCIDENCE OF HEALTH EFFECTS RELATED TO THE FINAL COLD TEMPERATURE VEHICLE STANDARD [A]

Health effect	2020 Annual incidence reduction	2030 Annual incidence reduction
PM-Related Endpoints:		
Premature Mortality [b] Adult, age 30+ and Infant, age <1 year	480	880

[222] See 68 FR 28327, May 23, 2003.

[223] Note that while the final regulations also control VOCs, which contribute to PM formation, the benefits transfer scaling approach only scales benefits based on NO_X, SO_2, and direct PM emission reductions. PM benefits will likely be underestimated as a result, though we are unable to estimate the magnitude of the underestimation.

[224] See: Clean Air Nonroad Diesel final rule (69 FR 38958, June 29, 2004); Nonroad Large Spark-Ignition Engines and Recreational Engines standards (67 FR 68241, November 8, 2002); Final Industrial Boilers and Process Heaters NESHAP (69 FR 55217, September 13, 2004); Final Reciprocating Internal Combustion Engines NESHAP (69 FR 33473, June 15, 2004); Final Clean Air Visibility Rule (EPA–452/R–05–004, June 15, 2005); Ozone Implementation Rule (documentation forthcoming).

[225] Pope, C.A., III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Ito, and G.D. Thurston. 2002. ''Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution.'' Journal of American Medical Association 287:1132–1141.

[226] Woodruff, T.J., J. Grillo, and K.C. Schoendorf. 1997. ''The Relationship Between Selected Causes of Postneonatal Infant Mortality and Particulate Infant Mortality and Particulate Air Pollution in the United States.'' Environmental Health Perspectives 105(6):608–612.

TABLE VIII.E–2.—ESTIMATED ANNUAL REDUCTIONS IN INCIDENCE OF HEALTH EFFECTS RELATED TO THE FINAL COLD TEMPERATURE VEHICLE STANDARD [A]—Continued

Health effect	2020 Annual incidence reduction	2030 Annual incidence reduction
Chronic bronchitis (adult, age 26 and over)	330	570
Non-fatal myocardial infarction (adult, age 18 and over)	810	1,600
Hospital admissions—respiratory (all ages) [c]	260	530
Hospital admissions—cardiovascular (adults, age >18) [d]	210	390
Emergency room visits for asthma (age 18 years and younger)	350	610
Acute bronchitis, (children, age 8–12)	780	1,400
Lower respiratory symptoms (children, age 7–14)	9,300	16,000
Upper respiratory symptoms (asthmatic children, age 9–18)	7,000	12,000
Asthma exacerbation (asthmatic children, age 6–18)	12,000	20,000
Work loss days	62,000	100,000
Minor restricted activity days (adults age 18–65)	370,000	600,000

[a] Incidence is rounded to two significant digits. Estimates represent benefits from the final rule nationwide, excluding Alaska and Hawaii.
[b] PM-related adult mortality based upon the ACS cohort study (Pope et al., 2002).[225] PM-related infant mortality based upon studies by Woodruff, Grillo, and Schoendorf, 1997.[226] Due to analytical constraints associated with the PM benefits scaling approach, we are unable to present the premature mortality impacts associated with the recent Six-Cities study (Laden et al., 2006) or the impacts associated with the recent PM-related premature mortality expert elicitation (IEc, 2006). Chapter 12.6 of the RIA discusses the implications these new studies have on the benefits estimated for the final rule.
[c] Respiratory hospital admissions for PM include admissions for chronic obstructive pulmonary disease (COPD), pneumonia and asthma.
[d] Cardiovascular hospital admissions for PM include total cardiovascular and subcategories for ischemic heart disease, dysrhythmias, and heart failure.

$PM_{2.5}$ also has numerous documented effects on environmental quality that affect human welfare. These welfare effects include direct damages to property, either through impacts on material structures or by soiling of surfaces, and indirect economic damages through the loss in value of recreational visibility or the existence value of important resources. Additional information about these welfare effects can be found in Chapter 12 of the Regulatory Impact Analysis.

3. Monetized Benefits

Table VIII.E–3 presents the estimated monetary value of reductions in the incidence of those health effects we are able to monetize for the final cold temperature vehicle standard. Total annual PM-related health benefits are estimated to be approximately $6.3 or $5.7 billion in 2030 (3 percent and 7 percent discount rate, respectively). These estimates account for growth in real gross domestic product (GDP) per capita between the present and 2030.

Table VIII.E–3 indicates with a ''B'' those additional health and environmental benefits of the rule that we are unable to quantify or monetize. These effects are additive to the estimate of total benefits, and are related to the following sources:

- There are many human health and welfare effects associated with PM, ozone, and toxic air pollutant reductions that remain unquantified because of current limitations in the methods or available data. A listing of the benefit categories that could not be quantified or monetized in our benefit estimates are provided in Table VIII.E–1.
- The $PM_{2.5}$ benefits scaled transfer approach, derived from the Clean Air Nonroad Diesel rule, does not account for VOCs as precursors to ambient $PM_{2.5}$ formation. To the extent that VOC emission reductions associated with the final regulations contribute to reductions in ambient $PM_{2.5}$, this analysis does not capture the related health and environmental benefits of those changes.
- The PM air quality model only captures the benefits of air quality improvements in the 48 states and DC; PM benefits for Alaska and Hawaii are not reflected in the estimate of benefits.

TABLE VIII.E–3.—ESTIMATED ANNUAL MONETARY VALUE OF REDUCTIONS IN INCIDENCE OF HEALTH AND WELFARE EFFECTS RELATED TO THE FINAL COLD TEMPERATURE VEHICLE STANDARD

(Millions of 2003$) [a,b]

Health effect	Pollutant	2020 estimated value of reductions	2030 estimated value of reductions
PM-Related Premature mortality [c,d] Adult, 30+ years and Infant, <1 year:			
3 percent discount rate	$PM_{2.5}$	$3,100	$5,800
7 percent discount rate		2,800	5,200
Chronic bronchitis (adults, 26 and over)	$PM_{2.5}$	150	260
Non-fatal acute myocardial infarctions:			
3 percent discount rate		79	150
7 percent discount rate	$PM_{2.5}$	76	140
Hospital admissions for respiratory causes	$PM_{2.5}$	4.7	10
Hospital admissions for cardiovascular causes	$PM_{2.5}$	5.0	9.1
Emergency room visits for asthma	$PM_{2.5}$	0.11	0.20
Acute bronchitis (children, age 8–12)	$PM_{2.5}$	0.32	0.56
Lower respiratory symptoms (children, age 7–14)	$PM_{2.5}$	0.16	0.29
Upper respiratory symptoms (asthma, age 9–11)	$PM_{2.5}$	0.20	0.35
Asthma exacerbations	$PM_{2.5}$	0.56	1.0

TABLE VIII.E–3.—ESTIMATED ANNUAL MONETARY VALUE OF REDUCTIONS IN INCIDENCE OF HEALTH AND WELFARE EFFECTS RELATED TO THE FINAL COLD TEMPERATURE VEHICLE STANDARD—Continued

(Millions of 2003$) [a,b]

Health effect	Pollutant	2020 estimated value of reductions	2030 estimated value of reductions
Work loss days	$PM_{2.5}$	9.1	14
Minor restricted activity days (MRADs)	$PM_{2.5}$	21	35
Monetized Total[e]			
Base estimate:			
3 percent discount rate	$PM_{2.5}$	3,300+ B	6,300+ B
7 percent discount rate		3,000+ B	5,700+ B

[a] Dollars are rounded to two significant digits. The PM estimates represent benefits from the final rule across the contiguous United States.

[b] Monetary benefits adjusted to account for growth in real GDP per capita between 1990 and the analysis year (2020 or 2030).

[c] Valuation of premature mortality based on long-term PM exposure assumes discounting over the SAB recommended 20-year segmented lag structure described in the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005). Results show 3 percent and 7 percent discount rates consistent with EPA and OMB guidelines for preparing economic analyses (US EPA, 2000 and OMB, 2003).[227,228]

[d] Adult mortality based upon the ACS cohort study (Pope et al., 2002). Infant mortality based upon studies by Woodruff, Grillo, and Schoendorf, 1997. Due to analytical constraints associated with the PM benefits scaling approach, we are unable to present the premature mortality impacts associated with the recent Six-Cities study (Laden et al., 2006) study or the impacts associated with the recent PM-related premature mortality expert elicitation (IEc, 2006). Chapter 12.6 of the RIA discusses the implications these new studies have on the benefits estimated for the final rule.

[e] B represents the monetary value of health and welfare benefits not monetized. A detailed listing is provided in Table VIII.E–1.

4. What Are the Significant Limitations of the Benefit Analysis?

The most significant limitation of this analysis is our inability to quantify a number of potentially significant benefit categories associated with improvements in air quality that would result from the final standards. Most notably, we are unable to estimate the benefits from reduced air toxics exposures because the available tools and methods to assess mobile source air toxics risk at the national scale are not adequate for extrapolation to incidence estimations or benefits assessment. We also do not quantify ozone benefits associated with the final PFC standards, despite the fact that there are net benefits, when population-weighted, in the ozone design value metric across the modeled domain (see section IV.C). We do not quantify these benefits because of their magnitude and the uncertainty associated with them.

More generally, every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate quantitative changes in health and environmental effects. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literature, which can cause the valuations to be higher or lower, are discussed in detail in the RIA and its supporting references. Key uncertainties that have a bearing on the results of the benefit-cost analysis of the final standards include the following:

- The exclusion of potentially significant and unquantified benefit categories (such as health, odor, and ecological benefits of reduction in air toxics, ozone, and PM);
- Errors in measurement and projection for variables such as population growth;
- Uncertainties in the estimation of future year emissions inventories and air quality;
- Uncertainties associated with the scaling of the PM results of the modeled benefits analysis to the final standards, especially regarding the assumption of similarity in geographic distribution between emissions and human populations and years of analysis;
- Uncertainty in the estimated relationships of health and welfare effects to changes in pollutant concentrations including the shape of the C–R function, the size of the effect estimates, and the relative toxicity of the many components of the PM mixture;
- Uncertainties in exposure estimation; and
- Uncertainties associated with the effect of potential future actions to limit emissions.

As Table VIII.E–3 indicates, total benefits are driven primarily by the reduction in premature fatalities each year. Elaborating on the list of uncertainties above, some key assumptions underlying the primary estimate for the premature mortality category include the following:

1. Inhalation of fine particles is causally associated with premature death at concentrations near those experienced by most Americans on a daily basis. Although biological mechanisms for this effect have not yet been completely established, the weight of the available epidemiological, toxicological, and experimental evidence supports an assumption of causality. The impacts of including a probabilistic representation of causality were explored in the expert elicitation-based results of the recently published PM NAAQS RIA. Because the analysis of the final cold temperature vehicle standard is constrained to the studies included in the CAND PM benefits scaling approach, we are unable to conduct the same analysis of expert elicitation-based mortality incidence for the final standards.[229] However, we qualitatively describe the expert elicitation-based mortality results associated with the final PM NAAQS to provide an indication of the sensitivity of our PM-related premature mortality results to use of alternative

[227] U.S. Environmental Protection Agency, 2000, Guidelines for Preparing Economic Analyses. *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html.*

[228] Office of Management and Budget, The Executive Office of the President, 2003. Circular A–4. *http://www.whitehouse.gov/omb/circlars.*

[229] The scaling approach relies on the incidence and valuation estimates derived from the studies available at the time of the CAND analysis. Incidence estimates and monetized benefits derived from new information, including mortality derived from the full expert elicitation, are not available for scaling. Please refer to section 2 of this preamble and Chapter 12 of the RIA for more information about the benefits scaling approach.

concentration-response functions. We present this discussion in the RIA.

2. Since the publication of CAIR and CAND, a follow up to the Harvard Six-Cities study on premature mortality was published (Laden et al., 2006 based on Dockery et al., 1993),[230, 231] which both confirmed the effect size from the first study and provided additional evidence that reductions in $PM_{2.5}$ directly result in reductions in the risk of premature death. The impacts of including this study in the primary analysis were explored in the results of the recently published PM NAAQS RIA. Because the analysis of the final cold temperature vehicle standard is constrained to the studies included in the CAND PM benefits scaling approach, we are unable to characterize PM-related mortality based on Laden *et al.* However, we discuss the implications of these results in the RIA for the final standards.

3. All fine particles, regardless of their chemical composition, are equally potent in causing premature mortality. This is an important assumption, because PM produced via transported precursors emitted from vehicles at cold temperatures may differ significantly from PM precursors released from electric generating units and other industrial sources. However, no clear scientific grounds exist for supporting differential effects estimates by particle type.

4. The concentration-response function for fine particles is approximately linear within the range of ambient concentrations under consideration. Thus, the estimates include health benefits from reducing fine particles in areas with varied concentrations of PM, including both regions that may be in attainment with $PM_{2.5}$ standards and those that are at risk of not meeting the standards.

Taking into account these uncertainties, we believe this benefit-cost analysis provides a conservative estimate of the expected economic benefits of the final standards for cold temperature vehicle control in future years because of the exclusion of potentially significant benefit categories. Acknowledging benefits omissions and uncertainties, we present a best estimate of the total benefits based on our interpretation of the best available scientific literature and methods. Furthermore, our analysis reflects many methodological improvements that were incorporated into the analysis of the final Clean Air Interstate Rule (CAIR), including a revised value of a statistical life, a revised baseline rate of future mortality, and a revised mortality lag assumption. Details of these improvements can be found in the RIA for this rule and in the final CAIR rule RIA.[232] Once again, however, it should be noted that since the CAIR rule, EPA's Office of Air and Radiation (OAR) has adopted a different format for its benefits analysis in which characterization of uncertainty is integrated into the main benefits analysis. Please see the PM NAAQS RIA for an indication of the uncertainty present in the base estimate of benefits and the sensitivity of our results to the use of alternative concentration-response functions.

In contrast to the additional benefits of the final standards discussed above, it is also possible that this rule will result in disbenefits in some areas of the United States. The effects of ozone and PM on radiative transfer in the atmosphere can lead to effects of uncertain magnitude and direction on the penetration of ultraviolet light and climate. Ground level ozone makes up a small percentage of total atmospheric ozone (including the stratospheric layer) that attenuates penetration of ultraviolet—b (UVb) radiation to the ground. EPA's past evaluation of the information indicates that potential disbenefits would be small, variable, and with too many uncertainties to attempt quantification of relatively small changes in average ozone levels over the course of a year.[233] EPA's most recent provisional assessment of the currently available information indicates that potential but unquantifiable benefits may also arise from ozone-related attenuation of UVb radiation.[234] In addition, EPA believes that we are unable to quantify any net climate-related disbenefit or benefit associated with the combined ozone and PM reductions in this rule.

5. How Do the Benefits Compare to the Costs of The Final Standards?

The final rule provides three separate provisions that reduce air toxics emissions from mobile sources: cold temperature vehicle controls, a PFC emissions control program, and a control program limiting benzene in gasoline. A full appreciation of the overall economic consequences of these provisions requires consideration of the benefits and costs expected to result from each standard, not just those that could be expressed here in dollar terms. As noted above, due to limitations in data availability and analytical methods, our benefits analysis only monetizes the $PM_{2.5}$ benefits from direct PM emission reductions associated with the cold temperature standards. There are a number of health and environmental effects associated with the final standards that we were unable to quantify or monetize (see Table VIII.E–1).

Table VIII.E–4 contains the estimates of monetized benefits of the final cold temperature vehicle standards only and estimated social welfare costs for all of the final control programs.[235] The annual social welfare costs of all provisions of the final rule are described more fully in Section VIII.F. It should be noted that the estimated social welfare costs for the vehicle program contained in this table are for 2019. The 2019 vehicle program costs are included for comparison purposes only and are therefore not included in the total 2020 social costs. There are no compliance costs associated with the vehicle program after 2019; as explained elsewhere in this preamble, the vehicle compliance costs are primarily R&D and facilities costs that are expected to be recovered by manufacturers over the first ten years of the program.

The results in Table VIII.E–4 suggest that the 2020 monetized benefits of the cold temperature vehicle standards are greater than the expected social welfare costs of that program in 2019. Specifically, the annual benefits of the program will be approximately $3,300 + B million or $3,000 + B million annually in 2020 (using a 3 percent and 7 percent discount rate in the benefits analysis, respectively), compared to estimated social welfare costs of approximately $10.6 million in the last year of the program (2019). These benefits are expected to increase to $6,300 + B million or $5,700 + B million annually in 2030 (using a 3 percent and

[230] Laden, F., J. Schwartz, F.E. Speizer, and D.W. Dockery. 2006. Reduction in Fine Particulate Air Pollution and Mortality. American Journal of Respiratory and Critical Care Medicine. 173: 667–672.

[231] Dockery, D.W., C.A. Pope, X.P. Xu, J.D. Spengler, J.H. Ware, M.E. Fay, B.G. Ferris, and F.E. Speizer. 1993. ''An Association between Air Pollution and Mortality in Six U.S. Cities.'' New England Journal of Medicine 329(24):1753–1759.

[232] See Chapter 4 of the Final Clean Air Interstate Rule RIA (*http://www.epa.gov/cair*) for a discussion of EPA's ongoing efforts to address the NAS recommendations in its regulatory analyses.

[233] EPA, 2005. Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft). January. *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=114523.*

[234] EPA, 2005. Air Quality Criteria for Ozone and Related Photochemical Oxidants (Second External Review Draft). August. *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=137307.*

[235] Social costs represent the welfare costs of the rule to society. These social costs do not consider transfer payments (such as taxes) that are simply redistributions of wealth.

7 percent discount rate in the benefits analysis, respectively), even as the social welfare costs of that program fall to zero. Table VIII.E–4 also presents the costs of the other rule provisions: a PFC emissions control program and a control program limiting benzene in gasoline. Though we are unable to present the benefits associated with these two programs, the benefits associated with the final cold temperature vehicle standards alone outweigh the costs of all three rule provisions combined.

TABLE VIII.E–4.—SUMMARY OF ANNUAL BENEFITS OF THE FINAL COLD TEMPERATURE VEHICLE STANDARDS AND COSTS OF ALL PROVISIONS OF THE FINAL STANDARDS [a]

[Millions of 2003 dollars]

Description	2020 (Millions of 2003 dollars)	2030 (Millions of 2003 dollars)
Estimated Social Welfare Costs [b]		
Cold Temperature Vehicle Standards	$10.6 [c]	$0
PFC Standards	$37.5	$45.7
Fuel Standards [d]	$402.6	$445.8
Total	$440.1	$491.5
Fuel Savings	−$80.7	−$91.5
Net Social Welfare Costs	$359.4	$400.0
Total $PM_{2.5}$-Related Health Benefits of the Cold Temperature Vehicle Standards [e]		
3 percent discount rate	$3,300 + B [f]	$6,300 + B [f]
7 percent discount rate	$3,000 + B [f]	$5,700 + B [f]

[a] All estimates are rounded to two significant digits and represent annualized benefits and costs anticipated for the years 2020 and 2030, except where noted. Totals may not sum due to rounding.

[b] Note that costs are the annual costs of reducing all pollutants associated with each provision of the final MSAT control package in 2020 and 2030 (unless otherwise noted). To estimate fixed costs associated with the vehicle standards, we use a 7 percent average before-tax rate of return over 5 years to amortize the capital fixed costs. For the fuel standards, we use a 7 percent before-tax rate of return over 15 years to amortize the capital costs. Note that by 2020, PFC container standard costs are only variable and do not use a rate of return assumption. See Chapters 8 and 9 for discussion of the vehicle and fuel standard costs, respectively. In Chapter 13, however, we do use both a 3 percent and 7 percent social discount rate to calculate the net present value of total social costs consistent with EPA and OMB guidelines for preparing economic analyses (US EPA, 2000 and OMB, 2003).[236, 237]

[c] These costs are for 2019; the vehicle program compliance costs terminate after 2019 and are included for illustrative purposes. They are not included in the total social welfare cost sum for 2020.

[d] Our modeling for the total costs of the proposed gasoline benzene program included participation by California refineries (achieving benzene reductions below the 0.62 proposed benzene standard—thus generating credits), since it was completed before we decided that California gasoline would not be covered by the program. For the final rule, we exclude California refineries from the analysis. By excluding California refineries, other higher cost refineries will have to comply in their place, slightly increasing the costs for the program.

[e] Annual benefits reflect only direct PM reductions associated with the cold temperature vehicle standards. Annual benefits analysis results reflect the use of a 3 percent and 7 percent discount rate in the valuation of premature mortality and nonfatal myocardial infarctions, consistent with EPA and OMB guidelines for preparing economic analyses (US EPA, 2000 and OMB, 2003). Valuation of premature mortality based on long-term PM exposure assumes discounting over the SAB recommended 20-year segmented lag structure described in the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005). Valuation of nonfatal myocardial infarctions (MI) assumes discounting over a 5-year period, reflecting lost earnings and direct medical costs following a nonfatal MI. Note that we do not calculate a net present value of benefits associated with the cold temperature vehicle standards.

[f] Not all possible benefits or disbenefits are quantified and monetized in this analysis. B is the sum of all unquantified benefits and disbenefits. Potential benefit categories that have not been quantified and monetized are listed in Table VIII.E–1.

F. Economic Impact Analysis

We prepared an Economic Impact Analysis (EIA) to estimate the economic impacts of this rule on the portable fuel container (PFC), gasoline fuel, and light-duty vehicle markets. In this section we briefly describe the Economic Impact Model (EIM) we developed to estimate both the market-level changes in price and outputs for affected markets and the social costs of the program and their distribution across affected stakeholders. We also present the results of our analysis.

We estimate the net social costs of the program to be about $359.4 million in 2020. This estimate reflects the estimated costs associated with compliance with the gasoline, PFC, and vehicle controls and the expected gasoline fuel savings from better evaporative controls on PFCs. The results of the economic impact modeling performed for the gasoline fuel and PFC control programs suggest that the social costs of those two programs are expected to be about $440.1 million in 2020, with consumers of these products expected to bear about 58.4 percent of these costs. We estimate gasoline fuel savings of about $80.7 million in 2020, which will accrue to consumers. There are no social costs associated with the vehicle program in 2020 (these accrue only in the 10-year period from 2010 through 2019). These estimates, and all costs presented in this section, are in year 2003 dollars.

With regard to market-level impacts in 2020, the maximum price increase for gasoline fuel is expected to be about 0.3 percent (0.5 cents per gallon), for PADD 5. The price of PFCs is expected to increase by about 1.9 percent ($0.20 per can) in areas that already have PFC requirements and 32.5 percent ($1.52 per can) in areas that do not.

Detailed descriptions of the EIM, the model inputs, modeling results, and several sensitivity analyses can be found in Chapter 13 of the Regulatory Impact Analysis prepared for this rule.

1. What Is an Economic Impact Analysis?

An Economic Impact Analysis (EIA) is prepared to inform decision makers about the potential economic consequences of a regulatory action. The analysis consists of estimating the social costs of a regulatory program and the distribution of these costs across stakeholders. These estimated social costs can then be compared with estimated social benefits (as presented

[236] U.S. Environmental Protection Agency, 2000. Guidelines for Preparing Economic Analyses. *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html.*

[237] Office of Management and Budget, The Executive Office of the President, 2003. Circular A–4. *http://www.whitehouse.gov/omb/circulars.*

in Section VIII.E). As defined in EPA's Guidelines for Preparing Economic Analyses, social costs are the value of the goods and services lost by society resulting from a) the use of resources to comply with and implement a regulation and b) reductions in output.[238] In this analysis, social costs are explored in two steps. In the market analysis, we estimate how prices and quantities of goods affected by the emission control program can be expected to change once the program goes into effect. In the economic welfare analysis, we look at the total social costs associated with the program and their distribution across stakeholders.

2. What Is the Economic Impact Model?

The Economic Impact Model (EIM) is a behavioral model developed to estimate price and quantity changes and total social costs associated with the emission controls set out in this rule. The EIM simulates how producers and consumers of affected products can be expected to respond to an increase in production costs associated with compliance with the emission control program. In this EIM, compliance costs are directly borne by producers of affected goods. Depending on the producers' and consumers' sensitivity to price changes, producers may be able to pass some or all of these compliance costs on to the consumers of these goods in the form of higher prices. Consumers adjust their consumption of affected goods in response to these price changes. This information is passed back to the producers in the form of purchasing decisions. The EIM takes these behavioral responses into account to estimate new market equilibrium quantities and prices for all modeled sectors and the resulting distribution of social costs across these stakeholders (producers and consumers).

3. What Economic Sectors Are Included in this Economic Impact Analysis?

There are three economic sectors affected by the control programs described in this rule: PFCs, gasoline fuel, and light-duty vehicles. In this Economic Impact Analysis we model only the impacts on the PFC and gasoline fuel markets. We did not model the impacts on the light-duty vehicle market. This is because the compliance costs for the vehicle program are expected to be very small, less than $1 per vehicle and, even if passed on entirely, are unlikely to affect producer or consumer behavior. Therefore, we do not expect these controls to affect the quantity of vehicles produced or their prices. At the same time, however, the light-duty vehicle compliance costs are a cost to society and should be included in the economic welfare analysis. We do this by adding the vehicle program engineering compliance cost estimates to the estimated social costs of the gasoline and PFC programs.

With regard to the gasoline fuel and PFC markets, we model the impacts on residential users of these products. This means that we focus the analysis on the use of these products for personal transportation (gasoline fuel) or residential lawns and garden care or recreational uses (PFCs) and do not separately model how the costs of complying with the standards may affect the production of goods and services that use gasoline fuel or PFCs as production inputs. We believe this approach is reasonable because the commercial share of the end-user markets for both gasoline fuel and PFCs is relatively small.[239, 240] In addition, for most commercial users the share of the cost of these products to total production costs is also small (e.g., the cost of a PFC is only a very small part of the total production costs for an agricultural or construction firm). Therefore, a price increase of the magnitude anticipated for this control program is not expected to have a noticeable impact on prices or quantities of goods produced using these inputs (e.g., agricultural product or buildings).

With regard to the gasoline fuel analysis, it should be noted that this EIA does not include California fuels in the market analysis. California currently has state-level controls that address air toxics from gasoline. Also, consistent with the cost analysis, the economic impact analysis does not distinguish between reformulated and conventional gasoline fuels.

The EIM models the economic impacts on two PFC markets (states that currently have requirements for PFCs and those that do not), and four gasoline fuel markets (PADDs 1+3, PADD 2, PADD 4, PADD 5). The markets included in this EIA are described in more detail in Chapter 13 of the RIA for this rule.

In the EIM, the gasoline fuel and PFC markets are not linked (there is no feedback mechanism between the PFC and gasoline fuel model segments). This is because these two sectors represent different aspects of fuel consumption (fuel storage and fuel production) and production and consumption of PFCs is not expected to have an impact on the production and supply of gasoline, and vice versa. Production and consumption of each of these products are the result of other factors that have little cross-over impacts (the need for fuel storage; the need for personal transportation).

4. What Are the Key Features of the Economic Impact Model?

A detailed description of the features of the EIM and the data used in the analysis is provided in Chapter 13 of the RIA prepared for this rule. The model methodology is firmly rooted in applied microeconomic theory and was developed following the methodology set out in the OAQPS's Economic Analysis Resource Document.[241]

The EIM is a computer model comprised of a series of spreadsheet modules that simulate the supply and demand characteristics of the affected markets. The initial market equilibrium conditions are shocked by applying the compliance costs for the control program to the supply side of the markets (this is done by shifting the relevant supply curves by the amount of the compliance costs). The model equations can be analytically solved for equilibrium prices and quantities for the markets with the regulatory program and these new prices and quantities are used to estimate the social costs of the model and how those costs are shared among affected markets.

The EIM is a partial equilibrium, intermediate-run model that assumes perfect competition in the relevant markets. As explained in EPA's Guidelines for Preparing Economic Analyses, ''partial equilibrium'' means that the model considers markets in

[238] EPA Guidelines for Preparing Economic Analyses, EPA 240–R–00–003, September 2000, p 113. A copy of this document can be found at *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html#download.*

[239] The U.S Department of Energy estimates that about 92 percent of gasoline used in the United States for transportation is used in light-duty vehicles. About 6 percent is used for commercial or industrial transportation, and the remaining 2 percent is used in recreational marine vessels. See U.S Department of Energy, Energy Information Administration, 2004. ''Annual Energy Outlook 2004 with projections to 2025.'' Last updated June 2, 2004. Table A–2 and Supplemental Table 34. *http://www.eia.doe.gov/oiaf/aeoref_tab.html.*

[240] A recent study by CARB (1999) found that 94 percent of portable fuel containers in California were used by residential households California Environmental Protection Agency, Air Resources Board (CARB) 1999. See ''Hearing Notice and Staff Report, Initial Statement of Reasons for Proposed Rule Making Public Hearing to Consider the Adoption of Portable Fuel Container Spillage Control Regulation.'' Sacrament, CA: California Environmental Protection Agency, Air Resources Board (CARB). A copy of this document is available at *http://www.arb.ca.gov/regact/spillcon/isor.pdf.*

[241] U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Innovative Strategies and Economics Group, OAQPS Economic Analysis Resource Document, April 1999. A copy of this document can be found at *http://www.epa.gov/ttn/ecas/econdata/Rmanual2/.*

isolation and that conditions in other markets are assumed either to be unaffected by a policy or unimportant for social cost estimation.[242] The use of the intermediate run means that some factors of production are fixed and some are variable. In very short analyses, all factors of production would be assumed to be fixed, leaving the producers with no means to respond to the increased production costs associated with the regulation (e.g., they cannot adjust labor or capital inputs). Under this time horizon, the costs of the regulation fall entirely on the producer. In the long run, all factors of production are variable and producers can adjust production in response to cost changes imposed by the regulation (e.g., using a different labor/capital mix). In the intermediate run there is some resource immobility which may cause producers to suffer producer surplus losses, but they can also pass some of the compliance costs to consumers.

The perfect competition assumption is widely accepted economic practice for this type of analysis, and only in rare cases are other approaches used.[243] It should be noted that the perfect competition assumption is not primarily about the number of firms in a market. It is about how the market operates: the nature of the competition among firms. Indicators that allow us to assume perfect competition include absence of barriers to entry, absence of strategic behavior among firms in the market, and product differentiation.

With regard to the fuel market, the Federal Trade Commission (FTC) has developed an approach to ensure competitiveness in gasoline fuel markets. It reviews oil company mergers and frequently requires divestiture of refineries, terminals, and gas stations to maintain a minimum level of competition. This is discussed in more detail in the industry profile prepared for this rule.[244]

With regard to the PFC market, the small number of firms in the market is offset by several features of this market. Because PFCs are compact and lightweight, they are easy to transport far from their place of manufacture. This means that production is not limited to local producers. Although they vary by size and material, consumers are likely to view all PFCs designed for storing a particular fuel (gasoline, diesel fuel, kerosene) as good substitutes for the storage of that particular fuel. Because the products are similar enough to be considered homogeneous (*e.g.*, perfectly substitutable), consumers can shift their purchases from one manufacturer to another. There are only minimal technical barriers to entry that would prevent new firms from freely entering the market, since manufacturing is based on well-known plastic processing methods. In addition, there is significant excess capacity, enabling competitors to respond quickly to changes in price. Excess production capacity in the general container manufacturing market also means that manufacturers could potentially switch their product lines to compete in this segment of the market, often without a significant investment. In addition, there is no evidence of high levels of strategic behavior in the price and quantity decisions of the firms. Finally, it should be noted that contestable market theory asserts that oligopolies and even monopolies will behave very much like firms in a competitive market if manufacturers have extra production capacity and this capacity could allow them to enter the market costlessly (*i.e.*, there are no sunk costs associated with this kind of market entry or exit).[245] As a result of all of these conditions, producers and consumers in the PFC market are expected to take the market price as given when making their production and consumption choices and the market can be modeled as a competitive market even though the number of producers is small.

5. What Are the Key Model Inputs?

Key model inputs for the EIM are the behavioral parameters, compliance costs estimates, and market equilibrium quantities and prices.

The EIM is a behavioral model. The estimated social costs of this emission control program are a function of the ways in which producers and consumers of the PFC and gasoline fuel affected by the standards change their behavior in response to the costs incurred in complying with the standards. These behavioral responses are incorporated in the EIM through the price elasticity of supply and demand (reflected in the slope of the supply and demand curves), which measure the price sensitivity of consumers and producers. The price elasticities used in this analysis are described in Chapter 13 of the RIA. The gasoline elasticities were obtained from the literature and are −0.2 for demand and 0.2 for supply. This means that both the quantity supplied and demanded are expected to be fairly insensitive to price changes and that increases in prices are not expected to cause sales to fall or production to increase by very much. Because we were unable to find published supply and demand elasticities for the PFC market, we estimated these parameters using the procedures described in Chapter 13 of the RIA. This approach yielded a demand elasticity of −0.01 and a supply elasticity of 1.5. The estimated demand elasticity is nearly perfectly inelastic (equal to zero), which means that changes in price are expected to have very little effect on the quantity of PFCs demanded. However, supply is fairly elastic, meaning producers are expected to respond to a change in price. Therefore, consumers are expected to bear more of the burden of PFC regulatory control costs than producers.

Initial market equilibrium conditions are simulated using the same current year sales quantities and growth rates used in the engineering cost analysis. The initial equilibrium prices for PFCs and gasoline fuel were obtained from industry sources and published government data. The initial equilibrium market conditions are shocked by applying the engineering compliance cost estimates described earlier in this section. Although both the PFC and gasoline fuel markets are competitive markets, the model is shocked by applying the sum of variable and fixed costs. Two sets of compliance costs are used in the PFC market analysis, reflecting states with existing controls and states without existing controls. The compliance costs used to shock the gasoline fuel market are based on an average total cost (variable + fixed) analysis. An explanation for this approach can be found in Section 13.2.4.1 of the RIA prepared for this rule. These gasoline fuel compliance costs differ across PADDs but are the same across years. Because California already has existing gasoline fuel controls, fuel volumes for that state are not included in the market analysis.

Additional costs that need to be considered in the EIM are the gasoline fuel savings associated with the PFC controls and the costs of the light-duty vehicle controls. The PFC controls are

[242] EPA Guidelines for Preparing Economic Analyses, EPA 240–R–00–003, September 2000, p. 125–6.

[243] See, for example, EPA Guidelines for Preparing Economic Analyses, EPA 240–R–00–003, September 2000, p 126.

[244] Section 3 Industry Organization, ''Characterizing Gasoline Markets: a Profile,'' Final Report, prepared for EPA by RTI, August 2005.

[245] A monopoly or firms in oligopoly may not behave as neoclassical economic theories of the firm predict because they may be concerned about new entrants to the market. If super-normal profits are earned, potential competitors may enter the market. To respond to this threat, existing firm(s) in the market will keep prices and output at a level where only normal profits are made, setting price and output levels at or close to the competitive price and output. See Chapter 13 of the RIA for more information, Section 13.2.3.

expected to reduce gasoline evaporative emissions from fuel storage, leading to gasoline fuel savings for users of these containers. These gasoline fuel savings are not included in the market analysis for this economic impact analysis because these savings are not expected to affect consumer decisions with respect to the purchase of new containers. Gasoline fuel savings are included in the social cost analysis, however, because they are a savings that accrues to society. The estimated gasoline fuel savings are added to the estimated social costs as a separate line item. As noted above, the economic impacts of the light-duty vehicle controls are not modeled in the EIM. Instead, the estimated engineering compliance costs are used as a proxy, and are also added into the estimated social costs as a separate line item.

The EIM relies on the estimated compliance costs for the PFC and gasoline fuel programs described elsewhere in this preamble. Thus, the EIM reflects cost savings associated with ABT or other flexibility programs to the extent they are included in the estimated compliance costs.

6. What Are the Results of the Economic Impact Modeling?

Using the model and data described above, we estimated the economic impacts of the rule. The results of our modeling for selected years are summarized in this section. The year 2009 is presented because that is the first year in which both the PFC and the gasoline programs are in effect (the PFC program begins in 2009; the gasoline fuel program goes into effect January 1, 2011 but the compliance cost analysis includes a phase-in starting in 2007 that ends May 2015). The year 2012 is presented because it is a high cost year due to the way the fuel program compliance costs were estimated.[246] The year 2015 is presented because beginning with that year compliance costs are stabilized for future years for both the gasoline and PFC programs (the vehicle program compliance costs continue for five more years). Detailed results for all years are included in the appendices to Chapter 13 of the RIA. Also included as an appendix to that chapter are sensitivity analyses for several key inputs.

Market Impact Analysis. In the market analysis, we estimate how prices and quantities of goods affected by the emission control program can be expected to change once the program goes into effect. As explained above, we estimated market impacts for only the gasoline fuel and PFC markets. The analysis relies on the baseline equilibrium prices and quantities for each market and the price elasticity of supply and demand. It predicts market reactions to the increase in production costs due to the new compliance costs. It should be noted that this analysis does not allow any other factors to vary. In other words, it does not consider that manufacturers may adjust their production processes or marketing strategies in response to the control program.

The market analysis results for 2009, 2012, 2015, and 2020 are presented in Table VIII.F–1. With regard to the gasoline fuel program, the market impacts are expected to be small, on average. The price of gasoline fuel is expected to increase by less than 0.5 percent, depending on PADD, with smaller increases during the program phase-in. The expected reduction in quantity of fuel produced is expected to be less than 0.1 percent.

The market impacts for the PFC program are expected to be more significant. In 2009, the first year of the PFC program, the model predicts a price increase of about seven percent for PFCs in states that currently have regulations for PFCs and about 57 percent for those that do not. Even with these large price increases, however, the quantity produced is not expected to decrease by very much: less than 0.6 percent. These percent price increases and quantity decreases are much smaller after the first five years. In 2015, the estimated PFC price increase is expected to be less than two percent for states that currently regulate PFCs and about 32.5 percent for states without such regulations. The quantity produced is expected to decrease by less than 0.4 percent. The results for 2020 are substantially the same as 2015, with a larger decrease in the number of PFCs produced.

TABLE VIII.F–1.—SUMMARY OF MARKET IMPACTS (2009, 2012, 2015, AND 2020; 2003$)

Market	Engineering cost per unit	Change in price		Change in quantity	
		Absolute	Percent	Absolute	Percent
2009					
	¢/gallon	¢/gallon		Million gallons	
Gasoline Fuel:					
PADD 1 & 3	0.016	0.009	0.006	−0.9	−0.001
PADD 2	0.091	0.050	0.033	−2.7	−0.007
PADD 4	0.033	0.018	0.011	−0.1	−0.002
PADD 5 (w/out CA)	0.007	0.004	0.002	−0.0	0.000
	$/can			Thousand cans	
Portable Fuel Containers:					
States with existing programs	0.77	0.76	6.9	−8.0	−0.07
States without existing programs	2.70	2.68	57.5	−104.7	−0.57
2012					
	¢/gallon			Million gallons	
Gasoline Fuel:					
PADD 1 & 3	0.058	0.032	0.021	−3.3	−0.004
PADD 2	0.308	0.168	0.111	−9.7	−0.022

[246] Actual fuel program compliance costs are expected to be spread more evenly across years.

TABLE VIII.F–1.—SUMMARY OF MARKET IMPACTS (2009, 2012, 2015, AND 2020; 2003$)—Continued

Market	Engineering cost per unit	Change in price		Change in quantity	
		Absolute	Percent	Absolute	Percent
PADD 4	0.213	0.116	0.074	−0.8	−0.015
PADD 5 (w/out CA)	0.140	0.768	0.046	−0.8	−0.009
	$/can			Thousand cans	
Portable Fuel Containers:					
States with existing programs	0.77	0.76	6.9	−8.5	−0.07
States without existing programs	2.70	2.68	57.5	−111.1	−0.57
2015					
	¢/gallon			Million gallons	
Gasoline Fuel:					
PADD 1 & 3	0.149	0.081	0.055	−8.9	−0.011
PADD 2	0.307	0.167	0.111	−10.4	−0.022
PADD 4	0.501	0.273	0.174	−1.8	−0.035
PADD 5 (w/out CA)	0.997	0.544	0.327	−6.1	−0.065
	$/can			Thousand cans	
Portable Fuel Containers:					
States with existing programs	0.21	0.20	1.9	−2.4	−0.02
States without existing programs	1.53	1.52	32.5	−66.7	−0.32
2020					
	¢/gallon			Million gallons	
Gasoline Fuel:					
PADD 1 & 3	0.149	0.081	0.055	−9.5	−0.011
PADD 2	0.307	0.167	0.111	−10.7	−0.022
PADD 4	0.501	0.273	0.174	−2.0	−0.035
PADD 5 (w/out CA)	0.997	0.544	0.327	−6.4	−0.065
	$/can			Thousand cans	
Portable Fuel Containers:					
States with existing programs	0.21	0.20	1.9	−2.7	−0.02
States without existing programs	1.53	1.52	32.5	−73.6	−0.32

Economic Welfare Analysis. In the economic welfare analysis, we look at the costs to society of the emission control program in terms of losses to key stakeholder groups that are the producers and consumers in the gasoline and PFC markets. These surplus losses are combined with estimated vehicle compliance costs, gasoline fuel savings, and government revenue losses to estimate the net economic welfare impacts of the program. Detailed economic welfare results for the rule are presented in Appendix C and are summarized below.

The estimated annual net social costs (total social costs less gasoline fuel savings) for all years are presented in Table VIII.F–2. These social costs follow the trend of the fuel program compliance costs. Initially, the estimated social costs of the program are relatively small as the gasoline program begins to phase in. The net social costs increase to 2012, fall somewhat for 2013 and 2014 due to changes in the fuel program compliance costs, and then increase again in 2015, after which time the per-gallon costs are expected to be stable. Some of the decrease in social costs in 2014 is also due to a decrease in costs associated with the PFC program, since fixed costs are fully amortized by 2014. The slight decrease in 2020 is due to the end of the vehicle compliance costs, which are incurred in the 10-year period from 2010 through 2019.

TABLE VIII.F–2.—ESTIMATED ENGINEERING COMPLIANCE AND SOCIAL COSTS THROUGH 2035

[Including fuel savings; $million; 2003$]

Year	Engineering compliance costs	Social costs
2007	$29.5	$29.5
2008	51.3	51.3

TABLE VIII.F–2.—ESTIMATED ENGINEERING COMPLIANCE AND SOCIAL COSTS THROUGH 2035—Continued

[Including fuel savings; $million; 2003$]

Year	Engineering compliance costs	Social costs
2009	99.0	98.9
2010	161.9	161.7
2011	152.6	152.4
2012	228.7	228.5
2013	190.9	190.8
2014	150.8	150.7
2015	350.8	350.7
2016	354.5	354.4
2017	358.0	357.9
2018	361.9	361.8
2019	366.1	366.0
2020	359.5	359.4
2021	363.5	363.4
2022	367.1	367.0
2023	370.7	370.6
2024	374.7	374.6
2025	378.7	378.6
2026	383.1	383.0

TABLE VIII.F–2.—ESTIMATED ENGINEERING COMPLIANCE AND SOCIAL COSTS THROUGH 2035—Continued

[Including fuel savings; $million; 2003$]

Year	Engineering compliance costs	Social costs
2027	387.5	387.4
2028	391.6	391.4
2029	396.0	395.9
2030	400.1	400.0
2031	404.6	404.5
2032	409.2	409.1
2033	413.9	413.7
2034	418.6	418.4
2035	423.4	423.2
3% NPV (2006–2035)	5,356.8	5,354.6
7% NPV (2006–2035)	2,901.0	2,899.7

Table VIII.F–3 shows how the social costs are expected to be shared across stakeholders, for selected years. Information for all years can be found in Appendix C. According to these results, consumers are expected to bear approximately 99 percent of the cost of the PFC program. This reflects the inelastic price elasticity on the demand side of the market and the elastic price elasticity on the supply side. The burden of the gasoline fuel program is expected to be shared more evenly, with about 54.5 percent expected to be borne by consumers and about 45.5 percent expected to be borne by producers. In all years, the estimated loss to consumer welfare will be offset somewhat by the gasoline fuel savings associated with PFCs. Beginning at about $11 million per year, these savings increase to about $76 million by 2015 as compliant PFCs are phased in. These savings continue for the life of the PFCs; total annual savings increase as the number of cans increases.

TABLE VIII.F–3.—SUMMARY OF ESTIMATED SOCIAL COSTS, 2009, 2012, 2015, AND 2020

[$million; 2003$]

Market	Change in consumer surplus	Change in producer surplus	Total
2009			
Gasoline U.S.	−$28.5	−$23.8	−$52.3
	(54.6%)	(45.4%)	
PADD 1 & 3	−$6.7	−$5.6	−$12.2
PADD 2	−$20.6	−$17.2	−$37.8
PADD 4	−$0.9	−$0.7	−$1.6
PADD 5 (w/out CA)	−$0.3	−$0.3	−$0.6
Portable Fuel Containers U.S.	−$57.5	−$0.4	−$57.9
	(99.3%)	(0.7%)	
States with existing programs	−$8.9	−$0.1	−$8.9
States without existing programs	−$48.7	−$0.3	−$49.0
Subtotal	−$86.1	−$24.1	−$110.2
	(78.1%)	(22%)	
Fuel Savings			$11.3
Vehicle Program			$0
Total			−$98.9
2012			
Gasoline U.S.	−$110.7	−$92.3	−$203.0
	(54.5%)	(45.5%)	
PADD 1 & 3	−$24.8	−$20.7	−$45.5
PADD 2	−$73.2	−$61.0	−$134.2
PADD 4	−$5.9	−$4.9	−$10.9
PADD 5 (w/out CA)	−$6.8	−$4.7	−$12.4
Portable Fuel Containers U.S.	−$61.1	−$0.4	−$61.5
	(99.3%)	(0.7%)	
States with existing programs	−$9.4	−$0.1	−$9.5
States without existing programs	−$51.7	−$0.4	−$52.1
Subtotal	−$171.8	−$92.7	−$264.5
	(65.0%)	(35.0%)	
Fuel Savings			$48.5
Vehicle Program			−$12.5
Total			−$228.5
2015			
Gasoline U.S.	−$207.0	−$172.5	−$379.4
	(54.5%)	(45.5%)	
PADD 1 & 3	−$66.3	−$55.3	−$121.6
PADD 2	−$75.9	−$63.2	−$139.1

TABLE VIII.F–3.—SUMMARY OF ESTIMATED SOCIAL COSTS, 2009, 2012, 2015, AND 2020—Continued

[$million; 2003$]

Market	Change in consumer surplus	Change in producer surplus	Total
PADD 4	−$14.5	−$12.1	−$26.6
PADD 5 (w/out CA)	−$50.3	−$41.9	−$92.2
Portable Fuel Containers U.S.	−$33.7	−$0.2	−$34.0
	(99.3%)	(0.7%)	.....
States with existing programs	−$2.7	$0.0	−$2.7
States without existing programs	−$31.0	−$0.2	−$31.3
Subtotal	−$240.7	−$172.7	−$413.4
	(58.2%)	(41.8%)	.....
Fuel Savings	.....	.....	$75.5
Vehicle Program	.....	.....	−$12.9
Total	.....	.....	−$350.7
2020			
Gasoline U.S.	−$219.6	−$183.0	−$402.6
	(54.5%)	(45.5%)	.....
PADD 1 & 3	−$70.4	−$58.6	−$129.0
PADD 2	−$80.5	−$67.1	−$147.6
PADD 4	−$15.4	−$12.8	−$28.2
PADD 5 (w/out CA)	−$53.4	−$44.5	−$97.8
Portable Fuel Containers U.S.	−$37.2	−$0.2	−$37.5
	(99.3%)	(0.7%)	.....
States with existing programs	−$3.0	$0.0	−$3.0
States without existing programs	−$34.3	−$0.2	−$34.5
Subtotal	−$256.8	−$183.3	−$440.1
	(58.4%)	(41.6%)	.....
Fuel Savings	.....	.....	$80.7
Vehicle Program	.....	.....	−$0
Total	.....	.....	−$359.4

The present value of net social costs (discounted back to 2006) of the standards through 2035, contained in Table VIII.F–2, is estimated to be about $5.4 billion (2003$). This present value is calculated using a social discount rate of three percent and the stream of economic welfare costs through 2035. We also performed an analysis using a seven percent social discount rate.[247] Using that discount rate, the present value of the net social costs through 2035 is estimated to be about $2.9 billion (2003$).

TABLE VIII.F–4.—NET PRESENT OF ESTIMATED SOCIAL COSTS 2007 THROUGH 2035, DISCOUNTED TO 2006

[$million; 2003$]

Market	Change in consumer surplus	Change in producer surplus	Total
Gasoline, U.S.	−$3,115.4	−$2,596.2	−$5,711.6
	(54.5%)	(45.5%)	
PADD 1 & 3	−$959.7	−$799.8	−$1,759.5
PADD 2	−$1,260.4	−$1,050.4	−$2,310.8
PADD 4	−$210.8	−$175.6	−$386.4
PADD 5 (w/out CA)	−$229.5	−$570.4	−$1,254.8
	−$684.5	.....	.....
Portable Fuel Containers US	−$754.9	−$5.0	−$759.9
	(99.3%)	(0.7%)	
States with existing programs	−$78.7	−$0.5	−$79.3
States without existing programs	−$676.2	−$4.5	−$680.7

[247] EPA presents the present value of cost and benefits estimates using both a three percent and a seven percent social discount rate. According to OMB Circular A–4, ''the 3 percent discount rate represents the 'social rate of time preference' * * * [which] means the rate at which 'society' discounts future consumption flows to their present value''; ''the seven percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy * * * [that] approximates the opportunity cost of capital.''

TABLE VIII.F–4.—NET PRESENT OF ESTIMATED SOCIAL COSTS 2007 THROUGH 2035, DISCOUNTED TO 2006—Continued

[$million; 2003$]

Market	Change in consumer surplus	Change in producer surplus	Total
Subtotal	−$3870.3 59.8%	−$2,601.2 40.2%	−$6,471.6
Fuel Savings	$1,208.0	.....	$1,208.0
Vehicle Program	.....	−$91.1	−$91.1
Total	−$2,662.3	−$2,692.3	−$5,354.6

Table VIII.F–4 shows the distribution of total surplus losses for the cumulative net social costs of the rule. This analysis includes the estimated social costs from 2007 through 2035, discounted to 2006 at a 3 percent discount rate. These results suggest that consumers will bear about 60 percent of the total social costs associated with the PFC and gasoline fuel programs for that period. The consumer share of the NPV social costs is about $3,870 million, or about 60 percent of the total. Of that loss of consumer surplus, about $3,115 million (about 80 percent) is from the gasoline fuel program. When the total costs of the program are taken into account, including the fuel savings and the vehicle program costs, the loss of consumer surplus decreases to about $2,662.3 million (about 50 percent of the social costs of the program).

IX. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on March 29, 2006 (71 FR 15804). We considered these comments in developing the final rule. In addition, we held a public hearing on the proposed rulemaking on April 12, 2006, and we have considered comments presented at the hearing.

Throughout the rulemaking process, EPA met with stakeholders including representatives from the fuel refining and distribution industry, automobile industry, emission control manufacturing industry, gas can industry, environmental organizations, states, interests, and others.

We have prepared a detailed Summary and Analysis of Comments document, which describes comments we received on the proposal and our response to each of these comments. The Summary and Analysis of Comments is available in the docket for this rule at the internet address listed under **ADDRESSES**, as well as on the Office of Transportation and Air Quality Web site (*http://www.epa.gov/otaq/toxics.htm#mobile*). In addition, comments and responses for key issues are included throughout this preamble.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to ''have an annual effect on the economy of $100 million or more'' and ''raise novel legal and policy issues.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

A final Regulatory Impact Analysis has been prepared and is available in the docket for this rulemaking and at the docket internet address listed under **ADDRESSES**.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The Agency will collect information to ensure compliance with the provisions in this rule. This includes a variety of requirements, both for vehicle manufacturers, fuel producers, and portable fuel container manufacturers. Information-collection requirements related to vehicle manufacturers are in EPA ICR #0783.52 (OMB Control Number 2060–0104); requirements related to fuel producers are in EPA ICR #1591.22 (OMB Control Number 2060–0277); requirements related to portable fuel container manufacturers are in EPA ICR #2213.02. For vehicle and fuel standards, section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. We will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act. For portable fuel container standards, recordkeeping and reporting requirements for manufacturers would be pursuant to the authority of sections 183(e) and 111 of the Clean Air Act.

As shown in Table X.B–1, the total annual burden associated with this rule is about 28,000 hours and $1,993,723, based on a projection of 521 respondents. The estimated burden for vehicle manufacturers and fuel producers is a total estimate for both new and existing reporting requirements. The portable fuel container requirements represent our first regulation of these containers, so those burden estimates reflect only new reporting requirements. 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.

TABLE X.B–1.—ESTIMATED BURDEN FOR REPORTING AND RECORDKEEPING REQUIREMENTS

Industry sector	Number of respondents	Annual burden hours	Annual costs
Vehicles	35	770	$80,900
Fuels	476	26,592	*1,888,032
Portable fuel containers	10	638	24,791
Total	521	28,000	1,993,723

*Does not include non-postage purchased services of approximately $1,988,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 and 48 CFR chapter 15 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule. EPA received various comments on the rulemaking provisions covered by the ICRs, but no comments on the paperwork burden or other information in the ICRs. All comments that were submitted to EPA are considered in the relevant Summary and Analysis of Comments, which can be found in the docket.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

1. Overview

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 rule 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 (see table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following table provides an overview of the primary SBA small business categories potentially affected by this regulation:

Industry	Defined as small entity by SBA if less than or equal to:	NAICS Codes [a]
Light-duty vehicles:		
—vehicle manufacturers (including small volume manufacturers)	1,000 employees	336111
—independent commercial importers	$6 million annual sales	811111
		811112
		811198
—alternative fuel vehicle converters	100 employees	424720
	1,000 employees	335312
	$6 million annual sales	811198
Gasoline fuel refiners	1500 employees [b]	324110
Portable fuel container manufacturers:		
—plastic container manufacturers	500 employees	326199
—metal gas can manufacturers	1,000 employees	332431

Notes:
[a] North American Industrial Classification System
[b] EPA has included in past fuels rulemakings a provision that, in order to qualify for EPA's small refiner flexibilities, a refiner must also produce no greater than 155,000 bpcd crude capacity.

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review Panel (SBAR Panel, or the 'Panel') to obtain advice and recommendations of representatives of the regulated small entities. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (see Docket EPA–HQ–OAR–2005–0036). A summary of the Panel's recommendations is presented at 71 FR 15922 (March 29, 2006).

As required by section 604 of the RFA, we also prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in Chapter 14 of the RIA and is summarized below.

Key elements of our FRFA include:

- A description of the reasons the Agency is considering this action, and the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments on the IRFA, a summary of the Agency's assessment of those issues, and any changes made to the proposed rule as a result of those comments;
- A description of the types and number of small entities to which the rule will apply;
- A description of the reporting, recordkeeping, and other compliance requirements of the rule;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the rule; and
- A description of the steps taken to minimize the significant economic impact on small entities consistent with

the stated objectives of the applicable statutes.

2. The Need for and Objectives of This Rule

Mobile sources emit air toxics that can cause cancer and other serious health effects (Section III of this preamble and Chapter 1 of the Regulatory Impact Analysis for this rule describe these compounds and their health effects). Mobile sources contribute significantly to the nationwide risk from breathing outdoor sources of air toxics. In this action we are finalizing: Standards to limit the exhaust hydrocarbons from passenger vehicles during cold temperature operation; evaporative hydrocarbon emissions standards for passenger vehicles; limiting the average annual benzene content of gasoline; and hydrocarbon emissions standards for gas cans that would reduce evaporation, permeation, and spillage from these containers. (Detailed discussions of each of these programs are in sections V, VI, and VII of the preamble and Chapters 5, 6, and 7 of the RIA). Standards for vehicles and gasoline benzene control are being pursued under section 202(l)(2) of the Clean Air Act (CAA), which directs EPA to establish requirements to control emissions of mobile source air toxics from new motor vehicles and fuels. Controls for gas cans are being pursued under CAA section 183(e), the provisions applying to consumer and commercial products.

3. Summary of the Significant Issues Raised by the Public Comments

We did not receive comments on the proposed flexibilities and hardships for small volume vehicle manufacturers or gas can manufacturers. We received comments from small refiners supporting the inclusion of flexibility provisions and hardships for small gasoline refiners. These comments generally supported additional lead-time, credit generation provisions (early credit generation and extra credit life for credits generated by or transferred to small refiners), and a review of the credit program.

Small refiners also indicated that they could incur significant economic impact in complying with the 1.3 vol% refinery maximum average benzene standard. Our economic analysis indicates that most small refiners will be able to comply with this standard without incurring significant adverse economic impact. We also believe that allowing additional lead time (until July 1, 2016) to meet this standard ameliorates potential economic impact. In addition, we believe that any other refiners that still demonstrate instances of severe economic impact can be accommodated through the hardship relief provision set out in the regulations at § 80.1335. This issue is discussed in more detail in section VI.A.3, in chapter 14 of the final RIA, and in individual comment responses.

We also received comments regarding the fact that two recent statutes use definitions that are not the same as the small refiner criteria that we proposed. The commenters generally stated that EPA should use one of the definitions from those statutes. However, we do not believe that it would be appropriate to change the small refiner employee count or crude capacity limit criteria to fit either of those programs' definitions; rather, we believe that it is prudent to continue using criteria similar to our current and previous fuel programs. (Please see section VI.A.3.a.i above for a more detailed discussion of this comment and our response.)

4. Summary of Regulated Small Entities

The following section discusses the small entities directly regulated by this action.

a. Highway Light-Duty Vehicles

In addition to the major vehicle manufacturers, three distinct categories of businesses relating to highway light-duty vehicles will be covered by the new vehicle standards: small volume manufacturers (SVMs), independent commercial importers (ICIs), and alternative fuel vehicle converters. SVMs are companies that sell less than 15,000 vehicles per year, as defined in past EPA regulations, and this status allows vehicle models to be certified under a slightly simpler certification process. Independent commercial importers are companies that hold a Certificate (or certificates) of Conformity permitting them to alter imported vehicles to meet U.S. emission standards. Alternative fuel vehicle converters are businesses that convert gasoline or diesel vehicles to operate on alternative fuel, and converters must seek a certificate for all of their vehicle models. From an assessment performed for our SBREFA Panel process, we continue to believe that there are about 14 SVMs, 10 alternative fuel vehicle converters, and 10 ICIs. Of these, EPA believes 5 SVMs, 6 converters, and all 10 ICIs would meet the small-entity criteria as defined by SBA (no major vehicle manufacturers meet the small-entity criteria). It is believed that these small entities comprise about 0.02 percent of the total light-duty vehicle sales in the U.S. for the year 2004.

b. Gasoline Refiners

EPA's current assessment is that 14 refiners (owning 16 refineries) meet SBA's criterion of having 1,500 employees or less and our criterion of having a crude capacity of less than or equal to 155,000 bpcd. It should be noted that because of the dynamics in the refining industry (i.e., mergers and acquisitions) and decisions by some refiners to enter or leave the gasoline market, the actual number of refiners that ultimately qualify for small refiner status under an MSAT program could be different than these estimates. Current data further indicates that these refiners produce about 2.5 percent of the total gasoline pool.

c. Portable Fuel Container Manufacturers

EPA conducted an industry profile to identify the manufacturers of portable fuel containers—98 percent are plastic containers and 2 percent are metal gas cans. Using this industry profile, EPA identified 9 domestic manufacturers and 1 foreign manufacturer. Of these 9 U.S. manufacturers, 8 meet the SBA definition of a small entity. One small business accounted for over 50 percent of the U.S. sales in 2002, and the other small entities comprised about 10 percent of U.S. sales.

5. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

For highway light-duty vehicles, the reporting, recordkeeping, and compliance requirements prescribed for this category in 40 CFR 86 will be continued. Key among these requirements are certification requirements and provisions related to reporting of production, emissions information, flexibility use, etc.

For any fuel control program, EPA must have assurance that fuel produced by refiners meets the applicable standard, and that the fuel continues to meet the standard as it passes downstream through the distribution system to the ultimate end user. As stated in section VI above, the recordkeeping, reporting and compliance provisions of the MSAT program will be consistent with those currently in place for existing fuel programs. These provisions include: The submission of refinery pre-compliance reports (similar to those required under the highway and nonroad diesel fuel programs), the submission of refinery batch reports, small refiner status and small refiner baseline applications, and retention of

all records for this program for five years.

For portable fuel containers, requirements similar to those in the California program (such as submitting emissions testing information, reporting of certification families, and use of transition provisions) were proposed and are being finalized today.

6. Relevant Federal Rules

We are aware of a few other current or proposed Federal rules that are related to this rule. The primary related federal rules are the first MSAT rule (66 FR 17230, March 29, 2001), the Tier 2 Vehicle/Gasoline Sulfur rulemaking (65 FR 6698, February 10, 2000), the fuel sulfur rules for highway diesel (66 FR 5002, January 18, 2001) and nonroad diesel (69 FR 38958, June 29, 2004), the Reformulated Gasoline and Anti-dumping rule (59 FR 7813 and 59 FR 7860, February 16, 1994), and the Cold Temperature Carbon Monoxide Rulemaking (57 FR 31888, July 17, 1992).

In addition, the Evaporative Emissions Streamlining Direct Final Rulemaking was issued on December 8, 2005 (70 FR 72917). For portable fuel containers, the Occupational Safety and Health Administration (OSHA) has safety regulations for containers used in workplace settings. Containers that meet OSHA's requirements, commonly called safety cans, are exempt from the California program, and we are thus exempting them from the EPA program.

Section 1501 of the Energy Policy Act of 2005 requires the Agency to implement a Renewable Fuels Standard (RFS) program. Beginning in 2006, this program will require increasing volumes of renewable fuel to be used in gasoline, until a total of 7.5 billion gallons is required in 2012. The most prevalent renewable fuel is expected to be ethanol. There are a wide variety of potential impacts of ethanol blending on MSAT emissions that will be evaluated as part of the RFS rulemaking process. In general, as ethanol use increases, other sources of octane in gasoline can decrease. Depending on these changes, the impact on benzene emissions will vary. The specific effects of ethanol on benzene are addressed in the Regulatory Impact Analysis (RIA) to this rule and in other fuels rulemakings, such as the RFS rule (71 FR 55552, September 22, 2006).

7. Steps Taken To Minimize the Significant Economic Impact on Small Entities

a. Significant Panel Findings

The SBAR Panel considered many regulatory options and flexibilities that would help mitigate potential adverse effects on small businesses as a result of this rule. During the SBREFA Panel process, the Panel sought out and received comments on the regulatory options and flexibilities that were presented to Small Entity Representatives (SERs) and Panel members. The major flexibilities and hardship relief provisions that were recommended by the Panel were proposed and are generally being finalized today (for more information regarding the Panel process, see Section 9 of the SBREFA Final Panel Report, which is available in the public docket for this rule).

b. Outreach With Small Entities (and the Panel Process)

As required by section 609(b) of the RFA as amended by SBREFA, EPA conducted outreach to small entities and convened a SBAR Panel prior to proposing the MSAT rule to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements.

As part of the SBAR Panel process, we conducted outreach with representatives from the various small entities that would be affected by the rule. We met with these SERs to discuss the potential rulemaking approaches and potential options to decrease the impact of the rulemaking on their industries. The Panel received written comments from the SERs, specifically on regulatory alternatives that could help to minimize the rule's impact on small businesses.

In general, SERs representing the portable fuel container industry raised concerns on how the MSAT rule's requirements would be coordinated with the California program and other requirements, and that there should be adequate opportunity for sell through at the start of the program. The small volume manufacturer, ICI, and vehicle converter SERs that participated had questions about the form of the new standards for light-duty vehicles, specifically testing and certification requirements. The gasoline refiner SERs generally stated that they believed that small refiners would face challenges in meeting a new standard. More specifically, they raised the concern that the rule could be very costly and dependence on credits may not be a comfortable situation; they were also concerned about the timing of the standards for this rule, given other upcoming fuel standards.

The Panel agreed that EPA should consider the issues raised by the SERs (and discussions had by the Panel itself) and that EPA should consider comments on flexibility alternatives that would help to mitigate any negative impacts on small businesses. Alternatives discussed throughout the Panel process included those offered in previous or current EPA rulemakings, as well as alternatives suggested by SERs and Panel members, and the Panel recommended that all be considered in the development of the rule.

A summary of the Panel's recommendations, what the Agency proposed, and what is being finalized today is discussed below. A detailed discussion of the regulatory alternatives and hardship provisions discussed and recommended by the Panel can be found in the SBREFA Final Panel Report. A complete discussion of the transition and hardship provisions that are being finalized today can be found in Sections V, VI, and VII (vehicle, fuels, and portable fuel container sections) of this preamble.

c. Small Business Flexibilities

i. Highway Light-Duty Vehicles

(a) Highway Light-Duty Vehicle Flexibilities

For certification purposes (and for the sake of simplicity for Panel discussions regarding flexibility options), SVMs include ICIs and alternative fuel vehicle converters since they sell less than 15,000 vehicles per year. Similar to the flexibility provisions implemented in the Tier 2 rule, the Panel recommended that we allow SVMs (includes all vehicle small entities that would be affected by this rule, which are the majority of SVMs) the following flexibility options for meeting cold temperature NMHC standards and evaporative emission standards:

Cold NMHC Standards—The Panel recommended that SVMs simply comply with the standards with 100 percent of their vehicles during the last year of the four-year phase-in period. For example, if the standard for light-duty vehicles and light light-duty trucks (0 to 6,000 pounds GVWR) were to begin in 2010 and end in 2013 (25%, 50%, 75%, 100% phase-in over four years), the SVM provision would be 100 percent in 2013. If the standard for heavy light-duty trucks and medium-duty passenger vehicles (greater than 6,000 pounds GVWR) were to start in 2012 (25%, 50%, 75%, 100% phase-in over four years), the SVM provision would be 100 percent in 2015.

Evaporative Emission Standards—The Panel recommended that since the evaporative emissions standards will not have phase-in years, we allow SVMs to simply comply with standards during

the third year of the program (we have implemented similar provisions in past rulemakings). For a 2009 start date for light-duty vehicles and light light-duty trucks, SVMs would need to meet the evaporative emission standards in 2011. For a 2010 implementation date for heavy light-duty trucks and medium-duty passenger vehicles, SVMs would need to comply in 2012.

We proposed the recommendations given by the Panel for these small business entities. We agree that SVMs may need additional lead time flexibility and the new cold NMHC standards for LDVs and LLDTs will begin in model year 2010 and end in model year 2013, therefore we are finalizing (as proposed) that the SVM provision would be 100 percent in model year 2013. Also, since the new cold NMHC standard for HLDTs and MDPVs will begin in 2012, we are finalizing as proposed that the SVM provision will be 100 percent in model year 2015. We believe that the Panel's recommendation for flexibilities with regard to the evaporative emission standards is reasonable. Therefore, for a 2009 model year start date for LDVs and LLDTs we proposed, and are finalizing, that SVMs meet the evaporative emission standards in model year 2011. For a model year 2010 implementation date for HLDTs and MDPVs, we proposed and are finalizing that SVMs comply in model year 2012. (Please see section V.E.1 for a greater discussion on flexibility provisions for small volume manufacturers.)

(b) Highway Light-Duty Vehicle Hardships

In addition, the Panel recommended that hardship flexibility provisions be extended to SVMs for the cold temperature VOC and evaporative emission standards. The provisions that the Panel recommended are:

SVMs would be allowed to apply (EPA would need to review and approve application) for up to an additional 2 years to meet the 100 percent phase-in requirements for cold VOC and the delayed requirement for evaporative emissions. Appeals for such hardship relief must be made in writing, must be submitted before the earliest date of noncompliance, must include evidence that the noncompliance will occur despite the manufacturer's best efforts to comply, and must include evidence that severe economic hardship will be faced by the company if the relief is not granted.

We proposed the Panel-recommended flexibility and hardship provisions described above, and we are finalizing these provisions in this action. (Please see section V.E.2 for a greater discussion on the hardship provisions for small volume manufacturers.)

(c) Special Provisions for Independent Commercial Importers (ICIs)

Although the SBAR panel did not specifically recommend it, we proposed, and are finalizing, that ICIs may participate in the averaging, banking, and trading (ABT) program for cold temperature NMHC fleet average standards, but with appropriate constraints to ensure that fleet averages will be met. The existing regulations for ICIs specifically prohibit ICIs from participating in emission-related averaging, banking, and trading programs unless specific exceptions are provided. However, an exception for ICIs to participate in an averaging, banking, and trading program was made for the Tier 2 NO_X fleet average standards, and today we are finalizing as proposed to apply a similar exception for the cold temperature NMHC fleet average standards. We also proposed, and are finalizing, that ICIs not be allowed to utilize the deficit carry-forward provisions of the ABT program. (Please see section V.E.3 for a greater discussion on the hardship provisions for small volume manufacturers.)

ii. Gasoline Refiners

(a) Gasoline Refiner Flexibilities

The Panel recommended that EPA propose certain provisions to encourage early compliance with lower benzene standards. The Panel recommended that EPA propose that small refiners be afforded the following flexibility options to help mitigate the impacts on small refiners:

Delay in Standards—The Panel recommended that a four-year delay period be proposed for small refiners (in order to allow for a review of the ABT program, as discussed below, to occur one year after implementation but still roughly three years prior to the small refiner compliance deadline). It was noted by the small refiners that three years are generally needed for small refiners to obtain financing and perform engineering and construction. The Panel was also in support of allowing for refinery expansion within the delay option, and recommended that refinery expansion be provided for in the rule.

Early ABT Credits—The Panel recommended that small refiners be eligible to generate early credits if they take some steps to meet the 0.62 vol% benzene requirement prior to the effective date of the standard. Depending on the start date of the program, and coupled with the four-year delay option for small refiners, a small refiner could have a total credit generation period of five to seven years. The Panel was also in support of allowing refiners (small, as well as non-small, refiners) to generate credits for reductions to their benzene emissions levels, rather than credits only for meeting the 0.62 vol% benzene standard that is set by the rule.

ABT Program Review—The Panel recommended a review of the credit trading program and small refiner flexibility options one year after the general program starts. The Panel further recommended that the review could take into account the number of early credits generated, as well as the number of credits generated and sold during the first year of the program. The Panel recommended that if the review were to conclude that changes to either the program or the small refiner provisions were necessary, EPA should also consider some of the suggestions provided by the small refiners (their comments are located in Appendix E of the Final Panel Report), such as:

- The general MSAT program should require pre-compliance reporting (similar to EPA's highway and nonroad diesel rules);
- Following the review, EPA should revisit the small refiner provisions if it is found that the credit trading market does not exist, or if credits are only available at a cost that would not allow small refiners to purchase credits for compliance;
- The review should offer ways either to help the credit market, or help small refiners gain access to credits (e.g., EPA could 'create' credits to introduce to the market, EPA could impose additional requirements to encourage trading with small refiners, etc.).
- In addition, the Panel recommended that EPA consider in this rulemaking establishing an additional hardship provision to assist those small refiners that cannot comply with the MSAT with a viable credit market. (This suggested hardship provision was also suggested by the small refiners in their comments, located in Appendix E of the Final Panel Report). This hardship provision would address concerns that, for some small refineries, compliance may be technically feasible only through the purchase of credits and it may not be economically feasible to purchase those credits. This flexibility would be provided to a small refiner on a case-by-case basis following the review and based on a summary, by the refiner, of technical or financial infeasibility (or some other type of similar situation that would render its compliance with the standard difficult). This hardship

provision might include further delays and/or a slightly relaxed standard on an individual refinery basis for a duration of two years; in addition, this provision might allow the refinery to request, and EPA grant, multiple extensions of the flexibility until the refinery's material situation changes. The Panel also stated that it understood that EPA may need to modify or rescind this provision, should it be implemented, based on the results of the program review.

We proposed and are finalizing the recommended four-year period of additional lead time (until January 1, 2015, four years after the general program start date) for compliance with the 0.62 vol% benzene standard. With respect to the 0.62 vol% standard, we agreed that a four-year period of additional lead time for small refiners would provide these refiners with roughly three years of lead time following the review of the credit program to complete capital projects if necessary or desirable to meet the 0.62 vol% benzene standard rather than to rely on credits. Further, we are finalizing an additional 18 months of lead time for small refiners to comply with the 1.3 vol% maximum average benzene standard (similar to 18-month lead-time afforded under the general program), until July 1, 2016. We likewise believe that this additional lead-time will provide small refiners with appropriate additional opportunity to raise capital and complete projects necessary to comply with the maximum average benzene standard.

With regard to credits, we proposed the Panel's recommendation that small refiners that take steps to meet the 0.62 vol% benzene requirement prior to January 1, 2015 would be eligible to generate early credits, and that credits remain available for small refiners for an additional amount of time. Early credit generation opportunities will provide more credits for the MSAT ABT program and will help to achieve the air quality goals of the MSAT program earlier than otherwise required. Therefore, we are finalizing an early credit generation provision for small refiners. Further, we believe that some incentive to trade credits with small refiners is warranted to help ensure that sufficient credits are available. Therefore, as stated above in section VI.A.3, we are finalizing the proposed provision that standard credits that are traded to, and ultimately used by, small refiners have an additional credit life of two years beyond the limit that is otherwise allowed.

We proposed that we would perform a review of the ABT program (and thus, the small refiner flexibility options) by 2012, one year after the general program begins. We are finalizing this provision today. In part to support this review, we are also requiring that refiners submit pre-compliance reports. If, following the review, EPA finds that the credit market is not adequate to support the small refiner provisions, we will revisit the provisions to determine whether or not they should be altered or whether EPA can assist the credit market (and small refiners' access to credits) to enable a successful ABT program. We are finalizing an additional hardship provision to assist small refiners if it is found that some small refiners still cannot comply with the 0.62 vol% benzene standard even with a viable credit market. The provision will only be available following the ABT program review and will only be afforded to small refiners on a case-by-case basis, and is in addition to the general refiner hardship provisions that are available to all refiners. Please see section VI.A.3.a.iii of this preamble for a more detailed discussion of this hardship provision.

(b) Gasoline Refiner Hardships

During the Panel process, we stated that we intended to propose the extreme unforeseen circumstances hardship and extreme hardship provisions (for all gasoline refiners and importers), similar to those in prior fuels programs. A hardship based on extreme unforeseen circumstances is intended to provide short-term relief due to unanticipated circumstances beyond the control of the refiner, such as a natural disaster or a refinery fire; an extreme hardship is intended to provide short-term relief based on extreme circumstances (e.g., extreme financial problems, extreme operational or technical problems, etc.) that impose extreme hardship and thus significantly affect a refiner's ability to comply with the program requirements by the applicable dates. The Panel agreed with the proposal of such provisions and recommended that we include them in the MSAT rulemaking; thus, we proposed these provisions.

We are finalizing the extreme hardship provision and the extreme unforeseen circumstances hardship provision with some modifications, as this final rule includes a 1.3 vol% refinery maximum average benzene standard. As discussed in more detail in section VI.A.3.b, relief will be granted on a case-by-case basis; however, it may differ somewhat depending upon whether a refiner applies for hardship relief for the 0.62 vol% benzene standard or for the 1.3 vol% refinery maximum average standard (while a refiner may apply for relief from both standards, hardship relief will be addressed independently for each standard). This is partly due to the fact that a refiner may use credits to meet the 0.62 vol% benzene standard, but credits cannot be used for compliance with the 1.3 vol% refinery maximum average.

Extreme hardship circumstances could exist based on severe economic or physical lead time limitations of the refinery to comply with the required benzene standards at the start of the program. For relief from the 0.62 vol% benzene standard in extreme hardship circumstances, relief will likely be in the form of an extension of the one-year deficit carry-forward allowed by the rule. Relief from the 1.3 vol% refinery maximum average benzene standard in extreme hardship circumstances would consist of additional time to comply with the 1.3 vol% refinery maximum average. Refiners must apply by January 1, 2008 (or, January 1, 2013 for approved small refiners) for extreme hardship relief from the 1.3 vol% refinery maximum average standard, as this provision is intended to address unusual circumstances that should be apparent now, or well before the standard takes effect.

The extreme unforeseen circumstances hardship is available to both refiners and importers, and is intended to provide relief in extreme and unusual circumstances outside a refiner or importer's control that could not have been avoided through the exercise of due diligence. Hardship relief for the 0.62 vol% benzene standard will allow a deficit to be carried forward for an extended, but limited, time period (more than the one year allowed by the rule). Relief from the 1.3 vol% refinery maximum average benzene standard based on unforeseen circumstances will be granted on a case-by-case basis, following an assessment of the hardship application, and would generally be in the form of an extension of time to comply with the standard.

iii. Portable Fuel Containers

(a) Portable Fuel Container Flexibilities

Since nearly all portable fuel container manufacturers are small entities and they account for about 60 percent of sales, the Panel planned to extend the flexibility options to all portable fuel container manufacturers. Moreover, implementation of the program would be much simpler by doing so. The recommended flexibilities are the following:

Design Certification—The Panel recommended that we propose to permit portable fuel container manufacturers to

use design certification in lieu of running any or all of the durability aging cycles. Manufacturers could demonstrate the durability of their gas cans based in part on emissions test data from designs using the same permeation barriers and materials. Under a design-based certification program, a manufacturer would provide evidence in the application for certification that their container would meet the applicable standards based on its design (e.g., use of a particular permeation barrier). The manufacturer would submit adequate engineering and other information about its individual design such that EPA could determine that the emissions performance of their individual design would not be negatively impacted by slosh, UV exposure, and/or pressure cycling (whichever tests the manufacturer is proposing to not run prior to emissions testing).

Broaden Certification Families—This approach would relax the criteria used to determine what constitutes a certification family. It would allow small businesses to limit their certification families (and therefore their certification testing burden), rather than testing all of the various size containers in a manufacturer's product line. Some small entities may be able to put all of their various size containers into a single certification family. Manufacturers would then certify their containers using the ''worst case'' configuration within the family. To be grouped together, containers would need to be manufactured using the same materials and processes even though they are of different sizes.

Additional Lead-time—Since it may take additional time for the portable fuel container SERs to gather information to fully evaluate whether or not additional lead-time is needed beyond the 2009 start date, the Panel recommended that we discuss lead-time in the proposal and request comments on the need for additional lead-time to allow manufacturers to ramp up to a nationwide program.

Product Sell-through—As with past rulemakings for other source sectors, the Panel recommended that EPA propose to allow normal sell through of portable fuel containers as long as manufacturers do not create stockpiles of noncomplying portable fuel containers prior to the start of the program.

We proposed these Panel-recommended flexibilities for all portable fuel container manufacturers. As stated above, we did not receive any comments on the proposed flexibilities, and are therefore finalizing them as proposed (the flexibility provisions are incorporated into the program requirements described earlier in sections VII.B through VII.D).

(b) Portable Fuel Container Hardships

The Panel recommended that EPA propose two types of hardship programs for small portable fuel container manufacturers.

The first would allow small manufacturers to petition EPA for limited additional lead-time to comply with the standards. A manufacturer would have to demonstrate that it has taken all possible business, technical, and economic steps to comply, but the burden of compliance costs would have a significant adverse effect on the company's solvency. Hardship relief may include requirements for interim emission reductions.

The second hardship provision would permit small manufacturers to apply for hardship relief if circumstances outside their control cause the failure to comply (i.e., supply contract broken by parts supplier) and if failure to sell the subject containers would have a major impact on the company's solvency. The terms and timeframe of the relief would depend on the specific circumstances of the company and the situation involved.

We proposed, and are finalizing, the above hardship provisions for portable fuel container manufacturers. These entities could, on a case-by-case basis, face hardship, and we are finalizing these provisions to provide what could prove to be needed safety valves for these entities. For both types of hardship provisions, the length of the hardship relief will be established, during the initial review, for not more than one year and will be reviewed annually thereafter as needed. (Please see section VII.F for a more detailed discussion of these hardship provisions.)

As required by section 212 of SBREFA, EPA also is preparing a Small Entity Compliance Guide to help small entities comply with this rule. The compliance guide will be available on the Web at: *http://www.epa.gov/otaq/toxics.htm.*

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 for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that the final rule represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule. The costs and benefits associated with the final rule are discussed above and in the Regulatory Impact Analysis, as required by 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.''

This final 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.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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 final rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on vehicle manufacturers (includes alternative fuel vehicle converters and ICIs), fuel producers, and portable gasoline container manufacturers. Tribal governments will be affected only to the extent they purchase and use regulated vehicles, fuels, and portable gasoline containers. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is subject to the Executive Order because it is an economically significant regulatory action as defined by Executive Order 12866, and we believe that by addressing the environmental health or safety risk this action may have a disproportionate beneficial effect on children. Accordingly, we have evaluated the potential environmental health or safety effects of VOC and toxics emissions from gasoline-fueled mobile sources and gas cans on children. The results of this evaluation are described below and contained in sections III and IV.

Exposure to a number of the compounds addressed in this rule may have a disproportionate effect on children. First, exposure to carcinogens that cause cancer through a mutagenic mode of action during childhood development may have an incrementally disproportionate impact. Because of their small size, increased activity, and increased ventilation rates compared to adults, children may have greater exposure to these compounds in the ambient air, on a unit body weight basis. Moreover, for PM, because children's breathing rates are higher, their exposures may be higher and because their respiratory systems are still developing, children may be more susceptible to problems from exposure to respiratory irritants.

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. The gasoline benzene provisions of the final rule will shift about 12,500 barrels per day of benzene from the gasoline market to the petrochemical market. This volume represents about 0.1 percent of nationwide gasoline production. The actual impact of the rule on the gasoline market, however, is likely to be less due to offsetting changes in the production of petrochemicals, as well as expected growth in the petrochemical market absent this rule. The major sources of benzene for the petrochemical market other than reformate from gasoline production are also derived from gasoline components or gasoline feedstocks. Consequently, the expected shift toward more benzene production from reformate due to this final rule will be offset by less benzene produced from other gasoline feedstocks.

The rule will require refiners to use a small additional amount of energy in processing gasoline to reduce benzene levels, primarily due to the increased energy used for benzene extraction. Our modeling of increased energy use indicates that the process energy used by refiners to produce gasoline would increase by about 0.6 percent (or, six-tenths of a percent). Overall, we believe that the final rule will result in no significant adverse energy impacts.

The gasoline benzene provisions will not affect the current gasoline distribution practices.

We discuss our analysis of the energy and supply effects of the gasoline benzene standard further in section VIII of this preamble and in Chapter 9 of the Regulatory Impact Analysis.

The fuel supply and energy effects described above will be offset substantially by the positive effects on gasoline supply and energy use of the gas can standards also promulgated in today's action. These provisions will greatly reduce the gasoline lost to evaporation from gas cans. This will in turn reduce the demand for gasoline, increasing the gasoline supply and reducing the energy used in producing gasoline.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, 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 rulemaking involves technical standards. Therefore, the Agency

conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards. Therefore, for the cold temperature NMHC standards, EPA will use the existing EPA cold temperature CO test procedures (manufacturers currently measure hydrocarbon emissions with current cold CO test procedures), which were adopted in a previous EPA rulemaking (1992). The fuel standards referenced in today's rule involve the measurement of gasoline fuel parameters. The measurement standards for gasoline fuel parameters referenced in today's rulemaking are government-unique standards that were developed by the Agency through previous rulemakings. Both the cold temperature CO test procedures and the measurement standards for gasoline fuel parameters have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. For gas cans, EPA is promulgating new procedures for measuring hydrocarbon emissions.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

The final rule will reduce VOC and toxic emissions from gasoline-fueled mobile sources (particularly highway light-duty vehicles) and gas cans, and thus, it will decrease the amount of air pollution to which the entire population is exposed. The rule will also reduce PM emissions from highway light-duty vehicles. EPA evaluated the population residing close to high traffic density (near roadways), and we found that this population has demographic differences from the general population, including a greater fraction of lower income and minority residents. The rule will reduce emissions from roadways. Since those living near roadways are more likely to be lower income and minority residents, this population will have a disproportionate benefit from the rule. Thus, this rule does not have a disproportionately high adverse human health or environmental effect on minority populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the rule is published in the **Federal Register**. This rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

XI. Statutory Provisions and Legal Authority

Statutory authority for the fuels controls in this final rule can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended, 42 U.S.C. 7521 and 7545(c). Additional support for the procedural and enforcement-related aspects of the fuel controls in this final rule, including the recordkeeping requirements, come from sections 114(a) and 301(a) of the CAA, 42 U.S.C. 7414(a) and 7601(a).

Statutory authority for the vehicle controls in this final rule can be found in sections 202, 206, 207, 208, and 301 of the CAA, 42 U.S.C. 7521, 7525, 7541, 7542 and 7601.

Statutory authority for the portable fuel container controls in this final rule can be found in sections 183(e) and 111 of the CAA, 42 U.S.C. sections 7511b(e) and 7411.

List of Subjects

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Consumer or Commercial Products pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 85

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 9, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, parts 59, 80, 85 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 59—NATIONAL VOLATILE ORGANIC COMPOUND EMISSION STANDARDS FOR CONSUMER AND COMMERCIAL PRODUCTS

■ 1. The authority citation for part 59 is revised to read as follows:

Authority: 42 U.S.C. 7414 and 7511b(e).

Subpart E—[Added and Reserved]

■ 2a. Add and reserve Subpart E.

■ 2b. A new Subpart F is added to part 59 to read as follows:

Subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers

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59.601 Do the requirements of this subpart apply to me?

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Emission Standards and Related Requirements

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59.680 What definitions apply to this subpart?
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Subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers

Overview and Applicability

§ 59.600 Does this subpart apply for my products?

(a) Except as provided in § 59.605 and paragraph (b) of this section, the regulations in this subpart F apply for all portable fuel containers (defined in § 59.680) that are manufactured on or after January 1, 2009.

(b) See § 59.602 (a) and (b) to determine how to apply the provisions of this subpart for containers that were manufactured before January 1, 2009.

§ 59.601 Do the requirements of this subpart apply to me?

(a) Unless specified otherwise in this subpart, the requirements and prohibitions of this subpart apply to all manufacturers and importers of portable fuel containers. Certain prohibitions in § 59.602 apply to all other persons.

(b) New portable fuel containers that are subject to the emissions standards of this part must be covered by a certificate of conformity that is issued to the manufacturer of the container. If more than one person meets the definition of manufacturer for a portable fuel container, see § 59.621 to determine if you are the manufacturer who may apply for and receive a certificate of conformity.

(c) Unless specifically noted otherwise, the term ''you'' means manufacturers, as defined in § 59.680.

§ 59.602 What are the general prohibitions and requirements of this subpart?

(a) *General prohibition for manufacturers and importers.* No manufacturer or importer may sell, offer for sale, introduce or deliver for introduction into commerce in the United States, or import any new portable fuel container that is subject to the emissions standards of this subpart and is manufactured after December 31, 2008 unless it is covered by a valid certificate of conformity, it is labeled as required, and it complies with all of the applicable requirements of this subpart, including compliance with the emissions standards for its useful life. After June 30, 2009, no manufacturer or importer may sell, offer for sale, introduce or deliver into commerce in the United States, or import any new portable fuel container that was manufactured prior to January 1, 2009 unless it meets the requirements of this subpart.

(b) *General prohibition for wholesale distributors.* No wholesale distributor may sell, offer for sale, or distribute any portable fuel container in the United States that is subject to the emissions standards of this subpart and is manufactured after December 31, 2008 unless it is covered by a valid certificate of conformity and is labeled as required. After December 31, 2009, no wholesale distributor may sell, offer for sale, or distribute in the United States any portable fuel container that was manufactured prior to January 1, 2009 unless it meets the requirements of this subpart. After December 31, 2009, all new portable fuel containers shall be deemed to be manufactured after December 31, 2008 unless they are in retail inventory.

(c) *Reporting and recordkeeping.* (1) You must keep the records and submit the reports specified in § 59.628. Records must be retained for at least 5 years from the date of manufacture or importation and must be supplied to EPA upon request.

(2) No person may alter, destroy, or falsify any record or report required by this subpart.

(d) *Testing and access to facilities.* You may not keep us from entering your facility to observe tests or inspect facilities if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited.

(e) *Warranty.* You may not fail to offer, provide notice of, or honor the emissions warranty required under this subpart.

(f) *Replacement components.* No person may sell, offer for sale, introduce or deliver for introduction into commerce in the United States, import, or install any replacement component for portable fuel containers subject to the standards of this subpart where the component has the effect of disabling, bypassing, or rendering inoperative the emissions controls of the containers.

(g) *Violations.* If a person violates any prohibition or requirement of this subpart or the Act concerning portable fuel containers, it shall be considered a separate violation for each portable fuel container.

(h) *Assessment of penalties and injunctions.* We may assess administrative penalties, bring a civil action to assess and recover civil penalties, bring a civil action to enjoin and restrain violations, or bring criminal action as provided by the Clean Air Act.

§ 59.603 How must manufacturers apply good engineering judgment?

(a) In addition to other requirements and prohibitions set forth in this subpart, you must use good engineering judgment for decisions related to any requirements under this subpart. This includes your applications for certification, any testing you do to show that your portable fuel containers comply with requirements that apply to them, and how you select, categorize, determine, and apply these requirements.

(b) Upon request, you must provide EPA a written description of the engineering judgment in question. Such information must be provided within 15 working days unless EPA specifies a different period of time to respond.

(c) We may reject your decision if it is not based on good engineering judgment or is otherwise inconsistent with the requirements that apply, and we may—

(1) Suspend, revoke, or void a certificate of conformity if we determine you used incorrect or incomplete

information or failed to consider relevant information, or that your decision was not based on good engineering judgment; or

(2) Notify you that we believe any aspect of your application or other information submission may be incorrect or invalid due to lack of good engineering judgment or other cause. Unless a different period is specified, you will have 30 days to respond to our notice and specifically address our concerns. After considering your information, we will notify you regarding our finding, which may include the actions provided in paragraph (c)(1) of this section.

(d) If you disagree with our conclusions under paragraph (c) of this section, you may file a request for a hearing with the Designated Compliance Officer as described in § 59.699. In your request, you must specifically state your objections, and include relevant data or supporting analysis. The request must be signed by your authorized representative. If we agree that your request raises a substantial factual issue, we will hold the hearing according to § 59.699.

§ 59.605 What portable fuel containers are excluded from this subpart's requirements?

This section describes exclusions that apply to certain portable fuel containers. The prohibitions and requirements of this subpart do not apply for containers excluded under this section. Exclusions under this section are based on inherent characteristics of the containers. See § 59.660 for exemptions that apply based on special circumstances.

(a) Containers approved as safety cans consistent with the requirements of 29 CFR 1926.150 through 1926.152 are excluded. Such cans generally have a flash-arresting screens, spring-closing lids and spout covers and have been approved by a nationally recognized testing laboratory such as Factory Mutual Engineering Corp. or Underwriters Laboratories, Inc., or Federal agencies such as Bureau of Mines, or U.S. Coast Guard.

(b) Containers with a nominal capacity of less than 0.25 gallons or more than 10.0 gallons are excluded.

(c) Containers designed and marketed solely to deliver fuel directly to nonroad engines during engine operation, such as containers with a connection for a fuel line and a reserve fuel area, are considered to be nonroad fuel tanks, and are thus excluded.

§ 59.607 Submission of information.

(a) You are responsible for all statements you make to us related to this subpart F, including information not required during certification. You are required to provide truthful and complete information. This subpart describes the consequences of failing to meet this obligation. The consequences also may include prosecution under 18 U.S.C. 1001 and 42 U.S.C. 7431(c)(2).

(b) We may require an officer or authorized representative of your company with knowledge of the information contained in the submittal to approve and sign any submission of information to us, and to certify that all the information submitted is accurate and complete.

Emission Standards and Related Requirements

§ 59.611 What evaporative emission requirements apply under this subpart?

(a) Hydrocarbon emissions from portable fuel containers may not exceed 0.3 grams per gallon per day when measured with the test procedures in §§ 59.650 through 59.653. This procedure measures diurnal venting emissions and permeation emissions.

(b) For the purpose of this section, portable fuel containers include spouts, caps, gaskets, and other parts provided with the container.

(c) The following general requirements also apply for all portable fuel containers subject to the standards of this subpart:

(1) *Prohibited controls.* The following controls are prohibited:

(i) For anyone to design, manufacture, or install emission control systems so they cause or contribute to an unreasonable risk to public health, welfare, or safety while operating.

(ii) For anyone to design, manufacture, or install emission control systems with features that disable, deactivate, reduce effectiveness, or bypass the emission controls, either actively or passively. For example, you may not include a manual vent that the operator can open to bypass emission controls. You may ask us to allow such features if needed for safety reasons or if the features operate during emission tests described in subpart F of this part.

(2) *Leaks.* You must design and manufacture your containers to be free of leaks. This requirement applies when your container is upright, partially inverted, or completely inverted.

(3) *Refueling.* You are required to design your portable fuel containers to minimize spillage during refueling to the extent practical. This requires that you use good engineering judgment to avoid designs that will make it difficult to refuel typical vehicle and equipment designs without spillage.

(d) Portable fuel containers must meet the standards and requirements specified in this subpart throughout the useful life of the container. The useful life of the container is five years beginning on the date of sale to the ultimate purchaser.

§ 59.612 What emission-related warranty requirements apply to me?

(a) *General requirements.* You must warrant to the ultimate purchaser that the new portable fuel container, including all parts of its evaporative emission-control system, is:

(1) Designed, built, and equipped so it conforms at the time of sale to the ultimate purchaser with the requirements of this subpart.

(2) Is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) *Warranty notice and period.* Your emission-related warranty must be valid for a minimum of one year from the date of sale to the ultimate purchaser.

(c) *Notice.* You must provide a warranty notice with each container.

§ 59.613 What operation and maintenance instructions must I give to buyers?

You must provide the ultimate purchaser of the new portable fuel container written instructions for properly maintaining and using the emission-control system.

§ 59.615 How must I label and identify the portable fuel containers I produce?

This section describes how you must label your portable fuel containers.

(a) At the time of manufacture, indelibly mark the month and year of manufacture on each container.

(b) Mold into or affix a legible label identifying each portable fuel container. The label must be:

(1) Attached so it is not easily removable.

(2) Secured to a part of the container that can be easily viewed when the can is in use, not on the bottom of the container.

(3) Written in English.

(c) The label must include:

(1) The heading ''EMISSION CONTROL INFORMATION''.

(2) Your full corporate name, trademark and warranty contact information.

(3) A standardized identifier such as EPA's standardized designation for the emission families, the model number, or the part number.

(4) This statement: ''THIS CONTAINER COMPLIES WITH U.S. EPA EMISSION REGULATIONS FOR PORTABLE FUEL CONTAINERS (40 CFR Part 59).''.

(5) This statement: ''THE EMISSIONS WARRANTY IS VALID FOR A MINIMUM OF ONE YEAR FROM DATE OF PURCHASE.''.

(d) You may add information to the emission control information label to identify other emission standards that the container meets or does not meet (such as California standards). You may also add other information to ensure that the portable fuel container will be properly maintained and used.

(e) You may request that we approve modified labeling requirements in this subpart F if you show that it is necessary or appropriate. We will approve your request if your alternate label is consistent with the requirements of this subpart.

(f) You may identify the name and trademark of another company instead of their own on your emission control information label, subject to the following provisions:

(1) You must have a contractual agreement with the other company that obligates that company to take the following steps:

(i) Meet the emission warranty requirements that apply under § 59.612. This may involve a separate agreement involving reimbursement of warranty-related expenses.

(ii) Report all warranty-related information to the certificate holder.

(2) In your application for certification, identify the company whose trademark you will use and describe the arrangements you have made to meet your requirements under this section.

(3) You remain responsible for meeting all the requirements of this subpart.

Certifying Emission Families

§ 59.621 Who may apply for a certificate of conformity?

A certificate of conformity may be issued only to the manufacturer that completes the construction of the portable fuel container. In unusual circumstances, upon a petition by a manufacturer, we may allow another manufacturer of the container to hold the certificate of conformity. However, in order to hold the certificate, the manufacturer must demonstrate day-to-day ability to ensure that containers produced under the certificate will comply with the requirements of this subpart.

§ 59.622 What are the general requirements for obtaining a certificate of conformity and producing portable fuel containers under it?

(a) You must send us a separate application for a certificate of conformity for each emission family. A certificate of conformity for containers is valid from the indicated effective date until the end of the production period for which it is issued. We may require new certification prior to the end of the production period if we finds that containers are not meeting the standards in use during their useful life.

(b) The application must be written in English and contain all the information required by this subpart and must not include false or incomplete statements or information (see §§ 59.607 and 59.629).

(c) We may ask you to include less information than we specify in this subpart, as long as you maintain all the information required by § 59.628.

(d) You must use good engineering judgment for all decisions related to your application (see § 59.603).

(e) An authorized representative of your company must approve and sign the application.

(f) See § 59.629 for provisions describing how we will process your application.

(g) If we approve your application, we will issue a certificate that will allow you to produce the containers that you described in your application for a specified production period. Certificates do not allow you to produce containers that were not described in your application, unless we approve the additional containers under § 59.624.

§ 59.623 What must I include in my application?

This section specifies the information that must be in your application, unless we ask you to include less information under § 59.622(c). We may require you to provide additional information to evaluate your application.

(a) Describe the emission family's specifications and other basic parameters of the emission controls. List each distinguishable configuration in the emission family. Include descriptions and part numbers for all detachable components such as spouts and caps.

(b) Describe and explain the method of emission control.

(c) Describe the products you selected for testing and the reasons for selecting them.

(d) Describe the test equipment and procedures that you used, including any special or alternate test procedures you used (see § 59.650).

(e) List the specifications of the test fuel to show that it falls within the required ranges specified in § 59.650.

(f) Include the maintenance and use instructions and warranty information you will give to the ultimate purchaser of each new portable fuel container (see § 59.613).

(g) Describe your emission control information label (see § 59.615).

(h) State that your product was tested as described in the application (including the test procedures, test parameters, and test fuels) to show you meet the requirements of this subpart.

(i) Present emission data to show your products meet the applicable emission standards. Where applicable, §§ 59.626 and 59.627 may allow you to submit an application in certain cases without new emission data.

(j) Report all test results, including those from invalid tests or from any other tests, whether or not they were conducted according to the test procedures of §§ 59.650 through 59.653. We may ask you to send other information to confirm that your tests were valid under the requirements of this subpart.

(k) Unconditionally certify that all the products in the emission family comply with the requirements of this subpart, other referenced parts of the CFR, and the Clean Air Act.

(l) Include estimates of U.S.-directed production volumes.

(m) Include the information required by other sections of this subpart.

(n) Include other relevant information, including any additional information requested by EPA.

(o) Name an agent for service located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this subpart.

§ 59.624 How do I amend my application for certification?

Before we issue you a certificate of conformity, you may amend your application to include new or modified configurations, subject to the provisions of this section. After we have issued your certificate of conformity, you may send us an amended application requesting that we include new or modified configurations within the scope of the certificate, subject to the provisions of this section. You must amend your application if any changes occur with respect to any information included in your application.

(a) You must amend your application before you take either of the following actions:

(1) Add a configuration to an emission family. In this case, the configuration added must be consistent with other configurations in the emission family with respect to the criteria listed in § 59.625.

(2) Change a configuration already included in an emission family in a way that may affect emissions, or change any of the components you described in

your application for certification. This includes production and design changes that may affect emissions any time during the portable fuel containers' lifetime.

(b) To amend your application for certification, send the Designated Compliance Officer the following information:

(1) Describe in detail the addition or change in the configuration you intend to make.

(2) Include engineering evaluations or data showing that the amended emission family complies with all applicable requirements. You may do this by showing that the original emission data are still appropriate with respect to showing compliance of the amended family with all applicable requirements.

(3) If the original emission data for the emission family are not appropriate to show compliance for the new or modified configuration, include new test data showing that the new or modified configuration meets the requirements of this subpart.

(c) We may ask for more test data or engineering evaluations. You must give us these within 30 days after we request them.

(d) For emission families already covered by a certificate of conformity, we will determine whether the existing certificate of conformity covers your new or modified configuration. You may ask for a hearing if we deny your request (see § 59.699).

(e) For emission families already covered by a certificate of conformity and you send us a request to amend your application, you may sell and distribute the new or modified configuration before we make a decision under paragraph (d) of this section, subject to the provisions of this paragraph. If we determine that the affected configurations do not meet applicable requirements, we will notify you to cease production of the configurations and any containers from the new or modified configuration will not be considered covered by the certificate. In addition, we may require you to recall any affected containers that you have already distributed, including those sold to the ultimate purchasers. Choosing to produce containers under this paragraph (e) is deemed to be consent to recall all containers that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days, you must stop producing the new or modified containers.

§ 59.625 How do I select emission families?

(a) Divide your product line into families of portable fuel containers that are expected to have similar emission characteristics throughout the useful life.

(b) Group containers in the same emission family if they are the same in all the following aspects:

(1) Type of material (including pigments, plasticizers, UV inhibitors, or other additives that may affect control of emissions).

(2) Production method.

(3) Spout and cap design.

(4) Gasket material and design.

(5) Emission control strategy.

(c) You may subdivide a group of containers that is identical under paragraph (b) of this section into different emission families if you show the expected emission characteristics are different.

(d) You may group containers that are not identical with respect to the things listed in paragraph (b) of this section in the same emission family if you show that their emission characteristics will be similar throughout their useful life.

§ 59.626 What emission testing must I perform for my application for a certificate of conformity?

This section describes the emission testing you must perform to show compliance with the emission standards in § 59.611.

(a) Test your products using the procedures and equipment specified in §§ 59.650 through 59.653.

(b) Select an emission-data unit from each emission family for testing. You must test a production sample or a preproduction product that will represent actual production. Select the configuration that is most likely to exceed (or have emissions nearest to) the applicable emission standard. For example, for a family of multilayer portable fuel containers, test the container with the thinnest barrier layer. Test three identical containers.

(c) We may measure emissions from any of your products from the emission family. You must supply your products to us if we choose to perform confirmatory testing.

(d) You may ask to use emission data from a previous production period (carryover) instead of doing new tests, but only if the emission-data from the previous production period remains the appropriate emission-data unit under paragraph (b) of this section. For example, you may not carryover emission data for your family of containers if you have added a thinner-walled container than was tested previously.

(e) We may require you to test a second unit of the same or different configuration in addition to the unit tested under paragraph (b) of this section.

(f) If you use an alternate test procedure under § 59.652 and later testing shows that such testing does not produce results that are equivalent to the procedures specified in this subpart, we may reject data you generated using the alternate procedure and base our compliance determination on the later testing.

§ 59.627 How do I demonstrate that my emission family complies with evaporative emission standards?

(a) For purposes of certification, your emission family is considered in compliance with an evaporative emission standard in § 59.611(a) if the test results from all portable fuel containers in the family that have been tested show measured emissions levels that are at or below the applicable standard.

(b) Your emissions family is deemed not to comply if any container representing that family has test results showing an official emission level above the standard.

(c) Round the measured emission level to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard.

§ 59.628 What records must I keep and what reports must I send to EPA?

(a) Organize and maintain the following records:

(1) A copy of all applications and any other information you send us.

(2) Any of the information we specify in § 59.623 that you were not required to include in your application.

(3) A detailed history of each emission-data unit. For each emission-data unit, include all of the following:

(i) The emission-data unit's construction, including its origin and buildup, steps you took to ensure that it represents production containers, any components you built specially for it, and all the components you include in your application for certification.

(ii) All your emission tests, including documentation on routine and standard tests, as specified in §§ 59.650 through 59.653, and the date and purpose of each test.

(iii) All tests to diagnose emission-control performance, giving the date and time of each and the reasons for the test.

(iv) Any other relevant events or information.

(4) Production figures for each emission family divided by assembly plant.

(5) If you identify your portable fuel containers by lot number or other identification numbers, keep a record of these numbers for all the containers you produce under each certificate of conformity.

(b) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for five years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

(d) Send us copies of any maintenance instructions or explanations if we ask for them.

(e) Send us an annual warranty report summarizing successful warranty claims by emission family under § 59.612, including the reason for the claim. You must submit the report by July 1 for the preceding calendar year.

§ 59.629 What decisions may EPA make regarding my certificate of conformity?

(a) If we determine your application is complete and shows that the emission family meets all the requirements of this subpart and the Act, we will issue a certificate of conformity for your emission family for the specified production period. We may make the approval subject to additional conditions.

(b) We may deny your application for certification if we determine that your emission family fails to comply with emission standards or other requirements of this subpart or the Act. Our decision may be based on a review of all information available to us. If we deny your application, we will explain why in writing.

(c) In addition, we may deny your application or suspend, revoke, or void your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information.

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities (see § 59.698). This includes a failure to provide reasonable assistance.

(5) Produce portable fuel containers for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(6) Fail to supply requested information or amend your application to include all portable fuel containers being produced.

(7) Take any action that otherwise circumvents the intent of the Act or this subpart.

(d) If we deny your application or suspend, revoke, or void your certificate, you may ask for a hearing (see § 59.699).

§ 59.630 EPA testing.

We may test any portable fuel container subject to the standards of this subpart.

(a) *Certification and production sample testing.* Upon our request, a manufacturer must supply a prototype container or a reasonable number of production samples to us for verification testing. These samples will generally be tested using the full test procedure of § 59.653.

(b) *In-use testing.* We may test in-use containers using the test procedure of § 59.653 without preconditioning.

§ 59.650 General testing provisions.

(a) The test procedures of this subpart are addressed to you as a manufacturer, but they apply equally to anyone who does testing for you.

(b) Unless we specify otherwise, the terms ''procedures'' and ''test procedures'' in this subpart include all aspects of testing, including the equipment specifications, calibrations, calculations, and other protocols and procedural specifications needed to measure emissions.

(c) The specification for gasoline to be used for testing is given in 40 CFR 1065.710. Use the grade of gasoline specified for general testing. Blend this grade of gasoline with reagent grade ethanol in a volumetric ratio of 90.0 percent gasoline to 10.0 percent ethanol. You may use ethanol that is less pure if you can demonstrate that it will not affect your ability to demonstrate compliance with the applicable emission standards.

(d) Accuracy and precision of all temperature measurements must be ±2.2° C or better.

(e) Accuracy and precision of mass balances must be sufficient to ensure accuracy and precision of two percent or better for emission measurements for products at the maximum level allowed by the standard. The readability of the display may not be coarser than half of the required accuracy and precision.

§ 59.652 Other procedures.

(a) *Your testing.* The procedures in this subpart apply for all testing you do to show compliance with emission standards, with certain exceptions listed in this section.

(b) *Our testing.* These procedures generally apply for testing that we do to determine if your portable fuel containers complies with applicable emission standards. We may perform other testing as allowed by the Act.

(c) *Exceptions.* We may allow or require you to use procedures other than those specified in this subpart as follows:

(1) You may request to use special procedures if your portable fuel containers cannot be tested using the specified procedures. We will approve your request if we determine that it would produce emission measurements that represent in-use operation and we determine that it can be used to show compliance with the requirements of § 59.611.

(2) You may ask to use emission data collected using other procedures, such as those of the California Air Resources Board. We will approve this only if you show us that using these other procedures do not affect your ability to show compliance with the applicable emission standards. This generally requires emission levels to be far enough below the applicable emission standards so that any test differences do not affect your ability to state unconditionally that your containers will meet all applicable emission standards when tested using the specified test procedures.

(3) You may request to use alternate procedures that are equivalent to allowed procedures, or more accurate or more precise than allowed procedures.

(4) You may not use other procedures under this paragraph (c) until we approve your request.

§ 59.653 How do I test portable fuel containers?

You must test the portable fuel container as described in your application, with the applicable spout attached except as otherwise noted. Tighten fittings in a manner representative of how they would be tightened by a typical user.

(a) *Preconditioning for durability.* Complete the following steps before an emissions test, in any order, unless we determine that omission of one or more of these durability steps will not affect the emissions from your container.

(1) *Pressure cycling.* Perform a pressure test by sealing the container and cycling it between +13.8 and −1.7 kPa (+2.0 and −0.5 psig) for 10,000

cycles at a rate of 60 seconds per cycle. For this test, the spout may be removed and the pressure applied through the opening where the spout attaches. The purpose of this test is to represent environmental wall stresses caused by pressure changes and other factors (such as vibration or thermal expansion). If your container cannot be tested using the pressure cycles specified by this paragraph (a)(1), you may ask to use special test procedures under § 59.652(c).

(2) *UV exposure.* Perform a sunlight-exposure test by exposing the container to an ultraviolet light of at least 24 W/m^2 (0.40 W-hr/m^2/min) on the container surface for at least 450 hours. Alternatively, the container may be exposed to direct natural sunlight for an equivalent period of time, as long as you ensure that the container is exposed to at least 450 daylight hours.

(3) *Slosh testing.* Perform a slosh test by filling the portable fuel container to 40 percent of its capacity with the fuel specified in paragraph (e) of this section and rocking it at a rate of 15 cycles per minute until you reach one million total cycles. Use an angle deviation of +15° to −15° from level.

(4) *Spout actuation.* Perform the following spout actuation and inversion steps at the end on the slosh testing, and at the end of the preconditioning soak.

(i) Perform one complete actuation/inversion cycle per day for ten days.

(ii) One actuation/inversion cycle consists of the following steps:

(A) Remove and replace the spout to simulate filling the container.

(B) Slowly invert the container and keep it inverted for at least 5 seconds to ensure that the spout and mechanisms become saturated with fuel. Any fuel leaking from any part of the container will denote a leak and must be reported as part of certification. Once completed, place the container on a flat surface in the upright position.

(C) Actuate the spout by fully opening and closing without dispensing fuel. The spout must return to the closed position without the aid of the operator (e.g., pushing or pulling the spout closed). Repeat for a total of 10 actuations. If at any point the spout fails to return to the closed position, the container fails the test.

(D) Repeat the step contained in paragraph (a)(4)(ii)(B) of this section (i.e., the inversion step).

(E) Repeat the steps contained in paragraph (a)(4)(ii)(C) of this section (i.e., ten actuations).

(b) *Preconditioning fuel soak.* Complete the following steps before a diurnal emission test:

(1) Fill the portable fuel container with the specified fuel to its nominal capacity, seal it using the spout, and allow it to soak at 28 ±5° C for 20 weeks. Alternatively, the container may be soaked for 10 weeks at 43 ±5° C. You may count the time of the preconditioning steps in paragraph (a) of this section as part of the preconditioning fuel soak, as long as the ambient temperature remains within the specified temperature range and the fuel tank is at least 40 percent full; you may add or replace fuel as needed to conduct the specified durability procedures.

(2) Pour the fuel out of the container and immediately refill to 50 percent of nominal capacity. Be careful to not spill any fuel on the container. Wipe the outside of the container as needed to remove any liquid fuel that may have spilled on it.

(3) Install the spout assembly that will be used in the production containers. The spout and other openings (such as vents) on the container must be tested in their open condition unless they close automatically and are unlikely to be left open by the user during typical storage. All manual closures such as caps must be left off the container and spout during testing.

(c) *Reference container.* A reference container is required to correct for buoyancy effects that may occur during testing. Prepare the reference tank as follows:

(1) Obtain a second container of the same model as the test tank. You may not use a container that has previously contained fuel or any other contents that might affect the stability of its mass.

(2) Fill the reference container with enough dry sand (or other inert material) so that the mass of the reference container is approximately the same as the test container when filled with fuel. Use good engineering judgment to determine how similar the mass of the reference container needs to be to the mass of the test container considering the performance characteristics of your balance.

(3) Ensure that the sand (or other inert material) is dry. This may require heating the container or applying a vacuum to it.

(4) Seal the container.

(d) *Diurnal test run.* To run the test, take the following steps for a portable fuel container that was preconditioned as specified in paragraph (a) of this section.

(1) Stabilize the fuel temperature within the portable fuel container at 22.2 °C. Vent the container at this point to relieve any positive or negative pressure that may have developed during stabilization.

(2) Weigh the sealed reference container and record the weight. Place the reference on the balance and tare it so that it reads zero. Place the sealed test container on the balance and record the difference between the test container and the reference container. This value is $M_{initial}$ Take this measurement within 8 hours of filling the test container with fuel as specified in paragraph (b)(2) of this section.

(3) Immediately place the portable fuel container within a well ventilated, temperature-controlled room or enclosure. Do not spill or add any fuel.

(4) Close the room or enclosure.

(5) Follow the temperature profile in the following table for all portable fuel containers. Use good engineering judgment to follow this profile as closely as possible. You may use linearly interpolated temperatures or a spline fit for temperatures between the hourly setpoints.

TABLE 1 OF § 59.653—DIURNAL TEMPERATURE PROFILE FOR PORTABLE FUEL CONTAINERS

Time (hours)	Ambient Temperature (°C) Profile
0	22.2
1	22.5
2	24.2
3	26.8
4	29.6
5	31.9
6	33.9
7	35.1
8	35.4
9	35.6
10	35.3
11	34.5
12	33.2
13	31.4
14	29.7
15	28.2
16	27.2
17	26.1
18	25.1
19	24.3
20	23.7
21	23.3
22	22.9
23	22.6
24	22.2

(6) At the end of the diurnal period, retare the balance using the reference container and weigh the portable fuel container. Record the difference in mass between the reference container and the test. This value is M_{final}.

(7) Subtract M_{final} from $M_{initial}$ and divide the difference by the nominal capacity of the container (using at least three significant figures) to calculate the g/gallon/day emission rate as follows:

Emission rate = ($M_{initial}$—M_{final})/(nominal capacity)/(one day)

(8) Round your result to the same number of decimal places as the emission standard.

(9) Instead of determining emissions by weighing the container before and after the diurnal temperature cycle, you may place the container in a SHED meeting the specifications of 40 CFR 86.107–96(a)(1) and measure emissions directly. Immediately following the stabilization in paragraph (d)(1) of this section, purge the SHED and follow the temperature profile from paragraph (d)(4) of this section. Start measuring emissions when you start the temperature profile and stop measuring emissions when the temperature profile concludes.

(e) For metal containers, you may demonstrate for certification that your portable fuel containers comply with the evaporative emission standards without performing the pre-soak or container durability cycles (i.e., the pressure cycling, UV exposure, and slosh testing) specified in this section. For other containers, you may demonstrate compliance without performing the durability cycles specified in this section only if we approve it after you have presented data clearly demonstrating that the cycle or cycles do not negatively impact the permeation rate of the materials used in the containers.

Special Compliance Provisions

§ 59.660 Exemption from the standards.

In certain circumstances, we may exempt portable fuel containers from the evaporative emission standards and requirements of § 59.611 and the prohibitions and requirements of § 59.602. You do not need an exemption for any containers that you own but do not sell, offer for sale, introduce or deliver for introduction into U.S. commerce, or import into the United States. Submit your request for an exemption to the Designated Compliance Officer.

(a) Portable fuel containers that are intended for export only and are in fact exported are exempt provided they are clearly labeled as being for export only. Keep records for five years of all portable fuel containers that you manufacture for export. Any introduction into U.S. commerce of such portable fuel containers for any purpose other than export is considered to be a violation of § 59.602 by the manufacturer. You do not need to request this exemption.

(b) You may ask us to exempt portable fuel containers that you will purchase, sell, or distribute for the sole purpose of testing them.

(c) You may ask us to exempt portable fuel containers for the purpose of national security, as long as your request is endorsed by an agency of the federal government responsible for national defense. In your request, explain why you need the exemption.

(d) You may ask us to exempt containers that are designed and marketed solely for rapidly refueling racing applications which are designed to create a leak proof seal with the target tank or are designed to connect with a receiver installed on the target tank. This exemption is generally intended for containers used to rapidly refuel a race car during a pit stop and similar containers. In your request, explain how why these containers are unlikely to be used for nonracing applications. We may limit these exemptions to those applications that are allowed to use gasoline exempted under 40 CFR 80.200(a).

(e) EPA may impose reasonable conditions on any exemption, including a limit on the number of containers that are covered by an exemption.

§ 59.662 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, we may exempt you from the evaporative emission standards and requirements of § 59.611 of this subpart and the prohibitions and requirements of § 59.602 for specified portable fuel containers that do not comply with emission standards if all the following conditions apply:

(1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from meeting requirements from this subpart.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations in this chapter to avoid the impending violation, including the provisions of § 59.663.

(b) To apply for an exemption, you must send the Designated Compliance Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption.

(f) We may approve renewable extensions of up to one year. We may review and revise an extension as reasonable under the circumstances.

(g) Add a legible label, written in English, to a readily visible part of each container exempted under this section. This label must prominently include at least the following items:

(1) Your corporate name and trademark.

(2) The statement ''EXEMPT UNDER 40 CFR 59.662.''.

§ 59.663 What are the provisions for extending compliance deadlines for manufacturers under hardship?

(a) After considering the circumstances, we may extend the compliance deadline for you to meet new emission standards, as long as you meet all the conditions and requirements in this section.

(b) To apply for an extension, you must send the Designated Compliance Officer a written request. In your request, show that all the following conditions and requirements apply:

(1) You have taken all possible business, technical, and economic steps to comply.

(2) Show that the burden of compliance costs prevents you from meeting the requirements of this subpart by the required compliance date.

(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations in this subpart to avoid the impending violation.

(c) In describing the steps you have taken to comply under paragraph (b)(1) of this section, include at least the following information:

(1) Describe your business plan, showing the range of projects active or under consideration.

(2) Describe your current and projected financial standing, with and without the burden of complying in full with the applicable regulations in this subpart by the required compliance date.

(3) Describe your efforts to raise capital to comply with regulations in this subpart.

(4) Identify the engineering and technical steps you have taken or plan

to take to comply with regulations in this subpart.

(5) Identify the level of compliance you can achieve. For example, you may be able to produce containers that meet a somewhat less stringent emission standard than the regulations in this subpart require.

(d) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(e) You must give us other relevant information if we ask for it.

(f) An authorized representative of your company must sign the request and include the statement: ''All the information in this request is true and accurate, to the best of my knowledge.''.

(g) Send your request for this extension at least nine months before the relevant deadline.

(h) We may include reasonable requirements on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit. For example, we may require that you meet a less stringent emission standard.

(i) We may approve renewable extensions of up to one year. We may review and revise an extension as reasonable under the circumstances.

(j) Add a permanent, legible label, written in English, to a readily visible part of each container exempted under this section. This label must prominently include at least the following items:

(1) Your corporate name and trademark.

(2) The statement ''EXEMPT UNDER 40 CFR 59.663.''.

§ 59.664 What are the requirements for importing portable fuel containers into the United States?

As specified in this section, we may require you to post a bond if you import into the United States containers that are subject to the standards of this subpart. See paragraph (f) of this section for the requirements related to importing containers that have been certified by someone else.

(a) Prior to importing containers into the U.S., we may require you to post a bond to cover any potential compliance or enforcement actions under the Clean Air Act if you cannot demonstrate to us that you have assets of an appropriate liquidity readily available in the United States with a value equal to the retail value of the containers that you will import during the calendar year.

(b) We may set the value of the bond up to five dollars per container.

(c) You may meet the bond requirements of this section by obtaining a bond from a third-party surety that is cited in the U.S. Department of Treasury Circular 570, ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies'' (*http://www.fms.treas.gov/c570/c570.html#certified*).

(d) If you forfeit some or all of your bond in an enforcement action, you must post any appropriate bond for continuing importation within 90 days after you forfeit the bond amount.

(e) You will forfeit the proceeds of the bond posted under this section if you need to satisfy any United States administrative final order or judicial judgment against you arising from your conduct in violation of this subpart.

(f) This paragraph (f) applies if you import for resale containers that have been certified by someone else. You and the certificate holder are each responsible for compliance with the requirements of this subpart and the Clean Air Act. No bond is required under this section if either you or the certificate holder meet the conditions in paragraph (a) of this section. Otherwise, the importer must comply with the bond requirements of this section.

Definitions and Other Reference Information

§ 59.680 What definitions apply to this subpart?

The following definitions apply to this subpart. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401–7671q.

Adjustable parameter means any device, system, or element of design that someone can adjust and that, if adjusted, may affect emissions. You may ask us to exclude a parameter if you show us that it will not be adjusted in use in a way that affects emissions.

Certification means relating to the process of obtaining a certificate of conformity for an emission family that complies with the emission standards and requirements in this subpart.

Configuration means a unique combination of hardware (material, geometry, and size) and calibration within an emission family. Units within a single configuration differ only with respect to normal production variability.

Container means portable fuel container.

Designated Compliance Officer means the Manager, Engine Programs Group (6403–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Designated Enforcement Officer means the Director, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated evaporative emissions from.

Emission-data unit means a portable fuel container that is tested for certification. This includes components tested by EPA.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emission deterioration.

Emission family has the meaning given in § 59.625.

Evaporative means relating to fuel emissions that result from permeation of fuel through the portable fuel container materials and from ventilation of the container.

Good engineering judgment means judgments made consistent with generally accepted scientific and engineering principles and all available relevant information. See § 59.603 for the administrative process we use to evaluate good engineering judgment.

Hydrocarbon (HC) means total hydrocarbon (THC).

Manufacture means the physical and engineering process of designing and/or constructing a portable fuel container.

Manufacturer means any person who manufactures a portable fuel container for sale in the United States.

Nominal capacity means the expected volumetric working capacity of a container.

Official emission result means the measured emission rate for an emission-data unit.

Portable fuel container means any reusable container designed and marketed (or otherwise intended) for use by consumers for receiving, transporting, storing, and dispensing gasoline, diesel fuel, or kerosene. For the purpose of this subpart, all utility jugs that are red, yellow or blue in color are deemed to be portable fuel containers, regardless of how they are labeled or marketed.

Production period means the period in which a portable fuel container will be produced under a certificate of conformity. The maximum production period is five years.

Revoke means to terminate the certificate or an exemption for an emission family. If we revoke a certificate or exemption, you must apply for a new certificate or exemption before continuing to introduce the affected

containers into commerce. This does not apply to containers you no longer possess.

Round has the meaning given in 40 CFR 1065.1001.

Suspend means to temporarily discontinue the certificate or an exemption for an emission family. If we suspend a certificate, you may not introduce into commerce portable fuel containers from that emission family unless we reinstate the certificate or approve a new one. If we suspend an exemption, you may not introduce into commerce containers that were previously covered by the exemption unless we reinstate the exemption.

Total hydrocarbon means the combined mass of organic compounds measured by the specified procedure for measuring total hydrocarbon, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Ultimate purchaser means, with respect to any portable fuel container, the first person who in good faith purchases such a container for purposes other than resale.

Ultraviolet light means electromagnetic radiation with a wavelength between 300 and 400 nanometers.

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

U.S.-directed production volume means the amount of portable fuel containers, subject to the requirements of this subpart, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

Useful life means the period during which a portable fuel container is required to comply with all applicable emission standards. See § 59.611.

Void means to invalidate a certificate or an exemption *ab initio* (i.e. retroactively). Portable fuel containers introduced into U.S. commerce under the voided certificate or exemption is a violation of this subpart, whether or not they were introduced before the certificate or exemption was voided.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

§ 59.685 What symbols, acronyms, and abbreviations does this subpart use?

The following symbols, acronyms, and abbreviations apply to this subpart:

CFR Code of Federal Regulations
EPA Environmental Protection Agency
HC hydrocarbon
NIST National Institute of Standards and Technology
THC total hydrocarbon
U.S.C. United States Code

§ 59.695 What provisions apply to confidential information?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method.

(b) We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2. This applies both to any information you send us and to any information we collect from inspections, audits, or other site visits.

(c) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(d) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in 40 CFR 2.204.

§ 59.697 State actions.

The provisions in this subpart do not preclude any State or any political subdivision of a State from:

(a) Adopting and enforcing any emission standard or limitation applicable to anyone subject to the provisions of this part; or

(b) Requiring the regulated entity to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of a facility for manufacturing a consumer product.

§ 59.698 May EPA enter my facilities for inspections?

(a) We may inspect your portable fuel containers, testing, manufacturing processes, storage facilities (including port facilities for imported containers or other relevant facilities), or records, as authorized by the Act, to enforce the provisions of this subpart. Inspectors will have authorizing credentials and will limit inspections to reasonable times—usually, normal operating hours.

(b) If we come to inspect, we may or may not have a warrant or court order.

(1) If we do not have a warrant or court order, you may deny us entry.

(2) If we have a warrant or court order, you must allow us to enter the facility and carry out the activities it describes.

(c) We may seek a warrant or court order authorizing an inspection described in this section, whether or not we first tried to get your permission to inspect.

(d) We may select any facility to do any of the following:

(1) Inspect and monitor any aspect of portable fuel container manufacturing, assembly, storage, or other procedures, and any facilities where you do them.

(2) Inspect and monitor any aspect of test procedures or test-related activities, including test container selection, preparation, durability cycles, and maintenance and verification of your test equipment's calibration.

(3) Inspect and copy records or documents related to assembling, storing, selecting, and testing a container.

(4) Inspect and photograph any part or aspect of containers or components use for assembly.

(e) You must give us reasonable help without charge during an inspection authorized by the Act. For example, you may need to help us arrange an inspection with the facility's managers, including clerical support, copying, and translation. You may also need to show us how the facility operates and answer other questions. If we ask in writing to see a particular employee at the inspection, you must ensure that he or she is present (legal counsel may accompany the employee).

(f) If you have facilities in other countries, we expect you to locate them in places where local law does not keep us from inspecting as described in this section. We will not try to inspect if we learn that local law prohibits it, but we may suspend your certificate if we are not allowed to inspect.

§ 59.699 How do I request a hearing?

(a) You may request a hearing under certain circumstances, as described elsewhere in this subpart. To do this, you must file a written request with the Designated Compliance Officer, including a description of your objection and any supporting data, within 30 days after we make a decision.

(b) For a hearing you request under the provisions of this subpart, we will approve your request if we find that your request raises a substantial factual issue.

(c) If we agree to hold a hearing, we will use the procedures specified in 40 CFR part 1068, subpart G.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 3. The authority citation for part 80 is revised to read as follows:

Authority: 42 U.S.C. 7414, 7521(1), 7545 and 7601(a).

Subpart D—[Amended]

■ 4. Section 80.41 is amended as follows:
■ a. By redesignating paragraph (e) as paragraph (e)(1).
■ b. By adding paragraphs (e)(2) and (e)(3).
■ c. By redesignating paragraph (f) as paragraph (f)(1).
■ d. By adding paragraphs (f)(2) and (f)(3).

§ 80.41 Standards and requirements for compliance.

* * * * *

(e) * * *

(2)(i) The NO_X emissions performance reduction specified in paragraph (e)(1) of this section shall no longer apply beginning January 1, 2007, except as provided in paragraph (e)(2)(ii) of this section.

(ii) For a refiner subject to the small refiner gasoline sulfur standards at § 80.240, the NO_X emissions performance reduction specified in paragraph (e)(1) of this section shall no longer apply beginning January 1, 2008. For a refiner subject to the gasoline sulfur standards at § 80.240 that has received an extension of its small refiner gasoline sulfur standards under § 80.553, the NO_X emissions performance reduction specified in paragraph (e)(1) of this section shall no longer apply beginning January 1, 2011.

(3)(i) Beginning January 1, 2011, or January 1, 2015 for small refiners approved under § 80.1340, the toxic air pollutants emissions performance reduction and benzene content specified in paragraph (e)(1) of this section shall apply to reformulated gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235.

(ii) The toxic air pollutants emissions performance reduction and benzene content specified in paragraph (e)(1) of this section shall not apply to reformulated gasoline produced by a refinery approved under § 80.1334, pursuant to § 80.1334(c).

(f) * * *

(2)(i) The NO_X emissions performance reduction specified in paragraph (f)(1) of this section shall no longer apply beginning January 1, 2007, except as provided in paragraph (f)(2)(ii) of this section.

(ii) For a refiner subject to the small refiner gasoline sulfur standards at § 80.240, the NO_X emissions performance reduction specified in paragraph (f)(1) of this section shall no longer apply beginning January 1, 2008. For a refiner subject to the gasoline sulfur standards at § 80.240 that has received an extension of its small refiner gasoline sulfur standards under § 80.553, the NO_X emissions performance reduction specified in paragraph (f)(1) of this section shall no longer apply beginning January 1, 2011.

(3)(i) Beginning January 1, 2011, or January 1, 2015 for small refiners approved under § 80.1340, the toxic air pollutants emissions performance reduction and benzene content specified in paragraph (f)(1) of this section shall apply only to reformulated gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235.

(ii) The toxic air pollutants emissions performance reduction and benzene content specified in paragraph (f)(1) of this section shall not apply to reformulated gasoline produced by a refinery approved under § 80.1334, pursuant to § 80.1334(c).

* * * * *

■ 5. Section 80.68 is amended as follows:
■ a. By redesignating paragraphs (a) through (c) as paragraphs (b) through (d), respectively.
■ b. By adding new paragraph (a).
■ c. In newly designated paragraph (b)(2) revise the reference ''(c)'' to read ''(d)''.
■ d. In newly designated paragraph (c) introductory text revise the reference ''(a)'' to read ''(b)''.
■ e. In newly designated paragraph (c)(2)(i) revise the reference ''(b)(1)'' to read ''(c)(1)''.
■ f. In newly designated paragraph (c)(2)(ii) revise the reference ''(c)'' to read ''(d)'', revise all references ''(b)(1)'' to read ''(c)(1)'', and revise all references ''(b)(2)(i)'' to read ''(c)(2)(i)''.
■ g. In newly designated paragraph (c)(3) revise the reference ''(c)'' to read ''(d)''.
■ h. In newly designated paragraph (c)(4)(i) revise the reference ''(a)'' to read ''(b)''.
■ i. In newly designated paragraph (d)(1)(ii)(A) revise the reference ''(c)(6)'' to read ''(d)(6)''.
■ j. In newly designated paragraph (d)(1)(ii)(B) revise the reference ''(c)(6)'' to read ''(d)(6)''.
■ k. In newly designated paragraph (d)(2)(i) revise the reference ''(c)(6)'' to read ''(d)(6)''.
■ l. In newly designated paragraph (d)(8)(i)(C) revise the reference ''(c)(8)(i)(B)'' to read ''(d)(8)(i)(B)''.
■ m. In newly designated paragraph (d)(9)(ii)(B) revise the reference ''(c)(9)(i)(B)'' to read ''(d)(9)(i)(B)''.
■ n. In newly designated paragraph (d)(10)(v) revise the reference ''(c)(10)(iv)'' to read ''(d)(10)(iv)''.
■ o. In newly designated paragraph (d)(11)(ii) revise the reference ''(c)(11)(i)'' to read ''(d)(11)(i)''.
■ p. In newly designated paragraph (d)(13)(v)(G) revise the reference ''(c)(8)(i)'' to read ''(d)(8)(i)''.

§ 80.68 Compliance surveys.

(a)(1) Beginning January 1, 2007, the compliance surveys for NO_X emissions performance under this section shall cease to be required.

(2) Beginning January 1, 2011, the compliance surveys for toxics emissions performance under this section shall cease to be required.

* * * * *

Subpart E—[Amended]

■ 6. Section 80.101 is amended by adding paragraphs (c)(3) and (c)(4) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(c) * * *

(3)(i) The NO_X emissions standard specified in paragraph (b)(3)(i) of this section shall no longer apply beginning January 1, 2007, except as provided in paragraph (c)(3)(ii) of this section.

(ii) For a refiner subject to the small refiner gasoline sulfur standards at § 80.240, the NO_X emissions standard specified in paragraph (b)(3)(i) of this section shall no longer apply beginning January 1, 2008. For a refiner subject to the gasoline sulfur standards at § 80.240 that has received an extension of its small refiner gasoline sulfur standards under § 80.553, the NO_X emissions standard specified in paragraph (b)(3)(i) of this section shall no longer apply beginning January 1, 2011.

(4)(i) Beginning January 1, 2011, or January 1, 2015 for small refiners approved under § 80.1340, the exhaust toxics emissions standard specified in paragraph (b)(3)(i) of this section shall apply only to conventional gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235.

(ii) The exhaust toxic emissions standard specified in paragraph (b)(3)(i) of this section shall not apply to conventional gasoline produced by a refinery approved under § 80.1334, pursuant to § 80.1334(c).

* * * * *

Subpart F—[Amended]

■ 7. Section 80.128 is amended by revising paragraph (a) to read as follows:

§ 80.128 Alternative agreed upon procedures for refiners and importers.

* * * * *

(a) Read the refiner's or importer's reports filed with EPA for the previous year as required by §§ 80.75, 80.83(g), 80.105, 80.990 and 80.1354.

* * * * *

Subpart J—[Amended]

■ 8. Section 80.815 is amended by redesignating paragraph (d)(1) as paragraph (d)(1)(i) and adding paragraph (d)(1)(ii) to read as follows:

§ 80.815 What are the gasoline toxics performance requirements for refiners and importers?

* * * * *

(d) * * *

(1) * * *

(ii)(A) Beginning January 1, 2011, or January 1, 2015 for small refiners approved under § 80.1340, the gasoline toxics performance requirements of this subpart shall apply only to gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235.

(B) The gasoline toxics performance requirements of this subpart shall not apply to gasoline produced by a refinery approved under § 80.1334, pursuant to § 80.1334(c).

* * * * *

■ 9. Section 80.1035 is amended by adding paragraph (h) to read as follows:

§ 80.1035 What are the attest engagement requirements for gasoline toxics compliance applicable to refiners and importers?

* * * * *

(h) Beginning January 1, 2011, or January 1, 2015 for small refiners approved per § 80.1340, the requirements of this section shall apply only to gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235.

■ 10. Subpart L is added to read as follows:

Subpart L—Gasoline Benzene

Sec.

80.1200–80.1219 [Reserved]

General Information

80.1220 What are the implementation dates for the gasoline benzene program?
80.1225 Who must register with EPA under the gasoline benzene program?

Gasoline Benzene Requirements

80.1230 What are the gasoline benzene requirements for refiners and importers?
80.1235 What gasoline is subject to the benzene requirements of this subpart?
80.1236 What requirements apply to California gasoline?
80.1238 How is a refinery's or importer's average benzene concentration determined?
80.1240 How is a refinery's or importer's compliance with the gasoline benzene requirements of this subpart determined?

Averaging, Banking and Trading (ABT) Program

80.1270 Who may generate benzene credits under the ABT program?
80.1275 How are early benzene credits generated?
80.1280 How are refinery benzene baselines calculated?
80.1285 How does a refiner apply for a benzene baseline?
80.1290 How are standard benzene credits generated?
80.1295 How are gasoline benzene credits used?

Hardship Provisions

80.1334 What are the requirements for early compliance with the gasoline benzene program?
80.1335 Can a refiner seek relief from the requirements of this subpart?
80.1336 What if a refiner or importer cannot produce gasoline conforming to the requirements of this subpart?

Small Refiner Provisions

80.1338 What criteria must be met to qualify as a small refiner for the gasoline benzene requirements of this subpart?
80.1339 Who is not eligible for the provisions for small refiners?
80.1340 How does a refiner obtain approval as a small refiner?
80.1342 What compliance options are available to small refiners under this subpart?
80.1343 What hardship relief provisions are available only to small refiners?
80.1344 What provisions are available to a non-small refiner that acquires one or more of a small refiner's refineries?

Sampling, Testing and Retention Requirements

80.1347 What are the sampling and testing requirements for refiners and importers?
80.1348 What gasoline sample retention requirements apply to refiners and importers?

Recordkeeping and Reporting Requirements

80.1350 What records must be kept?
80.1352 What are the pre-compliance reporting requirements for the gasoline benzene program?
80.1354 What are the reporting requirements for the gasoline benzene program?

Attest Engagements

80.1356 What are the attest engagement requirements for gasoline benzene compliance?

Violations and Penalties

80.1358 What acts are prohibited under the gasoline benzene program?
80.1359 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
80.1360 Who is liable for violations under the gasoline benzene program?
80.1361 What penalties apply under the gasoline benzene program?

Foreign Refiners

80.1363 What are the additional requirements under this subpart for gasoline produced at foreign refineries?

Subpart L—Gasoline Benzene

§§ 80.1200–80.1219 [Reserved]

General Information

§ 80.1220 What are the implementation dates for the gasoline benzene program?

(a) *Benzene standard.* (1) For the annual averaging period beginning January 1, 2011, and for each annual averaging period thereafter, gasoline produced at each refinery of a refiner or imported by an importer, must meet the benzene standard specified in § 80.1230(a), except as otherwise specifically provided for in this subpart.

(2) For the period July 1, 2012 through December 31, 2013, and for each annual averaging period thereafter, gasoline produced at each refinery of a refiner or imported by an importer, must meet the maximum average benzene standard specified in § 80.1230(b), except as otherwise specifically provided for in this subpart.

(3) Small refiners approved under § 80.1340 may defer meeting the benzene standard specified in § 80.1230(a) until the annual averaging period beginning January 1, 2015 and may defer meeting the benzene standard specified in § 80.1230(b) until the averaging period beginning July 1, 2016, as described in § 80.1342.

(b) *Early credit generation.* (1) Effective with the averaging period beginning June 1, 2007, a refiner for each of its refineries that has an approved benzene baseline per § 80.1285 may generate early benzene credits in accordance with the provisions of § 80.1275.

(2) Early benzene credits may be generated through the end of the averaging period ending December 31, 2010, or through the end of the averaging period ending December 31, 2014 for small refiners approved under § 80.1340.

(c) *Standard credit generation.* (1) Effective with the annual averaging period beginning January 1, 2011, a refiner for any of its refineries or an importer for its imported gasoline, may generate standard benzene credits in accordance with the provisions of § 80.1290.

(2) Effective with the annual averaging period beginning January 1,

2015, a small refiner approved under § 80.1340, for any of its refineries, may generate standard benzene credits in accordance with the provisions of § 80.1290.

§ 80.1225 Who must register with EPA under the gasoline benzene program?

(a) Refiners and importers that are registered by EPA under § 80.76, § 80.103, § 80.190, or § 80.810 are deemed to be registered for purposes of this subpart.

(b) Refiners and importers subject to the requirements in § 80.1230 that are not registered by EPA under §§ 80.76, 80.103, 80.190 or 80.810 shall provide to EPA the information required in § 80.76 by September 30, 2010, or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

(c) Refiners that plan to generate early credits under § 80.1275 and that are not registered by EPA under §§ 80.76, 80.103, 80.190, or 80.810 must provide to EPA the information required in § 80.76 not later than 60 days prior to the end of the first year of credit generation.

Gasoline Benzene Requirements

§ 80.1230 What are the gasoline benzene requirements for refiners and importers?

(a) *Annual average benzene standard.* (1) Except as specified in paragraph (c) of this section, a refinery's or importer's average gasoline benzene concentration in any annual averaging period shall not exceed 0.62 volume percent.

(2) Compliance with the standard specified in paragraph (a)(1) of this section, or creation of a deficit in accordance with paragraph (c) of this section, is determined in accordance with § 80.1240(a).

(3) The annual averaging period for achieving compliance with the requirement of paragraph (a)(1) of this section is January 1 through December 31 of each calendar year beginning January 1, 2011, or beginning January 1, 2015 for small refiners approved under § 80.1340.

(4) Refinery grouping per § 80.101(h) does not apply to compliance with the gasoline benzene requirement specified in this paragraph (a).

(5) Gasoline produced at foreign refineries that is subject to the gasoline benzene requirements per § 80.1235 shall be included in the importer's compliance determination beginning January 1, 2011, or beginning January 1, 2015 for small foreign refiners approved under § 80.1340.

(b) *Maximum average benzene standard.* (1) A refinery's or importer's maximum average gasoline benzene concentration in any averaging period shall not exceed 1.30 volume percent.

(2) Compliance with the standard specified in paragraph (b)(1) of this section is determined in accordance with § 80.1240(b).

(3) The averaging period for achieving compliance with the requirement of paragraph (b)(1) of this section is July 1, 2012 through December 31, 2013 and each calendar year thereafter, or July 1, 2016 through December 31, 2017, and each calendar year thereafter for small refiners approved under § 80.1340.

(c) *Deficit carry-forward.* (1) A refinery or importer creates a benzene deficit for a given averaging period when its compliance benzene value, per § 80.1240(a), is greater than the benzene standard specified in paragraph (a) of this section.

(2) A refinery or importer may carry the benzene deficit forward to the calendar year following the year the benzene deficit is created but only if no deficit had been previously carried forward to the year the deficit is created. If a refinery or importer carries forward a deficit, the following provisions apply in the second year:

(i) The refinery or importer must achieve compliance with the benzene standard specified in paragraph (a) of this section.

(ii) The refinery or importer must achieve further reductions in its gasoline benzene concentrations sufficient to offset the benzene deficit of the previous year.

(iii) Benzene credits may be used, per § 80.1295, to meet the requirements of paragraphs (c)(2)(i) and (ii) of this section.

(iv) A refinery that has banked credits per § 80.1295(a)(3) must use all of its banked credits to achieve compliance with the benzene standard specified in paragraph (a) of this section before creating a deficit.

(3) EPA may allow an extended period of deficit carry-forward if it grants hardship relief under §§ 80.1335 or 80.1336 from the annual average standard specified in paragraph (a) of this section.

§ 80.1235 What gasoline is subject to the benzene requirements of this subpart?

(a) For the purposes of determining compliance with the requirements of § 80.1230, all of the following products that are produced or imported for use in the United States during a refinery's or importer's applicable compliance period are collectively ''gasoline'' and are to be included in a refinery's or importer's compliance determination under § 80.1240, except as provided in paragraph (b) of this section:

(1) Reformulated gasoline.

(2) Conventional gasoline.

(3) Reformulated gasoline blendstock for oxygenate blending (''RBOB'').

(4) Conventional gasoline blendstock that becomes finished conventional gasoline upon the addition of oxygenate (''CBOB'').

(5) Blendstock that has been combined with finished gasoline, other blendstock, transmix, or gasoline produced from transmix to produce gasoline.

(6) Blendstock that has been combined with previously certified gasoline (''PCG'') to produce gasoline. Such blendstock must be sampled in accordance with the provisions at § 80.1347(a)(5).

(b) The following products are not to be included in a refinery's or importer's compliance determination under § 80.1240:

(1) Blendstock that has not been combined with other blendstock or finished gasoline to produce gasoline.

(2) Oxygenate added to finished gasoline, RBOB, or CBOB downstream of the refinery that produced the gasoline or import facility where the gasoline was imported.

(3) Butane added to finished gasoline, RBOB, CBOB downstream of the refinery that produced the gasoline or import facility where the gasoline was imported.

(4) Gasoline produced by separating gasoline from transmix.

(5) PCG.

(6) Gasoline produced or imported for use in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(7) Gasoline exported for use outside the United States.

(8) Gasoline produced by a small refiner approved under § 80.1340 prior to January 1, 2015, or prior to the small refiner's first compliance period pursuant to § 80.1342(a), whichever is earlier.

(9) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that —

(i) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned events;

(ii) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(iii) The gasoline is not made available for use as motor vehicle

gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(10) California gasoline, as defined in § 80.1236.

§ 80.1236 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart, ''California gasoline'' means any gasoline designated by the refiner or importer as for use only in California and that is actually used in California.

(b) *California gasoline exemption.* California gasoline that complies with all the requirements of this section is exempt from the requirements in § 80.1230.

(c) *Requirements for California gasoline.* The following requirements apply to California gasoline:

(1) Each batch of California gasoline must be designated as such by its refiner or importer.

(2) Designated California gasoline must be kept segregated from gasoline that is not California gasoline at all points in the distribution system.

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere in the United States.

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees must meet the product transfer document requirements under § 80.81(g).

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California must comply with the requirements specified in § 80.1230, regardless of any designation as California gasoline.

§ 80.1238 How is a refinery's or importer's average benzene concentration determined?

(a) The average benzene concentration of gasoline produced at a refinery or imported by an importer for an applicable averaging period is calculated according to the following equation:

$$B_{avg} = \frac{\sum_{i=1}^{n} (V_i \times B_i)}{\sum_{i=1}^{n} V_i}$$

Where:

B_{avg} = Average benzene concentration for the applicable averaging period (volume percent benzene).

i = Individual batch of gasoline produced at the refinery or imported during the applicable averaging period.

n = Total number of batches of gasoline produced at the refinery or imported during the applicable annual averaging period.

V_i = Volume of gasoline in batch i (gallons).

B_i = Benzene concentration of batch i (volume percent benzene), per § 80.46(e).

(b) A refiner or importer may include the volume of oxygenate added downstream from the refinery or import facility in the calculation specified in paragraph (a) of this section, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii) and the calculation methodologies of § 80.101(g)(3).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(c) Refiners and importers must exclude from the calculation specified in paragraph (a) of this section all of the following:

(1) Gasoline that was not produced at the refinery or imported by the importer.

(2) Except as provided in paragraph (b) of this section, any blendstocks or unfinished gasoline transferred to others.

(3) Gasoline that has been included in the compliance calculations for another refinery or importer.

(4) Gasoline exempted from the standards under § 80.1235(b).

§ 80.1240 How is a refinery's or importer's compliance with the gasoline benzene requirements of this subpart determined?

(a) A refinery's or importer's compliance with the annual average benzene standard at § 80.1230(a) is determined as follows:

(1)(i) The compliance benzene value for a refinery or importer is:

$$CBV_y = V_y \times \left(\frac{B_{avg,y}}{100}\right) + D_{y-1} - BC - OC$$

Where:

CBV_y = Compliance benzene value (gallons benzene) for year y.

V_y = Gasoline volume produced or imported in year y (gallons).

$B_{avg,y}$ = Average benzene concentration in year y (volume percent benzene), calculated in accordance with § 80.1238.

D_{y-1} = Benzene deficit from the previous reporting period, per § 80.1230(c) (gallons benzene).

BC = Banked benzene credits used to show compliance (gallons benzene).

OC = Benzene credits obtained by the refinery or importer used to show compliance (gallons benzene).

(ii) Benzene credits used in the calculation specified in paragraph (a)(1)(i) of this section must be used in accordance with the requirements at § 80.1295.

(2)(i) If $CBV_y \leq V_y \times (0.62)/100$, then compliance with the benzene requirement at § 80.1230(a) is achieved for calendar year y.

(ii) If $CBV_y > V_y \times (0.62)/100$, then compliance with the benzene requirement at § 80.1230(a) is not achieved for calendar year y, and a deficit is created per § 80.1230(c). The deficit value to be included in the following year's compliance calculation per paragraph (a) of this section is calculated as follows:

$$D_y = CBV_y - V_y \times \left(\frac{0.62}{100}\right)$$

Where:

D_y = Benzene deficit created in compliance period y (gallons benzene).

(b) Compliance with the maximum average benzene standard at § 80.1230(b) is achieved by a refinery or importer if the value of B_{avg} calculated in accordance with § 80.1238(a) is no greater 1.30 volume percent for an applicable averaging period per § 80.1230(b)(3).

Averaging, Banking and Trading (ABT) Program

§ 80.1270 Who may generate benzene credits under the ABT program?

(a) *Early benzene credits.* Early benzene credits are credits generated prior to 2011, or prior to 2015 if generated by a small refiner approved under § 80.1340.

(1)(i) Early credits may be generated under § 80.1275 by a refiner for any refinery it owns that has an approved benzene baseline under § 80.1285, including a refinery of a foreign refiner that is subject to the provisions of § 80.1363.

(ii) The refinery specified in paragraph (a)(1)(i) of this section must process crude oil and/or intermediate feedstocks through refinery processing units.

(iii) Early benzene credits shall be calculated separately for each refinery of a refiner.

(iv) A refinery that is approved for early compliance under § 80.1334 may not generate early credits for the gasoline subject to the early compliance provisions.

(2)(i) A refinery that was shut down during the entire 2004–2005 benzene baseline period is not eligible to generate early credits under § 80.1275.

(ii) A refinery not in full production, excluding normal refinery downtime, or not showing consistent or regular gasoline production activity during 2004–2005 may be eligible to generate early benzene credits under § 80.1275 upon petition to and approval by EPA, pursuant to § 80.1285(d).

(3) Importers may not generate early credits.

(b) *Standard benzene credits.* Standard benzene credits are credits generated after 2010, or after 2014 if generated by a small refiner approved under § 80.1340.

(1) Unless otherwise provided for elsewhere in this subpart, standard credits may be generated under § 80.1290 as follows:

(i) A refiner may generate standard credits separately for each of its refineries.

(ii) An importer may generate standard credits for all of its imported gasoline.

(2) Oxygenate blenders, butane blenders, and transmix producers may not generate standard credits.

(3) Foreign refiners may not generate standard credits.

§ 80.1275 How are early benzene credits generated?

(a) For each averaging period per paragraph (b) of this section in which a refinery plans to generate early credits, its average gasoline benzene concentration calculated according to § 80.1238(a) must be at least 10% lower than its benzene baseline concentration approved under § 80.1280.

(b) The early credit averaging periods are as follows:

(1) For 2007, the seven-month period from June 1, 2007 through December 31, 2007.

(2) For 2008, 2009 and 2010, the 12-month calendar year.

(3) For small refiners approved under § 80.1340, the 12-month calendar years 2011, 2012, 2013, and 2014 in addition to the periods specified in paragraphs (b)(1) and (b)(2) of this section.

(c) The number of early benzene credits generated shall be calculated for each applicable averaging period as follows:

$$EC_y = \left[\frac{B_{Base} - B_{avg,y}}{100}\right] \times V_{e,y}$$

Where:

EC_y = Early credits generated in averaging period y (gallons benzene).

B_{Base} = Baseline benzene concentration of the refinery (volume percent benzene), per § 80.1280(a).

$B_{avg,y}$ = Average benzene concentration of gasoline produced at the refinery during averaging period y (volume percent benzene), per § 80.1238.

$V_{e,y}$ = Total volume of gasoline produced at the refinery during averaging period y (gallons).

(d) A refinery that plans to generate early credits must also show that it has met all of the following requirements prior to or during the first early credit averaging period, per paragraph (b) of this section, in which it generates early credits:

(1) Since 2005, has made operational changes and/or improvements in benzene control technology to reduce gasoline benzene levels, including at least one of the following:

(i) Treating the heavy straight run naphtha entering the reformer using light naphtha splitting and/or isomerization.

(ii) Treating the reformate stream exiting the reformer using benzene extraction or benzene saturation.

(iii) Directing additional refinery streams to the reformer for treatment described paragraphs (d)(1)(i) and (ii) of this section.

(iv) Directing reformate streams to other refineries with treatment capabilities described in paragraph (d)(1)(ii) of this section.

(2) Has not included gasoline blendstock streams transferred to, from, or between refineries, except as noted in paragraph (d)(1)(iv) of this section.

(e) Early benzene credits calculated in accordance with paragraph (c) of this section shall be expressed to the nearest gallon. Fractional values shall be rounded down if less than 0.50, and rounded up if greater than or equal to 0.50.

§ 80.1280 How are refinery benzene baselines calculated?

(a) A refinery's benzene baseline is based on the refinery's 2004–2005 average gasoline benzene concentration, calculated according to the following equation:

$$B_{Base} = \frac{\sum_{i=1}^{n} (V_i \times B_i)}{\sum_{i=1}^{n} V_i}$$

Where:

B_{Base} = Benzene baseline concentration (volume percent benzene).

$_i$ = Individual batch of gasoline produced at the refinery from January 1, 2004 through December 31, 2005.

n = Total number of batches of gasoline produced at the refinery from January 1, 2004 through December 31, 2005 (or the total number of batches of gasoline pursuant to § 80.1285(d)).

V_i = Volume of gasoline in batch i (gallons).

B_i = Benzene content of batch i (volume percent benzene).

(b) A refiner for a refinery that included oxygenate blended downstream of the refinery in compliance calculations for RFG or conventional gasoline for calendar years 2004 or 2005 under § 80.69 or § 80.101(d)(4) must include the volume and benzene concentration of this oxygenate in the benzene baseline calculation for that refinery under paragraph (a) of this section.

§ 80.1285 How does a refiner apply for a benzene baseline?

(a) A benzene baseline application must be submitted for each refinery that plans to generate early credits under § 80.1275. The application must include the information specified in paragraph (c) of this section and must be submitted to EPA at least 60 days before the first averaging period in which the refinery plans to generate early credits.

(b) For U.S. Postal delivery, the benzene baseline application shall be sent to: Attn: MSAT2 Benzene, Mail Stop 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial delivery: MSAT2 Benzene, 202–343–9038, U.S. Environmental Protection Agency, 1310 L Street, NW., Washington, DC 20005.

(c) The benzene baseline application must include the following information:

(1) A listing of the names and addresses of all refineries owned by the company.

(2) The benzene baseline for gasoline produced in 2004–2005 at the refinery, calculated in accordance with § 80.1280.

(3) Copies of the annual reports required under § 80.75 for RFG and § 80.105 for conventional gasoline.

(4) A letter signed by the president, chief operating officer, or chief executive officer, of the company, or his/her designee, stating that the information contained in the benzene baseline determination is true to the best of his/her knowledge.

(5) Name, address, phone number, facsimile number and e-mail address of a corporate contact person.

(d) For a refinery that may be eligible to generate early credits under § 80.1270(a)(2)(ii), a refiner may submit to EPA a benzene baseline application per the requirements of this section. The refiner must also submit information regarding the nature and cause of the refinery's production activity that resulted in irregular or less than full production, how it affected the baseline benzene concentration, and whether and how an alternative calculation to the calculation specified in § 80.1280 produces a more representative benzene baseline value. Upon consideration of the submitted information, EPA may approve a benzene baseline for such a refinery.

(e) EPA will notify the refiner of approval of the refinery's benzene baseline or any deficiencies in the

application. However, except for applications submitted in accordance with paragraph (d) of this section, the refinery's benzene baseline application may be considered approved 60 days after EPA's receipt of the baseline application, subject to paragraph (f) of this section.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, EPA will notify the refiner of the corrected baseline.

§ 80.1290 How are standard benzene credits generated?

(a) The standard credit averaging periods are the calendar years beginning January 1, 2011, or beginning January 1, 2015 for small refiners approved under § 80.1340.

(b) [Reserved]

(c)(1) The number of standard benzene credits generated shall be calculated annually for each applicable averaging period according to the following equation:

$$SC_y = \left[\frac{0.62 - B_{avg,y}}{100}\right] \times V_y$$

Where:

SC_y = Standard credits generated in year y (gallons benzene).

$B_{avg,y}$ = Annual average benzene concentration for year y (volume percent benzene), per § 80.1238.

V_y = Total volume of gasoline produced or imported in year y (gallons).

(2) No credits shall be generated unless the value SC_y is positive.

(d) Standard benzene credits calculated in accordance with paragraph (c) of this section shall be expressed to the nearest gallon. Fractional values shall be rounded down if less than 0.50, and rounded up if greater than or equal to 0.50.

§ 80.1295 How are gasoline benzene credits used?

(a) *Credit use.* (1) Gasoline benzene credits may be used to comply with the gasoline benzene standard of § 80.1230(a) provided that—

(i) The gasoline benzene credits were generated according to §§ 80.1275 or 80.1290.

(ii) The recordkeeping requirements for gasoline benzene credits under § 80.1350 are met.

(iii) The gasoline benzene credits are correctly reported according to §§ 80.1352 and 80.1354.

(iv) The conditions of this section are met.

(2) Gasoline benzene credits generated under §§ 80.1275 and 80.1290 may be used interchangeably in all credit use scenarios, subject to the credit life provisions specified in paragraph (c) of this section.

(3) Gasoline benzene credits may be used by a refiner or importer to comply with the gasoline benzene content standard of § 80.1230(a), may be banked by a refiner or importer for future use or transfer, may be transferred to another refinery or importer within a company (intracompany trading), or may be transferred to another refiner or importer outside of the company.

(b) *Credit transfers.* (1) Gasoline benzene credits obtained from another refinery or importer may be used to comply with the gasoline benzene content requirement of § 80.1230(a) provided the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart, and the transferred credits have not expired, per paragraph (c) of this section.

(ii) Any credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.

(iii) The credit has not been transferred more than twice. The first transfer by the refinery or importer that generated the credit may only be made to a refiner or importer that intends to use the credit; if the transferee cannot use the credit, it may make the second, and final, transfer only to a refiner or importer that intends to use or to terminate the credit. In no case may a credit be transferred more than twice before being used or terminated.

(iv) The credit transferor has applied any gasoline benzene credits necessary to meet its own annual compliance requirements (including any deficit carried forward, pursuant to § 80.1230(c), if applicable) before transferring any gasoline benzene credits to any other refiner or importer.

(v) The credit transferor does not create a deficit as a result of a credit transfer.

(vi) The transferor supplies records to the transferee indicating the year the gasoline benzene credits were generated, the identity of the refiner (and refinery) or importer that generated the gasoline benzene credits, and the identity of the transferring entity if it is not the same entity that generated the gasoline benzene credits.

(2) In the case of gasoline benzene credits that have been calculated or created improperly, or that EPA has otherwise determined to be invalid, the following provisions apply:

(i) Invalid gasoline benzene credits cannot be used to achieve compliance with the gasoline benzene content requirement of § 80.1230(a), regardless of the transferee's good-faith belief that the gasoline benzene credits were valid.

(ii) The refiner or importer that used the gasoline benzene credits and any transferor of the gasoline benzene credits must adjust their credit records, reports, and compliance calculations as necessary to reflect the proper gasoline benzene credits.

(iii) Any properly created gasoline benzene credits existing in the transferor's credit balance following the corrections and adjustments specified in paragraph (b)(2)(ii) of this section must first be applied to correct the invalid transfers to the transferee, before the transferor uses, trades or banks the gasoline benzene credits.

(c) *Credit life.* (1)(i) Early credits, per § 80.1275, may be used for compliance purposes under § 80.1240(a) for any of the following annual averaging periods: 2011, 2102, 2013.

(ii) Early credits, per § 80.1275, may be used for compliance purposes under § 80.1240(a) by small refiners approved under § 80.1340 for any of the following averaging periods: 2015, 2016, 2017.

(2)(i) Standard credits, per § 80.1290, may be used for compliance purposes under § 80.1240(a) within five years from the year they were generated, except as noted under paragraph (c)(2)(ii) of this section. Example: Standard credits generated during 2011 may be used to achieve compliance under § 80.1240(a) for any calendar year averaging period prior to the 2017 averaging period.

(ii) Standard credits, per § 80.1290, may be used for compliance purposes under § 80.1240(a) within seven years from the year they were generated if traded to and ultimately used by a small refiner approved under § 80.1340. Example: Standard credits generated in 2011 may be used to achieve compliance under § 80.1240(a) for any calendar year averaging period prior to the 2019 averaging period if traded to and ultimately used by a small refiner approved under § 80.1340.

(d) *Deficit provision limitation.* A refiner or importer possessing gasoline benzene credits must use all gasoline benzene credits in its possession before applying the benzene deficit provisions of § 80.1230(c).

Hardship Provisions

§ 80.1334 What are the requirements for early compliance with the gasoline benzene program?

(a)(1) A refinery may comply with the benzene requirements at § 80.1230 for its RFG and/or conventional gasoline (CG) prior to the 2011 compliance

period if it applies for this early compliance option as specified in paragraph (b) of this section, and is approved by EPA.

(2) Only refineries that produce gasoline by processing crude and/or intermediate feedstocks through refinery processing units may apply for this early compliance option.

(b) Refiners must submit an application in order to be considered for early compliance as described in this section.

(1) Applications for early compliance as described in this section must be submitted to EPA by December 31, 2007.

(2) Applications must be sent to: U.S. EPA, NVFEL–ASD, Attn: MSAT2 Early Compliance, 2000 Traverwood Dr., Ann Arbor, MI 48105.

(3) Application must be made separately for a refinery's RFG and CG pools.

(4) The early compliance application must show that all the following criteria are met:

(i) For an RFG early compliance application—

(A) The refinery's RFG baseline value under § 80.915 is greater than or equal to 30 percent reduction.

(B) The refinery's 2003 RFG annual average benzene concentration was less than or equal to 0.62 vol%.

(C) The refinery's 2003 RFG annual average sulfur concentration was less than or equal to 140 ppm.

(D) The refinery's 2003 RFG annual average MTBE concentration was greater than or equal to 6 vol%.

(ii) For a CG early compliance application—

(A) The refinery's CG baseline under § 80.915 is less than or equal to 80 mg/mile.

(B) The refinery's 2003 CG annual average benzene concentration was less than or equal to 0.62 vol%.

(C) The refinery's 2003 CG annual average sulfur concentration was less than or equal to 140 ppm.

(D) The refinery's 2003 CG annual average MTBE concentration was greater than or equal to 6 vol%.

(5) In addition, the application must demonstrate that the refinery has extremely limited ability to adjust its operations in order to comply with its applicable RFG or CG toxics performance requirements under § 80.815.

(6) The refiner must provide additional information as requested by EPA.

(c)(1) If approved for early compliance with the provisions of this subpart, the refinery may comply with the provisions of § 80.1230 as follows:

(i) For the compliance period beginning January 1, 2007, and each annual compliance period through 2010; or

(ii) For the compliance period beginning January 1, 2008, and each annual compliance period through 2010.

(2) The refinery must notify EPA under which compliance period specified in paragraph (c)(1) of this section it will begin compliance.

(3) Beginning with the compliance period chosen pursuant to paragraph (c)(2) of this section—

(i) For early compliance approved for a refinery's RFG pool, the toxics air pollutants emissions performance requirements specified in §§ 80.41(e)(1) and (f)(1) and 80.815 shall not apply to the reformulated gasoline produced by the refinery.

(ii) For early compliance approved for a refinery's CG pool, the annual average exhaust toxics emissions requirements specified in §§ 80.101(c)(2) and 80.815 shall not apply to conventional gasoline produced by the refinery.

(4) Refineries approved for early compliance under this section may not generate early credits under § 80.1275.

(d) If EPA finds that a refiner provided false or inaccurate information in its application for early compliance, the early compliance approval will be void *ab initio.*

§ 80.1335 Can a refiner seek relief from the requirements of this subpart?

(a) A refiner may apply for relief from the requirements specified in § 80.1230(a) or (b) for a refinery, if it can show that—

(1) Unusual circumstances exist that impose extreme hardship and significantly affect the ability to comply with the gasoline benzene standards at § 80.1230(a) or (b) by the applicable date(s); and

(2) It has made best efforts to comply with the requirements of this subpart.

(b) A refiner must apply for and be approved for relief under this section.

(1) An application must include the following information:

(i) A plan demonstrating how the refiner will comply with the requirements of § 80.1230(a) or (b), as applicable, as expeditiously as possible. The plan shall include a showing that contracts are or will be in place for engineering and construction of benzene reduction technology, a plan for applying for and obtaining any permits necessary for construction, a description of plans to obtain necessary capital, and a detailed estimate of when the requirements of § 80.1230(a) or (b), as applicable, will be met.

(ii) A detailed description of the refinery configuration and operations including, at minimum, the following information:

(A) The refinery's total reformer unit throughput capacity;

(B) The refinery's total crude capacity;

(C) Total crude capacity of any other refineries owned by the same entity;

(D) Total volume of gasoline production at the refinery;

(E) Total volume of other refinery products;

(F) Geographic location(s) where the refinery's gasoline will be sold;

(G) Detailed descriptions of efforts to obtain capital for refinery investments;

(H) Bond rating of entity that owns the refinery; and

(I) Estimated capital investment needed to comply with the requirements of this subpart.

(iii) For a hardship related to complying with the requirement at § 80.1230(a), detailed descriptions of efforts to obtain credits, including the prices of credits available, but deemed uneconomical by the refiner.

(2) Applicants must also provide any other relevant information requested by EPA.

(3) An application for relief from the requirements specified in § 80.1230(b) must be submitted to EPA by January 1, 2008, or by January 1, 2013 for small refiners approved under § 80.1340.

(c)(1) Approval of a hardship application under this section for relief from the annual average benzene standard at § 80.1230(a) shall be in the form of an extended period of deficit carry-forward, per § 80.1230(c), for such period of time as EPA determines is appropriate.

(2) Approval of a hardship application under this section for relief from the maximum average benzene standard at § 80.1230(b) shall be in the form of a waiver of the standard for such period of time as EPA determines is appropriate.

(3) EPA may deny any application for appropriate reasons, including unacceptable environmental impact.

(d) EPA may impose any other reasonable conditions on relief provided under this section, including rescinding, or reducing the length of, the extended deficit carry-forward period if conditions or situations change between approval of the hardship application and the end of the approved relief period.

§ 80.1336 What if a refiner or importer cannot produce gasoline conforming to the requirements of this subpart?

In extreme, unusual, and unforeseen circumstances (for example, a natural

disaster or a refinery fire) that are clearly outside the control of the refiner or importer and that could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refinery or importer to exceed the allowable average benzene levels specified in § 80.1230(a) or (b), as applicable, if—

(a) It is in the public interest to do so;

(b) The refiner or importer exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;

(c) The refiner or importer can show how the requirements at § 80.1230(a) or (b), as applicable, will be achieved as expeditiously as possible;

(d) The refiner or importer agrees to make up any air quality detriment associated with the nonconformity, where practicable; and

(e) The refiner or importer pays to the U.S. Treasury an amount equal to the economic benefit of the nonconformity minus the amount expended making up the air quality detriment pursuant to paragraph (d) of this section.

Small Refiner Provisions

§ 80.1338 What criteria must be met to qualify as a small refiner for the gasoline benzene requirements of this subpart?

(a) A small refiner is any person that demonstrates that it—

(1) Produced gasoline at a refinery by processing crude oil through refinery processing units from January 1, 2005 through December 31, 2005.

(2) Employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 2005 through December 31, 2005.

(3) Had a corporate average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2005.

(4) Following the submission of a small refiner application, pursuant to § 80.1340, has been approved as a small refiner for this subpart.

(b) For the purpose of determining the number of employees and the crude oil capacity under paragraph (a) of this section, the following determinations shall be observed:

(1) The refiner shall include the employees and crude oil capacity of any subsidiary companies, any parent company, subsidiaries of the parent company in which the parent has a controlling interest, and any joint venture partners.

(2) For any refiner owned by a governmental entity, the number of employees and total crude oil capacity as specified in paragraph (a) of this section shall include all employees and crude oil production of the government to which the governmental entity is a part.

(3) Any refiner owned and controlled by an Alaska Regional or Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601) is not considered an affiliate of such entity, or with other concerns owned by such entity, solely because of their common ownership.

(c) Notwithstanding the provisions of paragraph (a) of this section, a refiner that reactivates a refinery that it had previously operated, and that was shut down or non-operational for the entire period between January 1, 2005 and December 31, 2005, may apply for small refiner status in accordance with the provisions of § 80.1340.

§ 80.1339 Who is not eligible for the provisions for small refiners?

The following are not eligible for the hardship provisions for small refiners:

(a) A refiner with one or more refineries built after December 31, 2005.

(b) A refiner that exceeds the employee or crude oil capacity criteria under § 80.1338 but that meets these criteria after December 31, 2005, regardless of whether the reduction in employees or crude capacity is due to operational changes at the refinery or a company sale or reorganization.

(c) Importers.

(d) A refiner that produce gasoline other than by processing crude oil through refinery processing units.

(e)(1) A small refiner approved under § 80.1340 that subsequently ceases production of gasoline from processing crude oil through refinery processing units, employs more than 1,500 people, or exceeds the 155,000 bpcd crude oil capacity limit after December 31, 2005 as a result of merger with or acquisition of or by another entity, is disqualified as a small refiner, except that this shall not apply in the case of a merger between two previously approved small refiners. If disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(2) Except as provided under paragraph (e)(3) of this section, any refiner whose status changes as specified in paragraph (e)(1) under this paragraph (b) shall meet the applicable standards of § 80.1230 within 30 months of the disqualifying event for all its refineries. However, such period shall not extend beyond December 31, 2014.

(3) A refiner may apply to EPA for an additional six months to comply with the standards of § 80.1230 if it believes that more than 30 months will be required for the necessary engineering, permitting, construction, and start-up work to be completed. Such applications must include detailed technical information supporting the need for additional time. EPA will base its decision to approve additional time on the information provided by the refiner and on other relevant information. In no case will EPA extend the compliance date beyond December 31, 2014.

(4) During the period provided under paragraph (e)(2) of this section, and any extension provided under paragraph (e)(3) of this section, the refiner may not generate gasoline benzene credits under § 80.1275 or § 80.1290.

(f) A small refiner approved under § 80.1340 which notifies EPA that it wishes to withdraw its small refiner status pursuant to § 80.1340(g).

§ 80.1340 How does a refiner obtain approval as a small refiner?

(a) Applications for small refiner status must be submitted to EPA by December 31, 2007.

(b) For U.S. Postal delivery, applications for small refiner status must be sent to: Attn: MSAT2 Benzene, Mail Stop 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial delivery: MSAT2 Benzene, 202–343–9038, U.S. Environmental Protection Agency, 1310 L Street, NW., Washington, DC 20005.

(c) The small refiner status application must contain the following information for the company seeking small refiner status, and for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners:

(1) *Employees*. For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture. For government-owned refiners, the total employee count includes all government employees.

(i) Pursuant to paragraph (c) of this section, a listing of each company facility and each facility's address where any employee, as specified in paragraph (a)(1) of this section, worked during the 12 months preceding January 1, 2006.

(ii) The average number of employees at each facility based upon the number of employees for each pay period for the 12 months preceding January 1, 2006.

(iii) The type of business activities carried out at each location.

(iv) In the case of a refiner that reactivates a refinery that it previously owned and operated and that was shut down or non-operational between

January 1, 2005 and January 1, 2006, include the following:

(A) Pursuant to paragraph (c) of this section, a listing of each company refinery each refinery's address where any employee, as specified in paragraph (a)(1) of this section, worked since the refiner acquired or reactivated the refinery.

(B) The average number of employees at any such reactivated refinery during each calendar year since the refiner reactivated the refinery.

(C) The type of business activities carried out at each location.

(2) *Crude oil capacity.*

(i) The total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE), for the period January 1, 2005 through December 31, 2005.

(ii) The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record when the company submits its application for small refiner status.

(3) The type of business activity carried out at each location.

(4) For each refinery, an indication of the small refiner option(s), pursuant to § 80.1342, intended to be utilized at the refinery.

(5) A letter signed by the president, chief operating officer or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge, and that the company owned the refinery as of January 1, 2006.

(6) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.

(d) Approval of a small refiner status application will be based on the information submitted under paragraph (c) of this section and any other relevant information.

(e) EPA will notify a refiner of approval or disapproval of small refiner status by letter.

(1) If approved, all refineries of the refiner may defer meeting the standard specified in § 80.1230(a) until the annual averaging period beginning January 1, 2015, and the standard specified in § 80.1230(b) until the averaging period beginning July 1, 2016.

(2) If disapproved, all refineries of the refiner must meet the standard specified in § 80.1230(a) beginning with the annual averaging period beginning January 1, 2011, and must meet the standard specified in § 80.1230(b) beginning with the averaging period beginning July 1, 2012.

(f) If EPA finds that a refiner provided false or inaccurate information on its application for small refiner status, the refiner's small refiner status will be void *ab initio.*

(g) Prior to January 1, 2014, and upon notification to EPA, a small refiner approved per this section may withdraw its status as a small refiner. Effective on January 1 of the year following such notification, the small refiner will become subject to the standards at § 80.1230.

§ 80.1342 What compliance options are available to small refiners under this subpart?

(a) A refiner that has been approved as a small refiner under § 80.1340 may—

(1)(i) Defer meeting the standard specified in § 80.1230(a) until the annual averaging period beginning January 1, 2015; or

(ii) Meet the standard specified in § 80.1230(a) in any annual averaging period from 2011 through 2014, inclusive, provided it notifies EPA in writing no later than November 15 prior to the year in which it will produce compliant gasoline.

(2)(i) Defer meeting the standard specified in § 80.1230(b) until the averaging period beginning July 1, 2016; or

(ii) Meet the standard specified in § 80.1230(b) in any averaging period specified in § 80.1230(b)(3) prior to the averaging period beginning July 1, 2016 provided it notifies EPA in writing no later than November 15 prior to the year in which it will produce compliant gasoline.

(b) Any refiner that makes an election under paragraphs (a)(1) or (a)(2) of this section must comply with the applicable benzene standards at § 80.1230 beginning with the first averaging period subsequent to the status change.

(c) The provisions of paragraph (a) of this section shall apply separately for each of an approved small refiner's refineries.

§ 80.1343 What hardship relief provisions are available only to small refiners?

(a)(1) In the case of a small refiner approved under § 80.1340 for which compliance with the requirement at § 80.1230(a) would be feasible only through the purchase of credits, but for whom purchase of credits is not practically or economically feasible, EPA may approve a delay of the requirements applicable to the first compliance period for that refiner for up to two years.

(2) No delay in accordance with paragraph (a) of this section will be granted to any small refiner prior to the EPA issuing a review of the credit program.

(3) A small refiner may request one or more extensions of an approved delay if it can continue to demonstrate extreme difficulty in achieving compliance, through the use of credits, with the annual average benzene standard at § 80.1230(a).

(b) In the case of a small refiner approved under § 80.1340 for which compliance with the maximum average benzene requirement at § 80.1230(b) is not feasible, the refiner may apply for hardship relief under § 80.1335.

§ 80.1344 What provisions are available to a non-small refiner that acquires one or more of a small refiner's refineries?

(a) In the case of a refiner that is not an approved small refiner under § 80.1340 and that acquires a refinery from a small refiner approved under § 80.1340, the small refiner provisions of the gasoline benzene program of this subpart continue to apply to the acquired refinery for a period of up to 30 months from the date of acquisition of the refinery. In no case shall this period extend beyond December 31, 2014.

(b) A refiner may apply to EPA for up to an additional six months to comply with the standards of § 80.1230 for the acquired refinery if it believes that more than 30 months would be required for the necessary engineering, permitting, construction, and start-up work to be completed. Such applications must include detailed technical information supporting the need for additional time. EPA will base a decision to approve additional time on information provided by the refiner and on other relevant information. In no case shall this period extend beyond December 31, 2014.

(c) A refiner that acquires a refinery from a small refiner approved per § 80.1340 shall notify EPA in writing no later than 20 days following the acquisition.

Sampling, Testing and Retention Requirements

§ 80.1347 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) The sampling and testing requirements specified in subpart D for reformulated gasoline shall continue to apply to reformulated gasoline and shall be extended to conventional gasoline (CG) for the purpose of complying with the benzene requirements of this subpart, except as modified by paragraphs (a)(2), (a)(3) and (a)(4) of this section.

(2) Refiners and importers shall collect a representative sample from each batch of gasoline produced or imported, according to the earliest applicable date in the following schedule:

(i) Beginning January 1, 2011;

(ii) Beginning January 1, 2015 for small refiners approved under § 80.1340;

(iii) Beginning January 1 of the year prior to 2015 in which a small refiner approved under § 80.1340 has opted, per § 80.1342(a), to begin meeting the standards at § 80.1230;

(iv) Beginning June 1, 2007, for any refinery planning to generate early credits for the averaging period specified at § 80.1275(b)(1);

(v) Beginning January 1 of each averaging period specified at § 80.1275(b)(2) or (b)(3) for which the refinery plans to generate early credits;

(vi) Beginning January 1 of the year, per § 80.1334(c)(1), in which a refinery approved for early compliance under § 80.1334 opts to begin early compliance. The provisions shall only apply to the type of gasoline, RFG or CG, for which early compliance was approved.

(3)(i) Each sample shall be tested in accordance with the methodology specified at § 80.46(e) to determine its benzene concentration for compliance with the requirements of this subpart.

(ii) Independent sample analysis, under § 80.65(f), is not required for conventional gasoline.

(4) Any refiner or importer may release CG prior to obtaining the test results for benzene required under paragraph (a)(1) of this section.

(5) *Exclusion of previously certified gasoline.*

(i) Any refiner who uses previously certified reformulated or conventional gasoline or RBOB to produce conventional gasoline at a refinery, must exclude the previously certified gasoline (''PCG'') for purposes of demonstrating compliance with the benzene standards at § 80.1230.

(ii) To accomplish the exclusion required in paragraph (a)(5)(i) of this section, the refiner must determine the volume and benzene content of the previously certified gasoline used at the refinery and the volume and benzene content of gasoline produced at the refinery, and use the compliance calculation procedures in paragraphs (a)(5)(iii) and (a)(5)(iv) of this section.

(iii) For each batch of previously certified gasoline that is used to produce conventional gasoline the refiner must include the volume and benzene content of the previously certified gasoline as a negative volume and a negative benzene content in the refiner's compliance calculations in accordance with the requirements at § 80.1238.

(iv) For each batch of conventional gasoline produced at the refinery using previously certified gasoline, the refiner must determine the volume and benzene content and include each batch in the refinery's compliance calculations at § 80.1240 without regard to the presence of previously certified gasoline in the batch.

(v) The refiner must use any previously certified gasoline that it includes as a negative batch in its compliance calculations pursuant to § 80.1240 as a component in gasoline production during the annual averaging period in which the previously certified gasoline was included as a negative batch in the refiner's compliance calculations.

(b) *Batch numbering.* The batch numbering convention of § 80.365(b) shall apply to batches of conventional gasoline beginning with earliest applicable date specified in paragraph (a)(2) of this section.

§ 80.1348 What gasoline sample retention requirements apply to refiners and importers?

Beginning with earliest applicable date specified in § 80.1347(a)(2), the gasoline sample retention requirements specified in subpart H of this part for the gasoline sulfur provisions apply for the purpose of complying with the requirements of this subpart, except that in addition to including the sulfur test result as provided by § 80.335(a)(4)(ii), the refiner, importer, or independent laboratory shall also include with the retained sample the test result for benzene as conducted pursuant to § 80.46(e).

Recordkeeping and Reporting Requirements

§ 80.1350 What records must be kept?

(a) *General requirements.* The recordkeeping requirements specified in §§ 80.74 and 80.104, as applicable, apply for the purpose of complying with the requirements of this subpart; however, duplicate records are not required.

(b) *Additional records that refiners and importers shall keep.* (1) Beginning with earliest applicable date specified in § 80.1347(a)(2), any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information, as applicable:

(i) Its compliance benzene value per § 80.1240, and the calculations used to obtain that value.

(ii) Its benzene baseline value, per § 80.1280, if the refinery or importer submitted a benzene baseline application to EPA per § 80.1285.

(iii) The number of early benzene credits generated under § 80.1275, separately by year of generation.

(iv) The number of early benzene credits obtained, separately by generating refinery and year of generation.

(v) The number of valid credits in possession of the refinery or importer at the beginning of each averaging period, separately by generating facility and year of generation.

(vi) The number of standard credits generated by the refinery or importer under § 80.1290, separately by transferor (if applicable), by facility and by year of generation.

(vii) The number of credits used, separately by generating facility and year of generation.

(viii) If any credits were obtained from, or transferred to, other parties, for each other party, its name, its EPA refinery or importer registration number, and the number of credits obtained from, or transferred to, the other party, and the price per credit.

(ix) The number of credits that expired at the end of each averaging period, separately by generating facility and year of generation.

(x) The number of credits that will be carried over into a subsequent averaging period, separately by generating facility and year of generation.

(xi) Contracts or other commercial documents that establish each transfer of credits from the transferor to the transferee.

(xii) A copy of all reports submitted to EPA under §§ 80.1352 and 80.1354; however, duplicate records are not required.

(2)(i) Beginning July 1, 2012, any refiner for each of its refineries, and any importer for the gasoline it imports, shall include, in the records required by paragraph (b)(1) of this section, its maximum average benzene value for the period July 1, 2012 through December 31, 2013, and for each annual compliance period thereafter.

(ii) Notwithstanding the requirements specified in paragraph (b)(2)(i) of this section, beginning July 1, 2016, a small refiner approved under § 80.1340, for each of its refineries, shall include, in the records required by paragraph (b)(1) of this section, its maximum average benzene value for the period July 1, 2016 through December 31, 2017, and for each annual compliance period thereafter.

(3) Records of all supporting calculations pursuant to paragraphs

(b)(1) or (b)(2) of this section shall also be kept.

(c) *Length of time records shall be kept.* Records required in this section shall be kept for five years from the date they were created, except that records relating to credit transfers shall be kept by the transferor for five years from the date the credits were transferred, and shall be kept by the transferee for five years from the date the credits were transferred, used or terminated, whichever is later.

(d) *Make records available to EPA.* On request by EPA, the records specified in this section shall be provided to the Administrator. For records that are electronically generated or maintained, the equipment and software necessary to read the records shall be made available, or upon approval by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator.

§ 80.1352 What are the pre-compliance reporting requirements for the gasoline benzene program?

(a) Except as provided in paragraph (c) of this section, a refiner for each of its refineries shall submit the following information, as applicable, to EPA by June 1, 2008 and annually thereafter through June 1, 2011, or through June 1, 2015 for small refiners approved under § 80.1340:

(1) Changes to the information submitted in the company's registration;

(2) Changes to the information submitted for any refinery or import facility registration;

(3) *Gasoline production.*

(i) An estimate of the average daily volume (in gallons) of gasoline produced at each refinery. This estimate shall include RFG, RBOB, conventional gasoline and conventional gasoline blendstock that becomes finished gasoline solely upon the addition of oxygenate but shall exclude gasoline exempted pursuant to § 80.1235.

(ii) The volume estimates specified in paragraph (a)(3)(i) of this section must be provided for the periods of June 1, 2007 through December 31, 2007, and calendar years 2008 through 2015.

(4) *Benzene concentration.* An estimate of the average gasoline benzene concentration corresponding to the time periods specified in paragraph (a)(3)(ii) of this section.

(5) *ABT participation.* For each year through 2015, the following information related to crdits shall be provided to EPA, if applicable:

(i) If the refinery is expecting to generate benzene credits per § 80.1275 and/or § 80.1290, the actual or estimated, as applicable, numbers of early credits and standard credits expected to be generated.

(ii) If the refinery is expecting to use benzene credits per § 80.1295, the actual or estimated, as applicable, numbers of early credits and standard credits expected to be banked, transferred or used to achieve compliance in accordance with § 80.1240.

(6) Information on any project schedule by quarter of known or projected completion date, by the stage of the project. See, for example, the five project phases described in EPA's June 2002 Highway Diesel Progress Review report (EPA420–R–02–016, *http://www.epa.gov/otaq/regs/hd2007/420r02016.pdf*): Strategic planning, Planning and front-end engineering, Detailed engineering and permitting, Procurement and Construction, and Commissioning and startup.

(7) Basic information regarding the selected technology pathway for compliance (*e.g.*, precursor re-routing or other technologies, revamp vs. grassroots, etc.).

(8) Whether capital commitments have been made or are projected to be made.

(b) The pre-compliance reports due in 2008 and succeeding years must provide an update of the progress in each of these areas and include actual values where available.

(c) The pre-compliance reporting requirements of this section do not apply to refineries that only produce products exempt from the requirements of this subpart per § 80.1235(b).

§ 80.1354 What are the reporting requirements for the gasoline benzene program?

(a) Beginning with earliest applicable date specified in § 80.1347(a)(2), any refiner for each of its refineries, and any importer for the gasoline it imports, shall submit to EPA an Annual Gasoline Benzene Report that contains the information required in this section, and such other information as EPA may require for each applicable averaging period.

(b) The Annual Gasoline Benzene Report shall contain the following information:

(1) Benzene volume percent and volume of any RFG, RBOB, and conventional gasoline, separately by batch, produced by the refinery or imported, and the sum of the volumes and the volume-weighted benzene concentration, in volume percent.

(2)(i) The annual average benzene concentration, per § 80.1238.

(ii) The maximum average benzene concentration per § 80.1240(b).

(3) Any benzene deficit from the previous reporting period, per § 80.1230(b).

(4) The number of banked benzene credits from the previous reporting period.

(5) The number of benzene credits generated under § 80.1275, if applicable.

(6) The number of benzene credits generated under § 80.1290, if applicable.

(7) The number of benzene credits transferred to the refinery or importer, per § 80.1295(c), and the cost of the credits, if applicable.

(8) The number of benzene credits transferred from the refinery or importer, per § 80.1295(c), and the price of the credits, if applicable.

(9) The number of benzene credits terminated or expired.

(10) The compliance benzene value per § 80.1240.

(11) The number of banked benzene credits.

(12) Projected credit generation through compliance year 2015.

(13) Projected credit use through compliance year 2015.

(c) EPA may require submission of additional information to verify compliance with the requirements of this subpart.

(d) The report required by paragraph (a) of this section shall be—

(1) Submitted on forms and following procedures specified by the Administrator.

(2) Submitted to EPA by the last day of February each year for the prior calendar year averaging period.

(3) Signed and certified as correct by the owner or a responsible corporate officer of the refiner or importer.

Attest Engagements

§ 80.1356 What are the attest engagement requirements for gasoline benzene compliance?

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, 80.410, and 80.1030, the attest engagements for refiners and importers must include the following:

(a) *EPA Early Credit Generation Baseline Years' Reports.* (1) Obtain and read a copy of the refinery's or importer's annual reports and batch reports filed with EPA for 2004 and 2005 that contain gasoline benzene and gasoline volume information.

(2) Agree the yearly volumes of gasoline and benzene concentration, in volume percent and benzene gallons, reported to EPA in the reports specified in paragraph (a)(1) of this section with the inventory reconciliation analysis under § 80.128.

(3) Verify that the information in the refinery's or importer's batch reports

filed with EPA under §§ 80.75 and 80.105, and any laboratory test results, agree with the information contained in the reports specified in paragraph (a)(1) of this section.

(4) Calculate the average benzene concentration for all of the refinery's or importer's gasoline volume over 2004 and 2005 and verify that those values agree with the values reported to EPA per § 80.1285.

(b) *Baseline for Early Credit Generation.* Take the following steps for the first attest reporting period following approval of a benzene baseline:

(1) Obtain the EPA benzene baseline approval letter for the refinery to determine the refinery's applicable benzene baseline under § 80.1285.

(2) Obtain a written statement from the company representative identifying the benzene value used as the refinery's baseline and agree that number to paragraph (b)(1) of this section and to the reports to EPA.

(c) *Early Credit Generation.* The following procedures shall be completed for a refinery or importer that generates early benzene credits per § 80.1275:

(1) Obtain the baseline benzene concentration and gasoline volume from paragraph (a)(4) of this section.

(2) Obtain the annual benzene report per § 80.1354.

(3) If the benzene value under paragraph (c)(2) of this section is at least 10 percent less than the value in paragraph (c)(1) of this section, compute and report as a finding the difference according to § 80.1275.

(4) Compute and report as a finding the total number of benzene credits generated by multiplying the value calculated in paragraph (c)(3) of this section by the volume of gasoline listed in the report specified in paragraph (c)(2) of this section, and agree this number with the number reported to EPA.

(d) *Standard Credit Generation.* The following procedures shall be completed for a refinery or importer that generates benzene credits per § 80.1290:

(1) Obtain the annual average benzene value from the annual benzene report per § 80.1285.

(2) If the annual average benzene value under paragraph (d)(1) of this section is less than 0.62 percent by volume, compute and report as a finding the difference according to § 80.1290.

(3) Compute and report as a finding the total number of benzene credits generated by multiplying the value calculated in paragraph (d)(2) of this section by the volume of gasoline listed in the report specified in paragraph (d)(1) of this section, and agree this number with the number reported to EPA.

(e) *Credits Required.* The following attest procedures shall be completed for refineries and importers:

(1) Obtain the annual average benzene concentration and volume from the annual benzene report per § 80.1285.

(2) If the value in paragraph (e)(1) of this section is greater than 0.62 percent by volume, compute and report as a finding the difference between 0.62 percent by volume and the value in paragraph (e)(1) of this section.

(3) Compute and report as a finding the total benzene credits required by multiplying the value in paragraph (e)(2) of this section times the volume of gasoline in paragraph (e)(1) of this section, and agree this number with the report to EPA.

(4) Obtain a statement from the refiner or importer as to the portion of the deficit under paragraph (e)(3) of this section that was resolved with credits, or that was carried forward as a deficit under § 80.1230(b), and agree these figures with the report to EPA.

(f) *Credit Purchases and Sales.* The following attest procedures shall be completed for a refinery or importer that is a transferor or transferee of credits during an averaging period:

(1) Obtain contracts or other documents for all credits transferred to another refinery or importer during the year being reviewed; compute and report as a finding the number and year of creation of credits represented in these documents as being transferred; and agree these figures with the report to EPA.

(2) Obtain contracts or other documents for all credits received during the year being reviewed; compute and report as a finding the number and year of creation of credits represented in these documents as being received; and agree with the report to EPA.

(g) *Credit Reconciliation.* The following attest procedures shall be completed each year credits were in the refiner's or importer's possession at any time during the year:

(1) Obtain the credits remaining or the credit deficit from the previous year from the refiner's or importer's report to EPA for the previous year.

(2) Compute and report as a finding the net credits remaining at the conclusion of the year being reviewed by totaling credits as follows:

(i) Credits remaining from the previous year; plus

(ii) Credits generated under paragraphs (c) and (d) of this section; plus

(iii) Credits purchased under paragraph (f) of this section; minus

(iv) Credits sold under paragraph (f) of this section; minus

(v) Credits used under paragraphs (e) of this section; minus

(vi) Credits expired; minus

(vii) Credit deficit from the previous year.

(3) Agree the credits remaining or the credit deficit at the conclusion of the year being reviewed with the report to EPA.

(4) If the refinery or importer had a credit deficit for both the previous year and the year being reviewed, report this fact as a finding.

Violations and Penalties

§ 80.1358 What acts are prohibited under the gasoline benzene program?

No person shall—

(a)(1) Produce or import gasoline subject to this subpart that does not comply with the applicable benzene standards under § 80.1230.

(2) Fail to meet any other requirements of this subpart.

(b) Cause another person to commit an act in violation of paragraph (a) of this section.

§ 80.1359 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the benzene standards of this subpart shall be determined based on the benzene concentration of the gasoline, measured using the methodologies specified in § 80.46(e), and other allowable adjustments. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the benzene concentration of the gasoline if the evidence or information is relevant to whether the benzene concentration of the gasoline would have been in compliance with the standard if the appropriate sampling and testing methodologies had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in § 80.46(e), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the benzene standards, and determinations of liability for any violation of this subpart, may be based on information from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.1360 Who is liable for violations under the gasoline benzene program?

(a) The following persons are liable for violations of prohibited acts:

(1) Any refiner or importer that violates § 80.1358(a) is liable for the violation.

(2) Any person that causes another party to violate § 80.1358(a) is liable for a violation of § 80.1358(b).

(3) Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(4) Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or a facility that is owned by the joint owners, or a facility that is committed by the joint venture operation or any of the joint owners of the facility.

(b) Any person who violates § 80.1358 is liable for the violation.

§ 80.1361 What penalties apply under the gasoline benzene program?

(a) Any person liable for a violation under § 80.1360 is subject to civil penalties as specified in sections 205 and 211(d) of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.1358(a) and (b) for a violation of the applicable benzene standards or causing another person to violate the requirements during any averaging period, is subject to a separate day of violation for each and every day in the averaging period. Any person liable under § 80.1360(b) for a failure to fulfill any requirement of credit generation, transfer, use, banking, or deficit carry-forward correction is subject to a separate violation for each and every day in the averaging period in which invalid credits are generated, banked, transferred or used.

(c) Any person liable under § 80.1360(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

Foreign Refiners

§ 80.1363 What are the additional requirements under this subpart for gasoline produced at foreign refineries?

(a) Definitions.

(1) A *foreign refinery* is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'').

(2) A *foreign refiner* is a person that meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) *Benzene-FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery benzene baseline under § 80.1285, has been approved as a small refiner under § 80.1340, or has been granted temporary relief under § 80.1335, and that is imported into the United States.

(4) *Non-Benzene-FRGAS* means

(i) Gasoline meeting any of the conditions specified in paragraph (a)(3) of this section that is not imported into the United States.

(ii) Gasoline meeting any of the conditions specified in paragraph (a)(3) of this section during a year when the foreign refiner has opted to not participate in the Benzene-FRGAS program under paragraph (c)(3) of this section.

(iii) Gasoline produced at a foreign refinery that has not been assigned an individual refinery benzene baseline under § 80.1285, or that has not been approved as a small refiner under § 80.1340, or that has not been granted temporary relief under § 80.1335.

(5) *Certified Benzene-FRGAS* means Benzene-FRGAS the foreign refiner intends to include in the foreign refinery's benzene compliance calculations under § 80.1240 or credit calculations under § 80.1275 and does include in these calculations when reported to EPA.

(6) *Non-Certified Benzene-FRGAS* means Benzene-FRGAS that is not Certified Benzene-FRGAS.

(b) *Baseline for Early Credits.* For any foreign refiner to obtain approval under the benzene foreign refiner program of this subpart for any refinery in order to generate early credits under § 80.1275, it must apply for approval under the applicable provisions of this subpart.

(1) The refiner shall follow the procedures specified in §§ 80.1280 and 80.1285 to establish a baseline of the volume of gasoline that was produced at the refinery and imported into the United States during the applicable years.

(2) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to correct this deficiency after a request for more information, EPA will not assign an individual refinery baseline.

(c) *General requirements for Benzene-FRGAS foreign refiners.* A foreign refiner of a refinery that is approved under the benzene foreign refiner program of this subpart must designate each batch of gasoline produced at the foreign refinery that is exported to the United States as either Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Benzene-FRGAS, the foreign refiner must meet all requirements that apply to refiners under this subpart.

(2) In the case of Non-Certified Benzene-FRGAS, the foreign refiner shall meet all the following requirements:

(i) The designation requirements in this section;

(ii) The recordkeeping requirements in this section and in § 80.1350;

(iii) The reporting requirements in this section and in §§ 80.1352 and 80.1354;

(iv) The product transfer document requirements in this section;

(v) The prohibitions in this section and in § 80.1358; and

(vi) The independent audit requirements in this section and in § 80.1356.

(3)(i) Any foreign refiner that generates early benzene credits under § 80.1275 shall designate all Benzene-FRGAS as Certified Benzene-FRGAS for any year that such credits are generated.

(ii) Any foreign refiner that has been approved to produce gasoline subject to the benzene foreign refiner program for a foreign refinery under this subpart may elect to classify no gasoline imported into the United States as Benzene-FRGAS provided the foreign refiner notifies EPA of the election no later than November 1 preceding the beginning of the next compliance period.

(iii) An election under paragraph (c)(3)(ii) of this section shall be for a 12 month compliance period and apply to all gasoline that is produced by the foreign refinery that is imported into the United States, and shall remain in effect for each succeeding year unless and until the foreign refiner notifies EPA of the termination of the election. The change in election shall take effect at the beginning of the next annual compliance period.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been approved by EPA to produce gasoline subject to the benzene foreign refiner program

must designate each batch of Benzene-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Benzene-FRGAS under paragraph (c)(3) of this section.

(2) On each occasion when any person transfers custody or title to any Benzene-FRGAS prior to its being imported into the United States, it must include the following information as part of the product transfer document information:

(i) Designation of the gasoline as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Benzene-FRGAS was produced.

(3) On each occasion when Benzene-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the Benzene-FRGAS that meets the following requirements.

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Benzene-FRGAS;

(B) The identification of the gasoline as Certified Benzene-FRGAS or Non-Certified Benzene-FRGAS;

(C) The volume of Benzene-FRGAS being transported, in gallons;

(D) In the case of Certified Benzene-FRGAS:

(*1*) The benzene content as determined under paragraph (f) of this section, and the applicable designations stated in paragraph (d)(2)(i) of this section; and

(*2*) A declaration that the Benzene-FRGAS is being included in the applicable compliance calculations required by EPA under this subpart.

(ii) The certification shall be made part of the product transfer documents for the Benzene-FRGAS.

(e) *Transfers of Benzene-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Benzene-FRGAS is imported into the United States. A foreign refiner may remove the Benzene-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1) The foreign refiner excludes:

(i) The volume of gasoline from the refinery's compliance report under § 80.1354; and

(ii) In the case of Certified Benzene-FRGAS, the volume of the gasoline from the compliance report under § 80.1354.

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.*

(1) On each occasion that Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Benzene-FRGAS loaded onto the vessel (exclusive of any tank bottoms before loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion that Certified Benzene-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the Certified Benzene-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Determine the benzene content value for each compartment using the methodology as specified in § 80.46(e) by one of the following:

(A) The third party analyzing each sample; or

(B) The third party observing the foreign refiner analyze the sample;

(iii) Review original documents that reflect movement and storage of the Certified Benzene-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Benzene-FRGAS was produced; and

(B) That the Benzene-FRGAS remained segregated from:

(*1*) Non-Benzene-FRGAS and Non-Certified Benzene-FRGAS; and

(*2*) Other Certified Benzene-FRGAS produced at a different refinery.

(3) The independent third party shall submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (f)(2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (f)(2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Any foreign refiner and any United States importer of Certified Benzene-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the benzene content value; except as specified in paragraph (g)(1)(ii) of this section.

(ii) Where a vessel transporting Certified Benzene-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if—

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The benzene content value determined at the port of entry is higher than the benzene content value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM) for the test method specified at § 80.46(e).

(ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Benzene-FRGAS, and the foreign refiner shall exclude the gasoline volume from its gasoline volumes calculations and benzene standard designations under this subpart.

(h) *Attest requirements.* Refiners, for each annual compliance period, must arrange to have an attest engagement performed of the underlying documentation that forms the basis of any report required under this subpart. The attest engagement must comply with the procedures and requirements that apply to refiners under §§ 80.125 through 80.130, § 80.1356, and other applicable attest engagement provisions, and must be submitted to the Administrator of EPA for the prior annual compliance period within the time period required under § 80.130. The following additional procedures shall be carried out for any foreign refiner of Benzene-FRGAS.

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Benzene-FRGAS.

(2) Obtain separate listings of all tenders of Certified Benzene-FRGAS and of Non-Certified Benzene-FRGAS, and obtain separate listings of Certified Benzene-FRGAS based on whether it is small refiner gasoline, gasoline produced through the use of credits, or other applicable designation under this subpart. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section, where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Benzene-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and benzene content test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry benzene content and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Benzene-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Benzene-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Benzene-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Benzene-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Benzene-FRGAS was mixed with any Non-Certified Benzene-FRGAS, Non-Benzene-FRGAS, or any Certified Benzene-FRGAS produced at a different refinery.

(5) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified and Non-Certified Benzene-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Benzene-FRGAS, and perform the following:

(i) Agree the total volume and benzene content of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being approved as a foreign refiner under this subpart.

(1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Benzene-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, if applicable, including the volume and benzene content of gasoline; transfers of title or custody of any gasoline or blendstocks whether Benzene-FRGAS or Non-Benzene-FRGAS, produced at the foreign refinery during the period January 1, 2004 through December 31, 2005, and any work papers related to refinery baseline establishment;

(B) The volume and benzene content of Benzene-FRGAS;

(C) The proper classification of gasoline as being Benzene-FRGAS or as

not being Benzene-FRGAS, or as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS, and all other relevant designations under this subpart;

(D) Transfers of title or custody to Benzene-FRGAS;

(E) Sampling and testing of Benzene-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline, gasoline additives or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for participation in the benzene foreign refiner program or producing and exporting gasoline under any such program, and all other actions to comply with the requirements of this subpart relating to participation in any benzene foreign refiner program, or to establish an individual refinery gasoline benzene baseline under this subpart constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Benzene-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Benzene-FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's petition to participate in any benzene foreign refiner program.

(j) *Sovereign immunity.* By submitting a petition for participation in any benzene foreign refiner program under this subpart (and baseline, if applicable) under this section, or by producing and exporting gasoline to the United States under any such program, the foreign refiner, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to approval as benzene foreign refiner under this subpart.

(1) The foreign refiner shall post a bond of the amount calculated using the following equation:

$$\text{Bond} = G \times \$0.01$$

Where:

Bond = amount of the bond in U.S. dollars

G = the largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the refinery's baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) Bonds posted under this paragraph (k) shall—

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds''; and

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest annual reporting period that the foreign refiner produces gasoline pursuant to the requirements of this subpart.

(4) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(5) If the bond amount for a foreign refiner increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to

EPA by a foreign refiner shall be in English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Benzene-FRGAS with any Non-Certified Benzene-FRGAS or Non-Benzene-FRGAS, and no person may combine Certified Benzene-FRGAS with any Certified Benzene-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Benzene-FRGAS or as Non-Benzene-FRGAS, and each batch classified as Benzene-FRGAS shall be further classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS.

(2) Gasoline shall be classified as Certified Benzene-FRGAS or as Non-Certified Benzene-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Benzene-FRGAS under paragraph (g) of this section. Additionally, the importer shall comply with all requirements of this subpart applicable to importers.

(3) For each gasoline batch classified as Benzene-FRGAS, any United States importer shall perform the following procedures.

(i) In the case of both Certified and Non-Certified Benzene-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Benzene-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Benzene-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Benzene-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Benzene-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Obtain the compartment samples; and

(C) Determine the benzene content value of each compartment sample using the methodology specified at § 80.46(e) by the third party analyzing the sample or by the third party observing the importer analyze the sample.

(4) Any importer shall submit reports within 30 days following the date any vessel transporting Benzene-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section, and including identification of the port at which the product was offloaded.

(5) Any United States importer shall meet all other requirements of this subpart for any imported gasoline that is not classified as Certified Benzene-FRGAS under paragraph (o)(2) of this section.

(p) *Truck imports of Certified Benzene-FRGAS produced at a foreign refinery.*

(1) Any refiner whose Certified Benzene-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

(i) Certification under paragraph (d)(5) of this section;

(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;

(iii) Attest under paragraph (h) of this section; and

(iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures must ensure Certified Benzene-FRGAS remains segregated from Non-Certified Benzene-FRGAS and from Non-Benzene-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Benzene-FRGAS from that refinery from all other gasoline;

(ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Benzene-FRGAS, that prohibit the commingling of Certified Benzene-FRGAS with any of the following:

(A) Other Certified Benzene-FRGAS from other refineries.

(B) All Non-Certified Benzene-FRGAS.

(C) All Non-Benzene-FRGAS;

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Benzene-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States;

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Benzene-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section must be submitted to EPA along with the application for temporary refiner relief individual refinery benzene standard under this subpart.

(q) *Withdrawal or suspension of foreign refiner status.* EPA may withdraw or suspend a foreign refiner's benzene baseline or standard approval for a foreign refinery where—

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refiner benzene baseline.*

(1) A foreign refiner may begin using an individual refinery benzene baseline under this subpart before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons that will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline

before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, *ab initio*, using the baseline values approved by the EPA, and the foreign refiner shall be liable for any resulting violation of the requirements of this subpart.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for approval to produce gasoline subject to the benzene foreign refiner program, any alternative procedures under paragraph (p) of this section, any report or other submission required by paragraph (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section shall be—

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart L, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart L, including 40 CFR 80.1363 apply to [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

■ 11a. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—[Amended]

■ 11b. Section 85.1515 is amended by adding paragraphs (c)(2)(vii), (c)(2)(viii), and (c)(8) to read as follows.

§ 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.

* * * * *

(c) * * *

(2) * * *

(vii) Nonconforming LDV/LLDTs originally manufactured in OP years 2009 and later must meet the evaporative emission standards in Table S09–1 in 40 CFR 86.1811–09(e). However, LDV/LLDTs originally manufactured in OP years 2009 and 2010 and imported by ICIs who qualify as small volume manufacturers as defined in 40 CFR 86.1838–01 are exempt from the LDV/LLDT evaporative emission standards in Table S09–1 in 40 CFR 86.1811–09(e), but must comply with the Tier 2 evaporative emission standards in Table S04–3 in 40 CFR 86.1811–04(e).

(viii) Nonconforming HLDTs and MDPVs originally manufactured in OP years 2010 and later must meet the evaporative emission standards in Table S09–1 in 40 CFR 86.1811–09(e). However, HLDTs and MDPVs originally manufactured in OP years 2010 and 2011 and imported by ICIs, who qualify as small volume manufacturers as defined in 40 CFR 86.1838–01, are exempt from the HLDTs and MDPVs evaporative emission standards in Table S09–1 in 40 CFR 86.1811–09(e), but must comply with the Tier 2 evaporative emission standards in Table S04–3 in 40 CFR 86.1811–04(e).

* * * * *

(8)(i) Nonconforming LDV/LLDTs originally manufactured in OP years 2010 and later must meet the cold temperature NHMC emission standards in Table S10–1 in 40 CFR 86.1811–10(g).

(ii) Nonconforming HLDTs and MDPVs originally manufactured in OP years 2012 and later must meet the cold temperature NHMC emission standards in Table S10–1 in 40 CFR 86.1811–10(g).

(iii) ICIs, which qualify as small volume manufacturers, are exempt from the cold temperature NMHC phase-in intermediate percentage requirements described in 40 CFR 86.1811–10(g)(3). See 40 CFR 86.1811–04(k)(5)(vi) and (vii).

(iv) As an alternative to the requirements of paragraphs (c)(8)(i) and (ii) of this section, ICIs may elect to meet a cold temperature NMHC family emission level below the cold temperature NMHC fleet average standards specified in Table S10–1 of 40 CFR 86.1811–10 and bank or sell credits as permitted in 40 CFR 86.1864–10. An ICI may not meet a higher cold temperature NMHC family emission level than the fleet average standards in Table S10–1 of 40 CFR 86.1811–10 as specified in paragraphs (c)(8)(i) and (ii) of this section, unless it demonstrates to the Administrator at the time of certification that it has obtained appropriate and sufficient NMHC credits from another manufacturer, or has generated them in a previous model year or in the current model year and not traded them to another manufacturer or used them to address other vehicles as permitted in 40 CFR 86.1864–10.

(v) Where an ICI desires to obtain a certificate of conformity using a higher cold temperature NMHC family emission level than specified in paragraphs (c)(8)(i) and (ii) of this section, but does not have sufficient credits to cover vehicles imported under such certificate, the Administrator may issue such certificate if the ICI has also obtained a certificate of conformity for vehicles certified using a cold temperature NMHC family emission level lower than that required under paragraphs (c)(8)(i) and (ii) of this section. The ICI may then import vehicles to the higher cold temperature NMHC family emission level only to the extent that it has generated sufficient credits from vehicles certified to a family emission level lower than the cold temperature NMHC fleet average standard during the same model year.

(vi) ICIs using cold temperature NMHC family emission levels higher than the cold temperature NMHC fleet average standards specified in paragraphs (c)(8)(i) and (ii) of this section must monitor their imports so that they do not import more vehicles certified to such family emission levels than their available credits can cover. ICIs must not have a credit deficit at the end of a model year and are not permitted to use the deficit carryforward provisions provided in 40 CFR 86.1864–10.

(vii) The Administrator may condition the certificates of conformity issued to ICIs as necessary to ensure that vehicles subject to this paragraph (c)(8) comply with the applicable cold temperature NMHC fleet average standard for each model year.

* * * * *

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 12. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—[Amended]

■ 13. Section 86.701–94 is amended by revising paragraph (a) to read as follows:

§ 86.701–94 General applicability.

(a) The provisions of this subpart apply to: 1994 through 2003 model year Otto-cycle and diesel light-duty vehicles; 1994 through 2003 model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines; and 2001 and later model year Otto-cycle heavy-duty vehicles and engines certified under the provisions of subpart S of this part. The provisions of subpart B of this part apply to this subpart. The provisions of § 86.1811–04(a)(5) and (p) apply to 2004 and later model year light-duty vehicles, light-duty trucks, and medium duty passenger vehicles.

* * * * *

Subpart S—[Amended]

■ 14. Section 86.1803–01 is amended by revising the definition of ''Banking'' and adding the definition for ''Fleet average cold temperature NMHC standard'' in alphabetical order to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Banking means one of the following:

(1) The retention of NO_X emission credits for complete heavy-duty vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

(2) The retention of cold temperature non-methane hydrocarbon (NMHC) emission credits for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

* * * * *

Fleet average cold temperature NMHC standard means, for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles, an NMHC cold temperature standard imposed over an individual manufacturer's total 50-State U.S. sales (or a fraction of total U.S. sales during phase-in years), as ''U.S. sales'' is defined to include all national sales, including points-of-first sale in California, of a given model year. Manufacturers determine their compliance with such a standard by averaging, on a sales-weighted basis, the individual NMHC ''Family Emission Limits'' (FEL—as defined in this subpart) to which light-duty vehicles, light-duty trucks and medium-duty passenger vehicles were certified and sold for that model year.

* * * * *

■ 15. Section 86.1805–04 is amended by adding paragraph (g) to read as follows:

§ 86.1805–04 Useful life.

* * * * *

(g) Where cold temperature NMHC standards are applicable, the useful life requirement for compliance with the cold temperature NMHC standard only is as follows:

(1) For LDV/LLDTs, 10 years or 120,000 miles, whichever occurs first.

(2) For HLDT/MDPVs, 11 years or 120,000 miles, whichever occurs first.

■ 16. A new § 86.1809–10 is added to Subpart S to read as follows:

§ 86.1809–10 Prohibition of defeat devices.

(a) No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle at a designated location, using driving cycles and conditions that may reasonably be expected to be encountered in normal operation and use, for the purposes of investigating a potential defeat device.

(c) For cold temperature CO and cold temperature NMHC emission control, the Administrator will use a guideline to determine the appropriateness of the CO and NMHC emission control at ambient temperatures between 25 °F (the upper bound of the temperatue test range) and 68 °F (the lower bound of the FTP range). The guideline for CO emission congruity across the intermediate temperature range is the linear interpolation between the CO standard applicable at 25 °F and the CO standard applicable at 68 °F. The guideline for NMHC emission congruity across the intermediate temperature range is the linear interpolation between the NMHC FEL pass limit (e.g. 0.3499 g/mi for a 0.3 g/mi FEL) applicable at 20 °F and the Tier 2 NMOG standard to which the vehicle was certified at 68 °F, where the intermediate temperature NMHC level is rounded to the nearest hundredth for comparison to the interpolated line. For vehicles that exceed this CO emissions guideline or this NMHC emissions guideline upon intermediate temperature cold testing:

(1) If the CO emission level is greater than the 20 °F emission standard, the vehicle will automatically be considered to be equipped with a defeat device without further investigation. If the intermediate temperature NMHC emission level, rounded to the nearest hundredth, is greater than the 20 °F FEL pass limit, the vehicle will be presumed to have a defeat device unless the manufacturer provides evidence to EPA's satisfaction that the cause of the test result in question is not due to a defeat device.

(2) If the CO emission level does not exceed the 20 °F emission standard, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section. If the intermediate temperature NMHC emission level, rounded to the nearest hundredth, does not exceed the 20 °F FEL pass limit the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section.

(d) The following provisions apply for vehicle designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal Test Procedure or Supplemental Federal Test Procedure (FTP or SFTP) when the vehicle is operated under conditions that may reasonably be expected to be encountered in normal operation and use.

(2) The following information requirements apply:

(i) Upon request by the Administrator, the manufacturer must provide an explanation containing detailed information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure.

(ii) For purposes of investigations of possible cold temperature CO or cold temperature NMHC defeat devices under this paragraph (d), the manufacturer must provide an explanation to show, to the satisfaction of the Administrator, that CO emissions and NMHC emissions are reasonably controlled in reference to the linear guideline across the intermediate temperature range.

(e) For each test group of Tier 2 LDV/LLDTs and HLDT/MDPVs and interim non-Tier 2 LDV/LLDTs and HLDT/MDPVs the manufacturer must submit, with the Part II certification application, an engineering evaluation demonstrating to the satisfaction of the Administrator that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the

Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 °F. For diesel vehicles, the engineering evaluation must also include particulate emissions.

■ 17. A new § 86.1810–09 is added to Subpart S to read as follows:

§ 86.1810–09 General standards; increase in emissions; unsafe condition; waivers.

Section 86.1810–09 includes text that specifies requirements that differ from § 86.1810–01. Where a paragraph in § 86.1810–01 is identical and applicable to § 86.1810–09, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1810–01.'' Where a corresponding paragraph of § 86.1810–01 is not applicable, this is indicated by the statement ''[Reserved].'' This section applies to model year 2009 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels. This section also applies to MDPVs and complete heavy-duty vehicles certified according to the provisions of this subpart. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) must comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. This section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

(a) through (e) [Reserved]. For guidance see § 86.1810–01.

(f) *Altitude requirements.* (1) All emission standards apply at low altitude conditions and at high altitude conditions, except for supplemental exhaust emission standards, cold temperature NMHC emission standards, and the evaporative emission standards as described in § 86.1811–09(e). Supplemental exhaust emission standards, as described in § 86.1811–04(f), apply only at low altitude conditions. Cold temperature NMHC emission standards, as described in § 86.1811–10(g), apply only at low altitude conditions. Tier 2 evaporative emission standards apply at high altitude conditions as specified in § 86.1810–01(f) and (j), and § 86.1811–04(e).

(2) For vehicles that comply with the cold temperature NMHC standards, manufacturers must submit an engineering evaluation indicating that common calibration approaches are utilized at high altitudes. Any deviation from low altitude emission control practices must be included in the auxiliary emission control device (AECD) descriptions submitted at certification. Any AECD specific to high altitude must require engineering emission data for EPA evaluation to quantify any emission impact and validity of the AECD.

(g) through (p) [Reserved]. For guidance see § 86.1810–01.

■ 18. Section 86.1811–04 is amended by adding paragraphs (k)(5)(iv) through (vii) and (q)(1)(vi) through (ix) to read as follows:

§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

* * * * *

(k) * * *

(5) * * *

(iv) Vehicles produced by small volume manufacturers, as defined in § 86.1838–01, are exempt from the LDV/LLDT evaporative emissions standards in Table S09–1 of § 86.1811–09(e) for model years 2009 and 2010, but must comply with the Tier 2 evaporative emission standards in Table S04–3 in paragraph (e)(1) of this section for model years 2009 and 2010.

(v) Vehicles produced by small volume manufacturers, as defined in § 86.1838–01, are exempt from the HLDT/MDPV evaporative emissions standards in Table S09–1 of § 86.1811–09(e) for model years 2010 and 2011, but must comply with the Tier 2 evaporative emission standards in Table S04–3 in paragraph (e)(1) of this section for model years 2010 and 2011.

(vi) Small volume manufacturers, as defined in § 86.1838–01, are exempt from the LDV/LLDT cold temperature NMHC phase-in requirements in Table S10–1 of § 86.1811–10(g) for model years 2010, 2011, and 2012, but must comply with the 100% requirement for 2013 and later model years for cold temperature NMHC standards.

(vii) Small volume manufacturers, as defined in § 86.1838–01, are exempt from the HLDT/MDPV cold temperature NMHC phase-in requirements in Table S10–1 of § 86.1811–10(g) for model years 2012, 2013, and 2014, but must comply with the 100% requirement for 2015 and later model years for cold temperature NMHC standards.

* * * * *

(q) * * *

(1) * * *

(vi) Defer compliance with the LDV/LLDT evaporative emissions standards in Table S09–1 of § 86.1811–09(e) until 2013, and defer 100% compliance with the LDV/LLDT evaporative emissions standards in Table S09–2 of § 86.1811–09(e) until 2016. (The hardship relief may be extended one additional model year—two model years total.)

(vii) Defer compliance with the HLDT/MDPV evaporative emissions standards in Table S09–1 of § 86.1811–09(e) until 2014, and defer 100% compliance with the HLDT/MDPV evaporative emissions standards in Table S09–2 of § 86.1811–09(e) until 2016. (The hardship relief may be extended one additional model year—two model years total.)

(viii) Defer 100% compliance with the LDV/LLDT cold temperature NMHC standards in Table S10–X of § 86.1811–10(g) until 2015. (The hardship relief may be extended one additional model year—two model years total.)

(ix) Defer 100% compliance with the HLDT/MDPV cold temperature NMHC standards in Table S10–X of § 86.1811–10(g) until 2017. (The hardship relief may be extended one additional model year—two model years total.)

* * * * *

■ 19. A new § 86.1811–09 is added to Subpart S to read as follows:

§ 86.1811–09 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

Section 86.1811–09 includes text that specifies requirements that differ from § 86.1811–04. Where a paragraph in § 86.1811–04 is identical and applicable to § 86.1811–09, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1811–04.'' Where a corresponding paragraph of § 86.1811–04 is not applicable, this is indicated by the statement ''[Reserved].''

(a) *Applicability.* (1) This section contains regulations implementing emission standards for all LDVs, LDTs and MDPVs. This section applies to 2009 and later model year LDVs, LDTs and MDPVs fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels, except as noted. Additionally, this section applies to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs). Unless otherwise specified, multi-fueled vehicles must comply with all requirements established for each consumed fuel.

(2) through (4) [Reserved]. For guidance see § 86.1811–04.

(5) The exhaust emission standards and evaporative emission standards of this section apply equally to certification and in-use LDVs, LDTs and

MDPVs, unless otherwise specified. See paragraph (t) of this section for interim evaporative emission in-use standards that are different than the certification evaporative emission standards specified in paragraph (e) of this section.

(b) through (d) [Reserved]. For guidance see § 86.1811–04.

(e) *Evaporative emission standards.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, ethanol-fueled and methanol-fueled vehicles must not exceed the standards in this paragraph (e). The standards apply equally to certification and in-use vehicles.

(1) *Diurnal-plus-hot soak evaporative hydrocarbon standards.* (i) Hydrocarbons for LDV/LLDTs, HLDTs and MDPVs that are gasoline-fueled, dedicated natural gas-fueled, dedicated liquefied petroleum gas-fueled, dedicated ethanol-fueled, dedicated methanol-fueled and multi-fueled vehicles when operating on gasoline must not exceed the diurnal plus hot soak standards shown in Table S09–1 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. The standards apply equally to certification and in-use vehicles, except as otherwise specified in paragraph (t) of this section. Table S09–1 follows:

TABLE S09–1.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS

[grams per test]

Vehicle category	Model year	3 day diurnal+hot soak	Supplemental 2 day diurnal+hot soak
LDVs	2009	0.50	0.65
LLDTs	2009	0.65	0.85
HLDTs	2010	0.90	1.15
MDPVs	2010	1.00	1.25

(ii) Hydrocarbons for LDV/LLDTs, HLDTs and MDPVs that are multi-fueled vehicles operating on non-gasoline fuel must not exceed the diurnal plus hot soak standards shown in Table S09–2 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. The standards apply equally to certification and in-use vehicles except as otherwise specified in paragraph (t) of this section. Table S09–2 follows:

TABLE S09–2.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS: NON-GASOLINE PORTION OF MULTI-FUELED VEHICLES

[grams per test]

Vehicle category	3 day diurnal+hot soak	Supplemental 2 day diurnal+hot soak
LDVs	0.50	0.65
LLDTs	0.65	0.85
HLDTs	0.90	1.15
MDPVs	1.00	1.25

(iii) For multi-fueled vehicles operating on non-gasoline fuel, manufacturers must comply with the phase-in requirements in Table S09–3 of this paragraph for the evaporative emission requirements specified in Table S09–2 of this section. Phase-in schedules are grouped together for LDV/LLDTs and HLDT/MDPVs. These requirements specify the minimum percentage of the manufacturer's LDV/LLDT/HLDT/MDPV 50-State sales, by model year, that must meet the requirements for their full useful lives. Table S09–3 follows:

TABLE S09–3.—PHASE-IN PERCENTAGES FOR LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS: NON-GASOLINE PORTION OF MULTI-FUELED VEHICLES

Model year	Percentage of vehicles that must meet evaporative emission requirements
2012	30
2013	60
2014 and subsequent	100

(2) through (6) [Reserved]. For guidance see § 86.1811–04.

(7) In cases where vehicles are certified to evaporative emission standards in Tables S09–1 and S09–2 of this section, the Administrator may accept evaporative emissions data for low altitude testing in accordance with California test conditions and test procedures (in lieu of the evaporative emission test condition and test procedure requirements of subpart B of this part).

(f) through (s) [Reserved]. For guidance see § 86.1811–04.

(t) *Evaporative emission in-use standards.* (1) For LDVs and LLDTs certified prior to the 2012 model year, the Tier 2 LDV/LLDT evaporative emissions standards in Table S04–3 of § 86.1811–04(e) shall apply to in-use vehicles for only the first three model years after an evaporative family is first certified to the LDV/LLDT evaporative emission standards in Table S09–1 of paragraph (e) of this section, as shown in Table S09–4. For example, evaporative families first certified to the LDV/LLDT standards in Table S09–1 in the 2011 model year must meet the Tier

2 LDV/LLDT evaporative emission standards (Table S04–3) in-use for 2011, 2012, and 2013 model year vehicles (applying Tier 2 standards in-use is limited to the first three years after introduction of a vehicle).

(2) For HLDTs and MDPVs certified prior to the 2013 model year, the Tier 2 HLDT/MDPV evaporative emissions standards in Table S04–3 of § 86.1811–04(e) shall apply to in-use vehicles for only the first three model years after an evaporative family is first certified to the HLDT/MDPV evaporative emission standards in Table S09–1 of paragraph (e) of this section, as shown in Table S09–5. For example, evaporative families first certified to the HLDT/MDPV standards in Table S09–1 in the 2012 model year must meet the Tier 2 HLDT/MDPV evaporative emission standards (Table S04–3) in-use for 2012, 2013, and 2014 model year vehicles (applying Tier 2 standards in-use is limited to the first three years after introduction of a vehicle).

TABLE S09–4.—SCHEDULE FOR IN-USE LDV/LLDT DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS

Model Year of Introduction	2009	2010	2011
Models Years That Tier 2 Standards Apply to In-use Vehicles	2009 2010 2011	2010 2011 2012	2011 2012 2013

TABLE S09–5—SCHEDULE FOR IN-USE HLDT/MDPV DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS

Model Year of Introduction 2010	2010	2011	2012
Models Years That Tier 2 Standards Apply to In-use Vehicles	2010 2011 2012	2011 2012 2013	2012 2013 2014

■ 20. A new § 86.1811–10 is added to Subpart S to read as follows:

§ 86.1811–10 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

Section 86.1811–10 includes text that specifies requirements that differ from § 86.1811–04 and § 86.1811–09. Where a paragraph in § 86.1811–04 or § 86.1811–09 is identical and applicable to § 86.1811–10, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1811–04'' or ''[Reserved]. For guidance see § 86.1811–09.'' Where a corresponding paragraph of § 86.1811–04 or § 86.1811–09 is not applicable, this is indicated by the statement ''[Reserved].''

(a) [Reserved]. For guidance see § 86.1811–09.

(b) through (d) [Reserved]. For guidance see § 86.1811–04.

(e) [Reserved]. For guidance see § 86.1811–09.

(f) [Reserved]. For guidance see § 86.1811–04.

(g) *Cold temperature exhaust emission standards.* (1) Cold temperature CO standards. These cold temperature CO standards are applicable only to gasoline fueled LDV/Ts and MDPVs. Cold temperature CO exhaust emission standards apply over a useful life of 50,000 miles or 5 years (whichever occurs first) as follows:

(i) For LDVs and LDT1s, the standard is 10.0 grams per mile CO.

(ii) For LDT2s, LDT3s and LDT4s, and MDPVs, the standard is 12.5 grams per mile CO.

(iii) These standards do not apply to interim non-Tier 2 MDPVs.

(2) *Cold temperature NMHC standards.* Full useful life fleet average cold temperature NMHC standards are applicable only to gasoline fueled LDV/LLDTs and HLDT/MDPVs, and apply equally to certification and in-use except as otherwise specified in paragraph (u) of this section for in-use standards for applicable phase-in models. Testing with other fuels such as E85, or testing on diesel vehicles, is not required. Multi-fuel, bi-fuel or dual-fuel vehicles must comply with requirements using gasoline only. For LDV/LLDTs, the useful life is 120,000 miles or 10 years, whichever comes first. For HLDT/MDPVs, the useful life is 120,000 miles or 11 years, whichever comes first. There is not an intermediate useful life standard for cold temperature NMHC standards.

(i) The standards are shown in the following table:

TABLE S10–1—FLEET AVERAGE COLD TEMPERATURE NMHC FULL USEFUL LIFE EXHAUST EMISSION STANDARDS

Vehicle weight category	Cold temperature NMHC sales-weighted fleet average standard (grams/mile)
LDVs & LLDTs (≤6,000 lbs GVWR)	0.3
HLDTs (>6,000–8,500 lbs GVWR) & MDPVs (>8,500–10,000 lbs GVWR)	0.5

(ii) The manufacturer must calculate its fleet average cold temperature NMHC emission level(s) as described in § 86.1864–10(m).

(iii) During a phase-in year, the manufacturer must comply with the fleet average standards for the required phase-in percentage for that year as specified in paragraph (g)(3) of this section, or for the alternate phase-in percentage as permitted under paragraph (g)(4) of this section.

(iv) For model years prior to 2010 (LDV/LLDTs) and 2012 (HLDT/MDPVs), where the manufacturer desires to bank early NMHC credits as permitted under § 86.1864–10(o)(5), the manufacturer must achieve a fleet average standard below the applicable standard. Manufacturers must determine compliance with the cold temperature NMHC fleet average standard according to § 86.1864–10(o).

(3) *Phase-in of the cold temperature NMHC standards.* Except as permitted in § 86.1811–04(k)(5)(vi) and (vii) regarding small volume manufacturers, manufacturers must comply with the phase-in requirements in Tables S10–2 and S10–3. Separate phase-in schedules are provided for LDV/LLDTs and for HLDT/MDPVs. These requirements specify the minimum percentage of the manufacturer's LDV/LLDT and HLDT/MDPV 50-State sales, by model year, that must meet the fleet average cold temperature NMHC standard for their full useful lives. LDVs and LLDTs must be grouped together to determine compliance with these phase-in requirements, and HLDTs and MDPVs must also be grouped together to determine compliance with these phase-in requirements. Tables S10–2 and S10–3 follow:

TABLE S10–2—PHASE-IN PERCENTAGES FOR LDV/LLDT COLD TEMPERATURE NMHC REQUIREMENTS

Model year	Percentage of LDV/LLDTs that must meet requirement
2010	25
2011	50
2012	75
2013 and subsequent	100

TABLE S10–3—PHASE-IN PERCENTAGES FOR HLDT/MDPV COLD TEMPERATURE NMHC REQUIREMENTS

Model year	Percentage of HLDT/MDPVs that must meet requirement
2012	25
2013	50
2014	75
2015 and subsequent	100

(4) *Alternate phase-in schedules for cold temperature NMHC standards.* (i) Manufacturers may apply for alternate phase-in schedules that would still result in 100% phase-in by 2013 and 2015, respectively, for LDV/LLDTs and HLDT/MDPVs. An alternate phase-in schedule submitted by a manufacturer is subject to EPA approval. The alternate phase-in will not be used to delay full implementation past the last year of the primary phase-in schedule (2013 for LDV/LLDTs, 2015 for HLDT/MDPVs). An alternate phase-in schedule will be acceptable if it satisfies the following conditions (where API = Anticipated Phase-In percentage for the referenced model year):

LDV/LLDTs:

$(6\times API_{2008}) + (5\times API_{2009}) + (4\times API_{2010}) + (3\times API_{2011}) + (2\times API_{2012}) + (1\times API_{2013}) \geq 500\%$, and $(6\times API_{2008}) + (5\times API_{2009}) + (4\times API_{2010}) \geq 100\%$

HLDT/MDPVs:

$(6\times API_{2010}) + (5\times API_{2011}) + (4\times API_{2012}) + (3\times API_{2013}) + (2\times API_{2014}) + (1\times API_{2015}) \geq 500\%$, and $(6\times API_{2010}) + (5\times API_{2011}) + (4\times API_{2012}) \geq 100\%$, or

$(6\times API_{2010}) + (5\times API_{2011}) + (4\times API_{2012}) + (3\times API_{2013}) + (2\times API_{2014}) + (1\times API_{2015}) \geq 600\%$

(ii)(A) For LDV/LLDTs, if the sum of products in paragraph (g)(4)(i) of this section is greater than or equal to 500%, which is the sum of products from the primary phase-in schedule (4×25% + 3×50% + 2×75% + 1×100% = 500%), then the alternate phase-in schedule is acceptable, except as prohibited in paragraphs (g)(4)(i) and (iii) of this section. In addition, manufacturers electing to use an alternate phase-in schedule for compliance with the cold temperature NMHC exhaust emission standards must ensure that the sum of products is at least 100% for model years 2010 and earlier for LDV/LLDTs. For example, a phase-in schedule for LDV/LLDTs of 5/10/10/45/80/100 that begins in 2008 would calculate as (6×5%) + (5×10%) + (4×10%) = 120% and would be acceptable for 2008–2010. The full phase-in would calculate as (6×5%) + (5×10%) + (4×10%) + (3×45%) + (2×80%) + (1×100%) = 515% and would be acceptable for 2008–2013.

(B) For HLDT/MDPVs, if the sum of products in paragraph (g)(4)(i) of this section is greater than or equal to 500%, which is the sum of products from the primary phase-in schedule (4×25% + 3×50% + 2×75% + 1×100% = 500%), then the alternate phase-in schedule is acceptable, except as prohibited in paragraphs (g)(4)(i) and (iii) of this section. In addition, manufacturers electing to use an alternate phase-in schedule for compliance with the cold temperature NMHC exhaust emission standards must ensure that the sum of products is at least 100% for model years 2012 and earlier for HLDT/MDPVs. Alternately, if the sum of products is greater than or equal to 600%, then the alternate phase-in schedule is acceptable, except as prohibited in paragraphs (g)(4)(i) and (iii) of this section. If the sum of products is greater than or equal to 600%, then there are no requirements on the sum of products for model years 2012 and earlier.

(iii) Under an alternate phase-in schedule, the projected phase-in percentage is not binding for a given model year, provided the sums of the actual phase-in percentages that occur meet the appropriate total sums as required in the equations of paragraph (g)(4)(i) of this section, and provided that 100% actual compliance is reached for the appropriate model year, either 2013 for LDV/LLDTs or 2015 for HLDT/MDPVs.

(5) Manufacturers must determine compliance with required phase-in schedules as follows:

(i) Manufacturers must submit information showing compliance with all phase-in requirements of this section with their Part I applications as required by § 86.1844(d)(13).

(ii) A manufacturer electing to use any alternate phase-in schedule permitted under this section must provide in its Application for Certification for the first year in which it intends to use such a schedule, and in each succeeding year during the phase-in, the intended phase-in percentages for that model year and the remaining phase-in years along with the intended final sum of those percentages as described in paragraph (g)(4)(i) of this section. This information may be included with the information required under § 86.1844–01(d)(13). In its year end annual reports, as required under § 86.1844–01(e)(4), the manufacturer must include sufficient information so that the Administrator can verify compliance with the alternate phase-in schedule established under paragraph (g)(4)(i) of this section.

(6)(i) Sales percentages for the purpose of determining compliance with the phase-in of the cold temperature NMHC requirements must be based upon projected 50-State sales of LDV/LLDTs and HLDT/MDPVs of the applicable model year by the manufacturer to the point of first sale. Such sales percentages must be rounded to the nearest 0.1 percent.

(ii) Alternatively, the manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of projected U.S. sales for purposes of determining compliance with the phase-in percentage requirements under this section. The manufacturer must submit its petition within 30 days of the end of the model year. For EPA to approve the use of actual volume produced for U.S. sales, the manufacturer must establish to the satisfaction of the Administrator, that actual production volume is functionally equivalent to actual sales volume of LDV/LLDTs and HLDT/MDPVs sold in all 50 U.S. States.

(h) through (s) [Reserved]. For guidance see § 86.1811–04.

(t) [Reserved]. For guidance see § 86.1811–09.

(u) *Cold temperature NMHC exhaust emission in-use standards for applicable phase-in models.* An interim full useful life in-use compliance standard is calculated by adding 0.1 g/mi to the FEL to which each test group is newly certified, and applies to that test group only for the model years shown in Tables S10–4 and S10–5. Otherwise, the in-use standard is the certification standard from paragraph (g)(2) of this section. The standards apply for purposes of in-use testing only and does not apply to certification or Selective Enforcement Auditing. Tables S10–4 and S10–5 follow:

TABLE S10–4.—IN-USE STANDARDS FOR APPLICABLE PHASE-IN LDV/LLDTS

Model Year of Introduction	2008	2009	2010	2011	2012	2013
Models years that the interim in-use standard is available	2008 2009 2010 2011	2009 2010 2011 2012	2010 2011 2012 2013	2011 2012 2013	2012 2013 2014	2013 2014

TABLE S10–5.—IN-USE STANDARDS FOR APPLICABLE PHASE-IN HLDT/MDPVS

Model Year of Introduction	2010	2011	2012	2013	2014	2015
Models years that the interim in-use standard is available	2010 2011 2012 2013	2011 2012 2013 2014	2012 2013 2014 2015	2013 2014 2015	2014 2015 2016	2015 2016

■ 21. Section 86.1823–01 is amended by revising paragraph (a)(3)(i)(C) to read as follows:

§ 86.1823–01 Durability demonstration procedures for exhaust emissions.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(C) The DF calculated by these procedures will be used for determining compliance with FTP exhaust emission standards, SFTP exhaust emission standards, cold temperature NMHC emission standards, and cold temperature CO emission standards. At the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold temperature CO test data to determine compliance with cold temperature CO emission standards. Similarly, at the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold temperature NMHC test data to determine compliance with cold temperature NMHC emission standards. For determining compliance with full useful life cold temperature NMHC emission standards, the 68–86 °F 120,000 mile full useful life NMOG DF may be used. Also at the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using US06 and/or air conditioning (SC03) test data to determine compliance with the SFTP emission standards.

* * * * *

■ 22. Section 86.1827–01 is amended by revising paragraph (a)(5) to read as follows:

§ 86.1827–01 Test group determination.

* * * * *

(a) * * *

(5) Subject to the same emission standards (or FEL in the case of cold temperature NMHC standards), except that a manufacturer may request to group vehicles into the same test group as vehicles subject to more stringent standards, so long as all the vehicles within the test group are certified to the most stringent standards applicable to any vehicle within that test group. Light-duty trucks subject to the same emission standards as light-duty vehicles, with the exception of the light-duty truck idle CO standard and/or total HC standard, may be included in the same test group.

* * * * *

■ 23. A new § 86.1828–10 is added to Subpart S to read as follows:

§ 86.1828–10 Emission data vehicle selection.

Section 86.1828–10 includes text that specifies requirements that differ from § 86.1828–01. Where a paragraph in § 86.1828–01 is identical and applicable to § 86.1828–10, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1828–01.'' Where a corresponding paragraph of § 86.1828–01 is not applicable, this is indicated by the statement ''[Reserved].''

(a) through (f) [Reserved]. For guidance see § 86.1828–01.

(g) *Cold temperature NMHC testing.* For cold temperature NMHC exhaust emission compliance for each durability group, the manufacturer must select the vehicle expected to emit the highest NMHC emissions at 20 °F on candidate in-use vehicles from the test vehicles specified in § 86.1828–01(a). When the expected worst-case cold temperature NMHC vehicle is also the expected worst-case cold temperature CO vehicle as selected in paragraph (c) of this section, then cold testing is required only for that vehicle; otherwise, testing is required for both the worst-case cold temperature CO vehicle and the worst-case cold temperature NMHC vehicle.

■ 24. Section 86.1829–01 is amended by revising paragraph (b)(3) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b) * * *

(3) *Cold temperature CO and cold temperature NMHC Testing.* The manufacturer must test one EDV in each durability group for cold temperature CO and cold temperature NMHC exhaust emission compliance in accordance with the test procedures in subpart C of this part or with alternative procedures approved in advance by the Administrator. The selection of which EDV and test group within the durability group will be tested for cold temperature CO and cold temperature NMHC compliance will be determined under the provisions of § 86.1828–10(c) and (g).

* * * * *

■ 25. Section 86.1844–01 is amended by revising paragraph (d)(11) to read as follows:

§ 86.1844–01 Information requirements: application for certification and submittal of information upon request.

* * * * *

(d) * * *

(11) A list of all auxiliary emission control devices (AECD) installed on any applicable vehicles, including a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD which results in a reduction in effectiveness of the emission control system, and rationale for why the AECD is not a defeat device as defined under §§ 86.1809–01 and 86.1809–10. For any AECD uniquely used at high altitudes, EPA may request engineering emission

data to quantify any emission impact and validity of the AECD. For any AECD uniquely used on multi-fuel vehicles when operated on fuels other than gasoline, EPA may request engineering emission data to quantify any emission impact and validity of the AECD.

* * * * *

■ 26. A new § 86.1848–10 is added to Subpart S to read as follows:

§ 86.1848–10 Certification.

Section 86.1848–10 includes text that specifies requirements that differ from § 86.1848–01. Where a paragraph in § 86.1848–01 is identical and applicable to § 86.1848–10, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1848–01.'' Where a corresponding paragraph of § 86.1848–01 is not applicable, this is indicated by the statement ''[Reserved].''

(a) through (b) [Reserved]. For guidance see § 86.1848–01.

(c) The following conditions apply to all certificates:

(1) The manufacturer must supply all required information according to the provisions of §§ 86.1843–01 and 86.1844–01.

(2) The manufacturer must comply with all certification and in-use emission standards contained in subparts S and H of this part both during and after model year production.

(3) The manufacturer must comply with all implementation schedules sales percentages as required in § 86.1810 or elsewhere in this part. Failure to meet a required implementation schedule sales percentage will be considered to be a failure to satisfy a condition upon which the certificate was issued and any vehicles or trucks sold in violation of the implementation schedule are not to be covered by the certificate.

(4) For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles that, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.1844–01.

(5) The manufacturer must meet the in-use testing and reporting requirements contained in §§ 86.1845–01, 86.1846–01, and 86.1847–01, as applicable. Failure to meet the in-use testing or reporting requirements shall be considered a failure to satisfy a condition upon which the certificate was issued. A vehicle or truck is considered to be covered by the certificate only if the manufacturer fulfills this condition upon which the certificate was issued.

(6) Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer's application for certification (Part I and Part II).

(7) For Tier 2 and interim non-Tier 2 vehicles, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811–04, 86.1860–04, 86.1861–04 and 86.1862–04 both during and after model year production. The manufacturer must bear the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied. For recall and warranty purposes, vehicles not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the vehicles.

(i) Failure to meet the fleet average NO_X requirements of 0.07g/mi, 0.3 g/mi or 0.2 g/mi, as applicable, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average NO_X standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that it has not generated or that are not available, as specified in § 86.1861–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold which do not comply with Tier 2 or interim non-Tier 2 requirements, up to the number needed to comply, will not be covered by the certificate(s).

(8) For LDV/LLDTs and HLDT/MDPVs, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811–10 and 86.1864–10 both during and after model year production. The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied. For recall and warranty purposes, vehicles not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the vehicles.

(i) Failure to meet the fleet average cold temperature NMHC requirements will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of the fleet average NMHC standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that are not generated or that are not available, as specified in § 86.1864–10, will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold in violation of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811–10 will be considered a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the vehicles sold that do not comply with cold temperature NMHC requirements, up to the number needed to comply, will not be covered by the certificate(s).

(d) through (i) [Reserved]. For guidance see § 86.1848–01.

■ 27. A new § 86.1864–10 is added to Subpart S to read as follows:

§ 86.1864–10 How to comply with the fleet average cold temperature NMHC standards.

(a) *Applicability.* Cold temperature NMHC exhaust emission standards apply to the following vehicles, subject to the phase-in requirements in § 86.1811–10(g)(3) and (4):

(1) 2010 and later model year LDV/LLDTs.

(2) 2012 and later model year HLDT/MDPVs.

(3) Aftermarket conversion systems as defined in 40 CFR 85.502, including conversion of MDPVs.

(4) Vehicles imported by ICIs as defined in 40 CFR 85.1502.

(b) *Useful life requirements.* Full useful life requirements for cold temperature NMHC standards are defined in § 86.1805–04(g). There is not an intermediate useful life standard for cold temperature NMHC standards.

(c) *Altitude.* Altitude requirements for cold temperature NMHC standards are provided in § 86.1810–09(f).

(d) *Small volume manufacturer certification procedures.* Certification procedures for small volume manufacturers are provided in § 86.1838–01.

(e) *Cold temperature NMHC standards.* Fleet average cold temperature NMHC standards are provided in § 86.1811–10(g)(2).

(f) *Phase-in.* Phase-in of the cold temperature NMHC standards are provided in § 86.1811–10(g)(3) and (4).

(g) *Phase-in flexibilities for small volume manufacturers.* Phase-in flexibilities for small volume manufacturer compliance with the cold temperature NMHC standards are provided in § 86.1811–04(k)(5).

(h) *Hardship provisions for small volume manufacturers.* Hardship provisions for small volume manufacturers related to the cold temperature NMHC standards are provided in § 86.1811–04(q)(1).

(i) *In-use standards for applicable phase-in models.* In-use cold temperature NMHC standards for applicable phase-in models are provided in § 86.1811–10(u).

(j) *Durability procedures and method of determining deterioration factors (DFs).* The durability data vehicle selection procedures of § 86.1822–01 and the durability demonstration procedures of § 86.1823–06 apply for cold temperature NMHC standards. For determining compliance with full useful life cold temperature NMHC emission standards, the 68–86 °F, 120,000 mile full useful life NMOG DF may be used.

(k) *Vehicle test procedure.* (1) The test procedure for demonstrating compliance with cold temperature NMHC standards is contained in subpart C of this part. With prior EPA approval, alternative testing procedures may be used, as specified in § 86.106–96(a), provided cold temperature NMHC emissions test results are equivalent or superior.

(2) Testing of all LDVs, LDTs and MDPVs to determine compliance with cold temperature NMHC exhaust emission standards set forth in this section must be on a loaded vehicle weight (LVW) basis, as defined in § 86.1803–01.

(3) Testing for the purpose of providing certification data is required only at low altitude conditions and only for vehicles that can operate on gasoline, except as requested in §§ 86.1810–09(f) and 86.1844–01(d)(11). If hardware and software emission control strategies used during low altitude condition testing are not used similarly across all altitudes for in-use operation, the manufacturer must include a statement in the application for certification, in accordance with §§ 86.1844–01(d)(11) and 86.1810–09(f), stating what the different strategies are and why they are used. If hardware and software emission control strategies used during testing with gasoline are not used similarly with all fuels that can be used in multi-fuel vehicles, the manufacturer will include a statement in the application for certification, in accordance with §§ 86.1844–01(d)(11) and 86.1810–09(f), stating what the different strategies are and why they are used. For example, unless a manufacturer states otherwise, air pumps used to control emissions on dedicated gasoline vehicles or multi-fuel vehicles during low altitude conditions must also be used to control emissions at high altitude conditions, and software used to control emissions or closed loop operation must also operate similarly at low and high altitude conditions and similarly when multi-fueled vehicles are operated on gasoline and alternate fuels. These examples are for illustrative purposes only; similar strategies would apply to other currently used emission control technologies and/or emerging or future technologies.

(l) *Emission data vehicle (EDV) selection.* Provisions for selecting the appropriate EDV for the cold temperature NMHC standards are provided in §§ 86.1828–10(g) and 86.1829–01(b)(3).

(m) *Calculating the fleet average cold temperature NMHC standard.* Manufacturers must compute separate sales-weighted fleet average cold temperature NMHC emissions at the end of the model year for LDV/LLDTs and HLDT/MDPVs, using actual sales, and certifying test groups to FELs, as defined in § 86.1803–01. The FEL becomes the standard for each test group, and every test group can have a different FEL. The certification resolution for the FEL will be 0.1 grams/mile. LDVs and LLDTs must be grouped together when calculating the fleet average, and HLDTs and MDPVs must also be grouped together to determine the fleet average. Manufacturers must compute the sales-weighted cold temperature NMHC fleet averages using the following equation, rounded to the nearest 0.1 grams/mile:

Fleet average cold temperature NMHC exhaust emissions (grams/mile) = $\Sigma(N \times FEL) \div$ Total number of vehicles sold of the applicable weight category (i.e., either LDV + LLDTs, or HLDT + MDPVs)

Where:

N = The number of LDVs and LLDTs, or HLDTs and MDPVs, sold within the applicable FEL, based on vehicles counted to the point of first sale.

FEL = Family Emission Limit (grams/mile).

(n) *Certification compliance and enforcement requirements for cold temperature NMHC standards.* (1) Compliance and enforcement requirements are provided in § 86.1864–10 and § 86.1848–10(c)(8).

(2) The certificate issued for each test group requires all vehicles within that test group to meet the emission standard or FEL to which the vehicles were certified.

(3) Each manufacturer must comply with the applicable cold temperature NMHC fleet average standard on a sales-weighted average basis, at the end of each model year, using the procedure described in paragraph (m) of this section.

(4) During a phase-in year, the manufacturer must comply with the applicable cold temperature NMHC fleet average standard for the required phase-in percentage for that year as specified in § 86.1811–10(g)(3) or (4).

(5) Manufacturers must compute separate cold temperature NMHC fleet averages for LDV/LLDTs and HLDT/MDPVs. The sales-weighted cold temperature NMHC fleet averages must be compared with the applicable fleet average standard.

(6) Each manufacturer must comply on an annual basis with the fleet average standards as follows:

(i) Manufacturers must report in their annual reports to the Agency that they met the relevant corporate average standard by showing that their sales-weighted average cold temperature NMHC emissions of LDV/LLDTs and HLDT/MDPVs, as applicable, are at or below the applicable fleet average standard;

(ii) If the sales-weighted average is above the applicable fleet average standard, manufacturers must obtain and apply sufficient NMHC credits as permitted under paragraph (o)(8) of this section. A manufacturer must show via the use of credits that they have offset any exceedence of the corporate average standard. Manufacturers must also include their credit balances or deficits.

(iii) If a manufacturer fails to meet the corporate average cold temperature NMHC standard for two consecutive years, the vehicles causing the corporate average exceedence will be considered not covered by the certificate of conformity (see paragraph (o)(8) of this section). A manufacturer will be subject to penalties on an individual-vehicle basis for sale of vehicles not covered by a certificate.

(iv) EPA will review each manufacturer's sales to designate the vehicles that caused the exceedence of the corporate average standard. EPA will designate as nonconforming those vehicles in test groups with the highest certification emission values first, continuing until reaching a number of vehicles equal to the calculated number of noncomplying vehicles as determined above. In a group where only a portion of vehicles would be deemed nonconforming, EPA will determine the

actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group. Manufacturers will be liable for penalties for each vehicle sold that is not covered by a certificate.

(o) *Requirements for the cold temperature NMHC averaging, banking and trading (ABT) program.* (1) Manufacturers must average the cold temperature NMHC emissions of their vehicles and comply with the cold temperature NMHC fleet average corporate standard. Manufacturers may generate credits during and after the phase-in period. Manufacturers may generate credits prior to the phase-in periods as described in paragraph (o)(5) of this section. A manufacturer whose cold temperature NMHC fleet average emissions exceed the applicable standard must complete the calculation in paragraph (o)(4) of this section to determine the size of its NMHC credit deficit. A manufacturer whose cold temperature NMHC fleet average emissions are less than the applicable standard must complete the calculation in paragraph (o)(4) of this section to generate NMHC credits.

(2) There are no property rights associated with NMHC credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this part or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking.

(3) Each manufacturer must comply with the reporting and recordkeeping requirements of paragraph (p) of this section for NMHC credits, including early credits. The averaging, banking and trading program is enforceable through the certificate of conformity that allows the manufacturer to introduce any regulated vehicles into commerce.

(4) Credits are earned on the last day of the model year. Manufacturers must calculate, for a given model year, the number of credits or debits it has generated according to the following equation, rounded to the nearest 0.1 grams/mile:

NMHC Credits or Debits = (Cold Temperature NMHC Standard—Manufacturer's Sales-Weighted Fleet Average Cold Temperature NMHC Emissions) × (Total Number of Vehicles Sold)

Where:

Cold Temperature NMHC Standard = 0.3 grams/mile for LDV/LLDTs or 0.5 grams/mile for HLDT/MDPV, per § 86.1811–10(g)(2).

Manufacturer's Sales-Weighted Fleet Average Cold Temperature NMHC Emissions = average calculated according to paragraph (m) of this section.

Total Number of Vehicles Sold = Total 50-State sales based on the point of first sale.

(5) The following provisions apply for early banking:

(i) Manufacturers may certify LDV/LLDTs to the cold temperature NMHC exhaust standards in § 86.1811–10(g)(2) for model years 2008–2009 to bank credits for use in the 2010 and later model years. Manufacturers may certify HLDT/MDPVs to the cold temperature NMHC exhaust standards in § 86.1811–10(g)(2) for model years 2010–2011 to bank credits for use in the 2012 and later model years.

(ii) This process is referred to as ''early banking'' and the resultant credits are referred to as ''early credits.'' To bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to LDV/LLDTs and/or HLDT/MDPVs. To generate early credits, a manufacturer must separately compute the sales-weighted cold temperature NMHC average of the LDV/LLDTs and HLDT/MDPVs it certifies to the exhaust requirements and separately compute credits using the calculations in paragraph (o)(4) of this section. Early HLDT/MDPV credits may not be applied to LDV/LLDTs before the 2010 model year. Early LDV/LLDT credits may not be applied to HLDT/ MDPV before the 2012 model year.

(6) NMHC credits are not subject to any discount or expiration date except as required under the deficit carryforward provisions of paragraph (o)(8) of this section. There is no discounting of unused credits. NMHC credits have unlimited lives, subject to the limitations of paragraph (o)(2) of this section.

(7) Credits may be used as follows:

(i) Credits generated and calculated according to the method in paragraph (o)(4) of this section may be used only to offset deficits accrued with respect to the standard in § 86.1811–10(g)(2). Credits may be banked and used in a future model year in which a manufacturer's average cold temperature NMHC level exceeds the applicable standard. Credits may be exchanged between the LDT/LLDT and HLDT/MDPV fleets of a given manufacturer. Credits may also be traded to another manufacturer according to the provisions in paragraph (o)(9) of this section. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(ii) The use of credits shall not be permitted to address Selective Enforcement Auditing or in-use testing failures. The enforcement of the averaging standard occurs through the vehicle's certificate of conformity. A manufacturer's certificate of conformity is conditioned upon compliance with the averaging provisions. The certificate will be void ab initio if a manufacturer fails to meet the corporate average standard and does not obtain appropriate credits to cover its shortfalls in that model year or in the subsequent model year (see deficit carryforward provision in paragraph (o)(8) of this section). Manufacturers must track their certification levels and sales unless they produce only vehicles certified to cold temperature NMHC levels below the standard and do not plan to bank credits.

(8) The following provisions apply if debits are accrued:

(i) If a manufacturer calculates that it has negative credits (also called ''debits'' or a ''credit deficit'') for a given model year, it may carry that deficit forward into the next model year. Such a carry-forward may only occur after the manufacturer exhausts any supply of banked credits. At the end of that next model year, the deficit must be covered with an appropriate number of credits that the manufacturer generates or purchases. Any remaining deficit is subject to an enforcement action, as described in this paragraph (o)(8). Manufacturers are not permitted to have a credit deficit for two consecutive years.

(ii) If debits are not offset within the specified time period, the number of vehicles not meeting the fleet average cold temperature NMHC standards (and therefore not covered by the certificate) must be calculated by dividing the total amount of debits for the model year by the fleet average cold temperature NMHC standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the number of vehicles for which the condition on the certificate was not satisfied by designating vehicles in those test groups with the highest certification cold temperature NMHC emission values first and continuing until reaching a number of vehicles equal to the calculated number of noncomplying vehicles as determined above. If this calculation determines that only a portion of vehicles in a test group contribute to the debit situation, then EPA will designate actual vehicles in that test group as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(iv)(A) If a manufacturer ceases production of LDV/LLDTs and HLDT/MDPVs, the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered a violation of paragraph (o)(8)(i) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraphs (o)(8)(ii) and (iii) of this section.

(B) If a manufacturer is purchased by, merges with, or otherwise combines with another manufacturer, the controlling entity is responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered a violation of paragraph (o)(8)(i) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraphs (o)(8)(ii) and (iii) of this section.

(v) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (o)(8)(i) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (o)(8)(i) of this section.

(9) The following provisions apply to NMHC credit trading:

(i) EPA may reject NMHC credit trades if the involved manufacturers fail to submit the credit trade notification in the annual report. A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (o)(7)(i) of this section.

(ii) In the event of a negative credit balance resulting from a transaction that a manufacturer could not cover by the reporting deadline for the model year in which the trade occurred, both the buyer and seller are liable, except in cases involving fraud. EPA may void ab initio the certificates of conformity of all engine families participating in such a trade.

(iii) A manufacturer may only trade credits that it has generated pursuant to paragraph (o)(4) of this section or acquired from another party.

(p) *Maintenance of records and submittal of information relevant to compliance with fleet average cold temperature NMHC standards.* (1) *Maintenance of records.* (i) Manufacturers producing any light-duty vehicles, light-duty trucks, or medium-duty passenger vehicles subject to the provisions in this subpart must establish, maintain, and retain all the following information in adequately organized records for each model year:

(A) Model year.

(B) Applicable fleet average cold temperature NMHC standards.

(C) Fleet average cold temperature NMHC value.

(D) All values used in calculating the fleet average cold temperature NMHC value.

(ii) Manufacturers producing any light-duty vehicles, light-duty trucks, or medium-duty passenger vehicles subject to the provisions in this subpart must establish, maintain, and retain all the following information in adequately organized records for each LDV/T or MDPV subject to this subpart:

(A) Model year.

(B) Applicable fleet average cold temperature NMHC standard.

(C) EPA test group.

(D) Assembly plant.

(E) Vehicle identification number.

(F) Cold temperature NMHC FEL to which the LDV, LDT, or MDPV is certified.

(G) Information on the point of first sale, including the purchaser, city, and state.

(iii) Manufacturers must retain all required records for a period of eight years from the due date for the annual report. Records may be stored in any format and on any media, as long as manufacturers can promptly send EPA organized, written records in English if we ask for them. Manufacturers must keep records readily available as EPA may review them at any time.

(iv) The Administrator may require the manufacturer to retain additional records or submit information not specifically required by this section.

(v) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(vi) EPA may void ab initio a certificate of conformity for vehicles certified to emission standards as set forth or otherwise referenced in this subpart for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(2) *Reporting.* (i) Each covered manufacturer must submit an annual report. The annual report must contain for each applicable cold temperature NMHC standard, the calculated fleet average cold temperature NMHC value, all values required to calculate the cold temperature NMHC emissions value, the number of credits generated or debits incurred, all the values required to calculate the credits or debits, the resulting balance of credits or debits, and sufficient information to show compliance with all phase-in or alternate phase-in requirements.

(ii) For each applicable fleet average cold temperature NMHC standard, the annual report must also include documentation on all credit transactions the manufacturer has engaged in since those included in the last report. Information for each transaction must include all of the following:

(A) Name of credit provider.

(B) Name of credit recipient.

(C) Date the trade occurred.

(D) Quantity of credits traded.

(E) Model year in which the credits were earned.

(iii) Unless a manufacturer reports the data required by this section in the annual production report required under § 86.1844–01(e), a manufacturer must submit an annual report for each model year after production ends for all affected vehicles produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports must be submitted to: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

(iv) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522 (a)(1)) for each applicable vehicle produced by that manufacturer.

(v) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's credit or debit calculations will be recalculated. EPA may void erroneous credits, unless traded, and will adjust erroneous debits. In the case of traded erroneous credits, EPA must adjust the selling manufacturer's credit balance to reflect the sale of such credits and any resulting credit deficit.

(3) *Notice of opportunity for hearing.* Any revoking of the certificate under paragraph (p)(1)(vi) of this section will be made only after EPA has offered the affected manufacturer an opportunity for a hearing conducted in accordance with § 86.614–84 for light-duty vehicles or § 86.1014–84 for light-duty trucks and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

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Part III

Department of Housing and Urban Development

Notice of Funding Availability (NOFA): Section 202 Demonstration Pre-Development Grant Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5078–N–01]

Notice of Funding Availability (NOFA): Section 202 Demonstration Pre-Development Grant Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of Housing.

B. *Funding Opportunity Title:* Section 202 Demonstration Pre-Development Grant Program.

C. *Announcement Type:* Initial announcement.

D. *Funding Opportunity Number:* The OMB approval number for this NOFA is 2502–0267. The **Federal Register** number is FR–5078–N–01.

E. *Catalog of Federal Domestic Assistance (CFDA) Number(s):* 14.157, Section 202 Demonstration Pre-Development Grant Program.

F. *Dates:* The application deadline date is Wednesday, March 28, 2007. All applications must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. Refer to the General Section of the Fiscal Year (FY) 2006 SuperNOFA (71 FR 3382), published January 20, 2006; the NOFA for HUD's discretionary programs (71 FR 11712), published March 8, 2006; and Section IV of this program NOFA for further information about application, submission, and timely receipt requirements.

G. *Additional Overview Content Information:* Applicants must be registered to apply online at Grants.gov. In addition to reviewing this program section, private nonprofit organizations and nonprofit consumer cooperatives interested in applying for funding under this program should carefully review the General Section of the FY 2006 SuperNOFA (71 FR 3382), published January 20, 2006; the NOFA for HUD's discretionary programs (71 FR 11712), published March 8, 2006; the technical corrections to the FY 2006 SuperNOFA (71 FR 25208), published April 28, 2006; the notice entitled ''Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Correction'' (71 FR 44038), published August 3, 2006; the notice entitled ''Notice of HUD's Fiscal Year (FY) 2006, Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Additional Information Regarding Applicant Registration'' (71 FR 45063), published August 8, 2006; and the information detailed in this program NOFA, which covers the registration, submission, timely receipt, and additional requirements for this funding opportunity.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description

The purpose of this Demonstration Pre-Development Grant Program is to assist Sponsors of projects that receive Fund Reservation Awards pursuant to the FY 2006 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program by providing predevelopment grant funding for architectural and engineering work, site control, and other planning-related expenses that are eligible for funding under the Section 202 Supportive Housing for the Elderly Program. Subsequent to providing predevelopment grant funding to the selected applicants, HUD will assess the impact of the availability of such funding on the ability of project Sponsors to expedite the development processing of projects from Section 202 Fund Reservation to Initial Closing within 18 months.

HUD is aware of the complexities of developing Section 202 projects and understands that a lack of predevelopment funding may be a contributing factor in many instances where project Sponsors are not able to move their approved projects from Fund Reservation award to Initial Closing within the required 18-month time frame. Funding under this program is not intended to duplicate Section 202 Capital Advance funding, but rather to provide a source of funding for predevelopment costs that would otherwise not be reimbursable until Initial Closing or would be payable from eligible funding resources secured outside of Section 202 Capital Advance funding.

B. Authority

The Section 202 Demonstration Pre-Development Grant Program is authorized by the Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115, approved November 30, 2005).

II. Award Information

A. Funding Available

The Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115, approved November 30, 2005), authorized approximately $20 million for predevelopment grants to private nonprofit organizations and consumer cooperatives in connection with the development of housing under the Section 202 Supportive Housing for the Elderly Program. The total dollar amount that is available under this Demonstration Pre-Development Grant Program is approximately $19.8 million, due to a one percent rescission pursuant to the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005).

B. Funding Process

HUD will only make offers to fully fund as many applications as possible from the $19.8 million allocated for Sponsors that receive Section 202 Fund Reservations pursuant to the FY 2006 SuperNOFA. Applicants selected for funding under the FY 2006 Section 202 Supportive Housing for the Elderly NOFA are not guaranteed funding under this Demonstration Pre-Development Grant Program.

C. Maximum Grant Award

The maximum grant amount per single application is $400,000. However, no more than $800,000 may be awarded to a single entity or its affiliated organizations. The amount of funding requested must be within the maximum grant award amounts or the application will not receive funding consideration.

D. Reduction of Requested Grant Amount

HUD may make an award in an amount less than requested, if:

1. HUD determines that any of the proposed predevelopment activities are ineligible for funding under the Section 202 Supportive Housing for the Elderly Program;
2. HUD determines that an eligible applicant has not been able to provide sufficient evidence to support the proposed cost of an eligible predevelopment item or activity;
3. HUD determines that a reduced grant would prevent duplicative federal funding; or
4. HUD determines that proposed costs for predevelopment activities are

not based on comparable costs for eligible items and activities in the applicant's community. HUD field office staff will review proposed costs in accordance with customary and reasonable costs for such items within the geographical jurisdiction of the respective Multifamily Hub and/or Multifamily Program Center Office. If requested by HUD, eligible applicants must provide supportable evidence of comparable costs for proposed activities.

E. Term of Funded Activities

The grant term is 18 months from the date of the Section 202 Supportive Housing for the Elderly Agreement Letter to Initial Closing. Funds not expended by the end of the grant term are subject to recapture and/or repayment if expended on ineligible activities. Failure to complete the development processing of the Section 202 project by the end of the grant term may result in grant termination, grant reduction, or other action deemed appropriate by HUD. HUD may use past performance in making future funding decisions.

III. Eligibility Information

A. Eligible Applicants

All private nonprofit organizations and nonprofit consumer cooperatives that submitted an application for funding consideration under the FY 2006 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program are eligible to apply for funding under this Demonstration Pre-Development Grant Program. (Please refer to the Section 202 program NOFA (71 FR 12009), published March 8, 2006, for a discussion on the eligibility criteria for the Section 202 program.) However, funding awards under this Demonstration Pre-Development Grant Program will be restricted to those applicants that are selected for Fund Reservation Awards under the FY 2006 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program. Funding under this Demonstration Pre-Development Grant Program will not be ''fair shared'' to each HUD office. Ineligible applicants under this program include:

1. Applicants that failed to submit a request for Fund Reservation under the FY 2006 Section 202 program NOFA;

2. Applications from eligible applicants that do not receive a Fund Reservation Award under the FY 2006 SuperNOFA for the Section 202 program;

3. Applications from applicants that are ineligible under the Section 202 program, including public bodies and instrumentalities of public bodies; and

4. Applicants submitting proposals involving mixed-financing for additional units.

B. Cost Sharing or Matching

No match required.

C. Other

1. *Requirement and Procedures.* To receive and administer funding under this Demonstration Pre-Development Grant Program, applicants must fully satisfy the eligibility requirements for participation in the Section 202 Supportive Housing for the Elderly Program and comply with the following:

a. *Statutory and Regulatory Requirements.* You must comply with all statutory, regulatory, threshold, and public policy requirements listed in the General Section of the FY 2006 SuperNOFA (71 FR 3382), published January 20, 2006.

b. *Allowable Use of Funds.* Pre-Development Grant Program funds may be used to cover the cost of predevelopment activities relating to the development of supportive housing for the elderly under the Section 202 program as described in Section IV(E)(1) (''Eligible Activities''). However, before a grantee can enter into a contract for professional services, the entity must receive approval under the form HUD–2530 clearance process. Such entities include, but are not limited to, housing consultants (including those instances where eligible Sponsors proposed to provide such services), general contractors, and management agents.

c. *Organizational Costs.* Eligible organizational expenses and/or costs are limited to those incurred in connection with the organization of an Owner entity, pursuant to the requirements of the Section 202 Supportive Housing for the Elderly Program.

d. *Site Control.* Applicants are required to provide evidence of site control, consistent with the requirements of the Section 202 program, as a condition to being funded under the FY 2006 Section 202 NOFA. Applicants who receive funding awards under this Pre-Development Grant Program NOFA may utilize this funding to extend site control in accordance with the site control requirements under the Section 202 Supportive Housing for the Elderly Program. See the FY 2006 Section 202 program NOFA (71 FR 12009), published March 8, 2006, for further discussion.

e. *Phase I and Phase II Environmental Site Assessments (ESA).* The requirements for Phase I and II ESAs are the same as those that apply to the Section 202 Supportive Housing for the Elderly Program and are contained in the FY 2006 Section 202 program NOFA and the Notice entitled, ''Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Correction'' (71 FR 44038), published August 3, 2006.

f. *False Statements.* See the General Section of the FY 2006 SuperNOFA.

2. *Program-Related Threshold Requirements.* In addition to the threshold requirements in the General Section of the FY 2006 SuperNOFA, applicants must adhere to all program-specific threshold requirements as detailed in this Pre-Development Grant Program NOFA. HUD will consider an application non-responsive to this NOFA and will not accept it for processing if the applicant:

a. is determined to be ineligible (Please refer to Section III(A) of this NOFA for a more detailed discussion on ineligible applicants);

b. requested more than the maximum grant amount;

c. is granted a waiver to submit a paper application, but fails to submit the required original and four copies; or

d. failed to submit the threshold requirements as identified by the asterisk (*) in Section IV(B) of this Pre-Development Grant Program NOFA by the deadline date.

IV. Application and Submission Information

A. Addresses To Request Application Package

All information needed for the preparation and submission of this application is included in this Pre-Development Grant Program NOFA and the General Section of the FY 2006 SuperNOFA (71 FR 3382), published January 20, 2006. Copies of the General Section, this Pre-Development Grant Program NOFA, and needed forms are found in the instructions and application downloads, which is on the Grants.gov Web site at *http://www.Grants.gov.* If you have difficulty accessing the information, you may call the Grants.gov Support desk toll-free at (800) 518–GRANTS or e-mail your questions to *support@grants.gov.* The Help Desk staff will assist you in accessing the information.

Your application must be transmitted electronically using www.Grants.gov unless you request and receive a waiver of the requirement for electronic application submittal. See the General Section for further information and instructions pertaining to electronic

application submission and waiver request requirements.

For applicants receiving a waiver to submit a paper application, an original and four copies of the completed application package must be received by the appropriate local HUD office on or before the deadline date. See *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* (select ''Important Information Related to the SuperNOFA'' and then select ''Field Offices'') for a complete listing of the Multifamily Hub Offices and Multifamily Program Centers.

B. Content and Form of Application Submission

You should ensure that your application is complete before transmitting it to the following Web site: *http://www.grants.gov* and, in cases where a waiver of electronic submission requirement is granted, an original and four copies must be submitted to the appropriate HUD office. Upon receipt of the application by HUD staff, HUD will screen all applications to determine if there are any curable deficiencies. See Section V(B)(2) of this Pre-Development Grant Program NOFA for further discussion.

Applicants may submit more than one application to a single field office. However, no more than one application may be submitted per project. All applicable documents must have an original signature. Each application must propose a separate project and the proposed development must be located within the jurisdiction of the appropriate field office. To be eligible for review, all applications must contain the required exhibits that include form SF–424, form HUD–2880, and the narrative discussions. Forms needed for the application may be obtained from *http://www.grants.gov.* Threshold items are identified by an asterisk (*). Failure to include threshold items in your initial application submission will render your application non-responsive and that application will not be considered for funding by HUD. Applications must contain the required exhibits listed below:

1. *Cover Letter.* A brief narrative detailing the project's name and HUD project number and the name(s), address(es), contact person name(s), and telephone number(s) of the Sponsor(s). The letter must also detail the total grant amount being requested under this Program NOFA.

2. *Standard Form 424—Application for Federal Assistance.*

3. * *Narrative Demonstrating Need for Predevelopment Funding.* This exhibit requires applicants to submit form HUD–2880, ''Applicant/Recipient Disclosure/Update Report,'' a disclosure of assistance from other governmental sources received in connection with the project. Applicants must also submit a brief narrative describing the financial circumstances that resulted in the need to apply for funding assistance with predevelopment activities and how the lack of such assistance has impacted the organization's previous or current development efforts.

4. * *Proposed Predevelopment Activities and Budget.* This exhibit requires applicants to submit a spreadsheet that specifically identifies the proposed activity(ies) and their anticipated cost. The recommended format is as follows:

Column 1—Clearly identify each eligible predevelopment activity being proposed by the applicant.

Column 2—Identify the anticipated cost for each activity.

The spreadsheet must identify the total predevelopment funding assistance being proposed in the application.

5. * *Project Development Schedule.* This Exhibit should include a detailed development schedule that identifies the predevelopment activities being proposed, their projected start and completion dates, the projected completion date for all predevelopment planning activities, and a brief narrative describing the applicant's plan for monitoring this schedule of activities and addressing potential delays. All projected development schedules must clearly demonstrate the applicant's ability to move its approved FY 2006 Section 202 elderly housing project from Fund Reservation to Initial Closing within 18 months of grant approval and must provide a statement addressing how access to predevelopment funding will assist the applicant in moving its FY 2006 Section 202 elderly housing project to Initial Closing within 18 months of Fund Reservation approval. The completion of the Logic Model (form HUD–96010) will assist you in responding to this exhibit.

6. *Logic Model (HUD–96010).* The Logic Model is representative of this Section 202 Demonstration Pre-Development Grant Program proposal and serves as the ''executive summary'' for this grant request. Applicants must ensure that its logic model accurately represents the purpose of the funding request and the expected impact on the development process.

7. *Facsimile Transmittal Cover Page (HUD–96011).* This form must be used as part of the electronic application to transmit third-party documents and other information as described in the General Section of the SuperNOFA (if applicable).

8. *Acknowledgment of Application Receipt (HUD–2993).* This form is not required for applications submitted electronically.

9. *Client Comments and Suggestions (HUD–2994).* Submitting this form is optional.

If changes have been made to any of the forms that were submitted under the FY 2006 Section 202 NOFA, HUD requires that the updated form(s) be resubmitted under this Demonstration Pre-Development Grant Program NOFA.

C. Submission Dates and Times

Your application must be received and validated electronically by Grants.gov no later than 11:59:59 p.m. eastern time by the application deadline date, unless a waiver of the electronic delivery process has been approved by HUD. Please refer to the General Section of the FY 2006 SuperNOFA for instructions on applying for a waiver. If a waiver is granted, HUD must receive an original and four copies of your application on or before the deadline date. You must comply with the mailing and timely receipt instructions in the General Section of the FY 2006 SuperNOFA.

D. Intergovernmental Review

This funding opportunity is subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.'' You must contact your state's Single Point of Contact (SPOC) to find out about and comply with the state's process under EO 12372. The names and addresses of the SPOCs are listed on the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html.* If required by the state, the submission to the state needs to occur no later than the application deadline date. It is recommended that you provide the state with sufficient time to review the application. Therefore, it is important that you consult with the SPOC for state review time frames and take that into account when submitting the application.

E. Funding Restrictions

1. *Eligible Activities.* Section 202 Demonstration Pre-Development Grant Program funds must be used exclusively to facilitate planning, design, and predevelopment activities for projects funded under the FY 2006 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program. Such activities include architectural and engineering work, site control planning, and other planning activities related to the

development of a multifamily housing project funded under the FY 2006 Section 202 Supportive Housing for the Elderly Program. Grantees may not use funds for land acquisition, leasing, new construction, or for property rehabilitation, alteration, demolition, or disposition.

a. All expenses related to eligible activities must be limited to those actual costs that are incurred prior to initial closing and be otherwise eligible activities under the Section 202 program. Activities that are eligible for funding include the following:

(1) *Appraisals.* The applicant's cost for obtaining an appraisal to establish the fair market value of the proposed site, completed by a qualified and licensed appraiser.

(2) *Architect Services.* The design fees charged by licensed architectural/engineering firms for architectural services regarding the applicant's project.

(3) *Engineering Services.* Actual cost of boundary survey, topographic survey, soil borings and tests.

(4) *Environmental Site Assessment.* Actual cost incurred for the environmental site assessment, i.e., Phase I and Phase II.

(5) *Consultant Services.* Up to 20 percent of the total amount of the contract between the applicant and its consultant for services related to the development and submission of an approvable Section 202 Fund Reservation application.

(6) *Cost Analysis.* The cost of the contract between the applicant and a professional with experience in cost estimation, for an independent cost estimate needed to determine the viability of a proposed project as required for Firm commitment processing under the Section 202 program.

(7) *Legal Fees.* The cost for legal services and title binder fees.

(8) *Site Control.* The applicant's cost for extending the time for site control of the original site, including option costs necessary to extend option agreement for up to 18 months, to the closing target date. The proceeds of this grant may not be used for site acquisition.

(9) *Market Studies.* The applicant's cost for a study completed by a qualified, independent, third-party market research firm for purposes of examining the need for and verifying the marketability of the proposed project.

(10) *Organizational Expenses.* The actual cost related to the creation of an owner entity for the proposed project, pursuant to Section 202 program regulations.

(11) *Impact Fees.* One-time fees local governments charge Sponsor/Owners to offset the impact such housing will have on the community. (Typical impact fees are traffic, solid waste, sewer, water, electric, gas, police protection, and fire protection.)

(12) *Relocation expenses.* If the project involves displacement of site occupants who are eligible for relocation assistance, indicate the total estimated cost.

(13) *Building permits and variance fees.* The cost of obtaining building permits and variances.

2. *Ineligible Activities.* No proposed activity that is deemed to be ineligible will be funded from the Demonstration Pre-Development Grant Program funds.

a. Section 202 Demonstration Pre-Development Grant Program funds may not be used for the following:

(1) To acquire sites or other real property; or to fund organizational overhead and/or operating expenses, staff salaries, or any planning activity that is otherwise ineligible for assistance under the Section 202 Supportive Housing for the Elderly Program.

(2) To meet Minimum Capital Investment (MCI) requirements for the Section 202 program.

(3) Performance/Payment Bonds (dual obligee).

(4) Taxes and interest.

(5) Bond premium, builder's risk, liability insurance, fidelity bond insurance, performance bond insurance, cash bond, and insurance premiums.

b. In the event that funding awarded under this program is utilized for activities or purposes that have not been approved by HUD, the Department will seek repayment or any other available remedies.

3. Applicants submitting proposals involving mixed-financing for additional units are not eligible to be considered for predevelopment funding under this NOFA.

F. Other Submission Requirements

Application Submission and Receipt Procedures. This section provides the application submission and receipt instructions for HUD program applications. Refer to the General Section for specific procedures for additional information on application submission requirements.

1. *Electronic Submission.* Demonstration Pre-Development Grant Program applicants must submit their applications electronically through *http://www.grants.gov/Apply*, unless a waiver is granted.

a. The *http://www.grants.gov/Apply* website offers a simple, unified application process. Submission requires an authenticated signature and registration at Grants.gov. There are five steps to complete the registration process, and information is available at the www.grants.gov Web site. Applicants should carefully read HUD's **Federal Register** notice on early registration (70 FR 73332), published December 9, 2005, or page 3390 of the General Section, published January 20, 2006.

b. In addition, applicants should carefully read HUD's **Federal Register** notice entitled, ''Notice of HUD's Fiscal Year (FY) 2006, Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Additional Information Regarding Applicant Registration'' (71 FR 45063), published August 8, 2006. The notice alerts applicants of a recent change in the registration process with the Central Contractor Registry (CCR). As of August 1, 2006, CCR registrants cannot enter or modify their name and address information, because it will be pre-populated using Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) record data. During a new registration or when updating a record, CCR registrants will have a choice to accept or reject the information provided from D&B. If the CCR registrant agrees with the D&B-supplied information, the D&B data will be accepted into the CCR registrant's record. If the CCR registrant disagrees with the D&B-supplied information, the registrant will need to go to the D&B Web site, *http://fedgov.dnb.com/webform*, to modify the information contained in the D&B record before proceeding with its CCR registration. See further details in the above-referenced **Federal Register** notice.

2. *Instructions.* Instructions on how to submit an electronic application to HUD via *grants.gov/Apply* are contained in section IV(F) of the General Section. Also, Grants.gov has a full set of instructions on how to apply for funds on its Web site at *http://www.grants.gov/applicants/apply_for_grants.jsp*. In addition, HUD has published a Desktop User Guide for Submitting Electronic Grant Applications, which is available on HUD's Web site at *http://www.hud.gov/offices/adm/grants/deskguide/deskguide.cfm.* The guide contains screen shots and detailed instructions. Applicants are encouraged to read all sources of instructions carefully.

3. *Waiver of Electronic Submission Requirement.* HUD will accept electronic applications only if submitted through www.grants.gov, unless the applicant has received a waiver. If you

apply for and receive a waiver from the electronic submission requirement, your application (original and four copies), must be received by the deadline by the Director of the appropriate local HUD Multifamily Hub office that has jurisdiction over the housing development identified in your application. If submitting a paper application, please note the office hours of the office where you are submitting your application. For your use in determining the appropriate HUD Multifamily Hub Office to which you must submit your application, see HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* for a listing of local HUD offices (select ''Important Information Related to the SuperNOFA'' and then select ''Field Offices''). The HUD Program Centers are under each Hub. If you send your application to the wrong Hub Office, or if it is received after hours on the deadline date, it will be rejected. Therefore, if you are uncertain which Hub Office to submit your application to, you are encouraged to contact the local HUD office that is closest to your project's location to ascertain the office's jurisdiction and hours and to ensure that you submit your application to the correct local HUD Multifamily Hub Office at a time when the office is open. Paper applications must be received in the appropriate Hub Office by 11:59:59 p.m. eastern time on the application deadline date. HUD will no longer allow a 15-day grace period for receipt of applications postmarked on or before the application deadline date.

4. *Proof of Timely Submission.* Applicants must submit their applications to www.grants.gov in time for receipt and validation at Grants.gov by 11:59:59 p.m. eastern time on the application deadline date. Validation can take 24 to 48 hours, so applicants should submit with ample time for the process to be completed. Applicants are also advised to submit 72 hours in advance of the deadline so that they have sufficient time to correct any deficiencies that would prevent the acceptance of the application by Grants.gov. (Refer to the General Section for specific procedures regarding proof of timely submission of applications.)

5. *Address for Submitting Applications.* Applications must be submitted electronically through the www.grants.gov Web site, unless the applicant receives a waiver from the electronic application submission requirement. See Section IV of the General Section, ''Application Submission and Receipt Procedures,'' for information on applying online. The applications submitted electronically via www.grants.gov will be electronically downloaded and forwarded to the appropriate local HUD office.

V. Application Review Information

A. Criteria

HUD Headquarters will use a rating process to select applications for the Section 202 Demonstration Pre-Development Grant Program. HUD will award funding under the following process until all available funding has been exhausted.

B. Review and Selection Process

1. *Application Review Process.* HUD's application review process will include, but is not limited to, an eligibility review of each predevelopment planning activity being proposed by the applicant, the reasonableness of the proposed cost for each activity, the reasonableness of the applicant's proposed budget, and the ability of project Sponsors to expedite the development processing of projects from Section 202 Fund Reservation to Initial Closing within the 18-month time frame. All activities must be related to the development of the Section 202 housing project selected under the FY 2006 Section 202 Supportive Housing for the Elderly Program and be otherwise eligible activities under the Section 202 program.

2. *Review for Curable Deficiencies.* A curable deficiency is a missing Exhibit or portion of an Exhibit that will not affect the eligibility of the applicant. The Exhibits identified by an asterisk (*) as threshold requirements must be dated on or before the application deadline date. Refer to the General Section of the SuperNOFA for additional information regarding procedures for corrections to deficient applications. HUD will screen all applications received by the application submission deadline for curable deficiencies. The relevant HUD Office will notify you in writing if your application is missing any of the exhibits or portions of exhibits, as listed in Section IV(B) of this NOFA, and you will be given 14 calendar days from the date of the HUD written notification to submit the information required to cure the noted deficiencies.

3. *Review for Threshold Requirements.* All applications must meet the threshold requirements identified in the General Section of the FY 2006 SuperNOFA and in Section IV(B) and Section III(C)(2) of this program NOFA. Failure to meet any threshold item will render an application ineligible for funding consideration. Please note that Section III(C)(2) of the General Section of the FY 2006 SuperNOFA, and the items identified by an asterisk (*) as listed in Section IV(B) and in Section III(C)(2) of this NOFA, are also threshold requirements and must be dated on or before the application deadline date. Failure to satisfy all threshold requirements at the time of submission will render the application in question as being nonresponsive to this NOFA and the application will be subject to no further review. See the General Section of the FY 2006 SuperNOFA for additional procedures for corrections to deficient applications.

4. *Technical Review.* After an application has passed threshold review, HUD Multifamily Field Office staff will review it for compliance with the eligibility criteria set forth in this NOFA. However, HUD will not reject an application based on technical review without notifying the applicant of that rejection, the reason(s) for the rejection, and providing the applicant with an opportunity to appeal. The applicant will have 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD office. The HUD office will make a determination on an appeal before making its selection of projects to be forwarded to HUD Headquarters. HUD field office staff will forward to Headquarters a listing of eligible applications that were received by the deadline date, met all eligibility criteria, proposed reasonable costs for eligible activities, and included all technical corrections by the designated deadline date.

5. *Selection Process.* HUD Headquarters will select Section 202 Demonstration Pre-Development Grant Program applications based on HUD Multifamily Program Centers' rating of the respective FY 2006 Section 202 program applications, beginning with the highest rated application nationwide. After this selection, HUD Headquarters will select the next highest rated application in another Program Center. Only one application will be selected per Multifamily Program Center. However, if there are no approvable applications in other Multifamily Program Centers, the process will begin again with the selection of the next highest rated application nationwide. More than one application may be selected per HUD Multifamily Program Center if there are no other approvable applications.

This process will continue into a second round and subsequent round(s) until all approvable applications are selected using the available remaining funds. HUD Headquarters will fully

fund as many applications as allocated funds will allow. HUD Headquarters will review its selection results to ensure that no single entity (including affiliated entities) receives grant funding in excess of $800,000. Once an organization receives its maximum amount of grant funding, no other projects from that organization will be eligible for selection from the succeeding rounds.

If there is a tie score between two or more applications, HUD will select the applicant with the highest score in Rating Factor 1 of the FY 2006 Section 202 program application. If Rating Factor 1 is scored identically, the scores in Rating Factors 2, 3, and 4, of the FY 2006 Section 202 program application will be compared in that order, until one of the applications received a higher score. If both applications still score the same, then the application that requests the least funding will be selected.

6. *Adjustments to Funding/Reduction of Requested Grant Amount.* See Section II(D) of this program NOFA.

VI. Award Administration Information

A. Award Notices

Following the congressional notification process, HUD will issue a press release announcing the selection of awards. Once such an announcement has been made, successful applicants will receive their selection letters and grant agreement via regular or overnight mail. The grant agreement is the legally binding document that establishes a relationship between HUD and the award recipient organization. Once properly executed, it authorizes the obligation and disbursement of funds.

1. As a condition of receiving a grant under this Section 202 Demonstration Pre-Development Grant Program, Grantees must open a separate, non-interest-bearing account for the receipt and handling of these funds.

2. All applicants that were not selected for funding will receive a non-selection letter.

3. You may request a debriefing on your application in accordance with section VI(A) of the General Section of the FY 2006 SuperNOFA. The request must be made to the Director of Multifamily Housing at the HUD field office to which you sent your application.

B. Administrative and National Policy Requirements

The Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115, approved November 30, 2005) requires HUD to obligate all Section 202 funds appropriated for FY 2006 by September 30, 2009. Under 31 U.S.C. 1551, no funds can be disbursed from this account after September 30, 2014. Under this Demonstration Pre-Development Grant Program, obligation of funds occurs upon execution of the Grant Agreement.

C. Reporting

Grantees must submit quarterly updates of the program outcome Logic Model (form HUD–96010) as well as quarterly SF–269, Financial Status Reports. In order for HUD to evaluate the effectiveness of this funding, each Logic Model must indicate the results achieved against the proposed output goal(s) and proposed outcome(s) that were stated in the FY 2006 Section 202 Demonstration Pre-Development Grant Program application and agreed upon by HUD. HUD requires that funded recipients collect racial and ethnic beneficiary data. HUD has adopted the Office of Management and Budget's Standards for Collection of Racial and Ethnic Data. In view of these requirements, you should use form HUD–27061, Racial and Ethnic Data Reporting form (and instructions for its use) found on *http://www.HUDclips.org.*

D. Environmental Requirements

The provision of assistance under this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and not subject to compliance action for related environmental authorities under 24 CFR 50.19(b)(1), (3), (5), (8), and (16).

E. Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

VII. Agency Contacts

A. For programmatic information, you may contact the appropriate local HUD office; or Brenda M. Butler at HUD Headquarters at (202) 708–3000 or via e-mail at *Brenda_Butler@hud.gov*. Persons with hearing and speech impairments may access the above number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

B. For technical assistance in downloading and submitting an application package through www.Grants.gov, contact the Grants.gov Help Desk at (800) 518–GRANTS or via e-mail at *support@grants.gov.*

VIII. Other Information

A. Section 102 of the HUD Reform Act (Documentation and Public Access Requirements)

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA, as follows:

1. *Documentation.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. *Disclosures.* HUD will make available to the public, for 5 years, all applicant disclosure reports (form HUD–2880) submitted in connection with this NOFA. Update reports (also reported on form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than 3 years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

3. *Publication of Recipients of HUD Funding.* HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by HUD to provide:

a. Assistance subject to Section 102(a) of the HUD Reform Act; and

b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

B. Section 103 of the HUD Reform Act

HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations in providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

C. Paperwork Reduction Act Statement

The information collection requirements contained in this document are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0267. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 4 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, semi-annual reports, and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Dated: February 16, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–3142 Filed 2–23–07; 8:45 am]

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Monday,
February 26, 2007

Part IV

Department of Housing and Urban Development

24 CFR Part 15

Public Access to HUD Records Under the Freedom of Information Act (FOIA) and Production of Material or Provision of Testimony by HUD Employees; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–5015–F–02]

RIN 2501–AD18

Public Access to HUD Records Under the Freedom of Information Act (FOIA) and Production of Material or Provision of Testimony by HUD Employees

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule clarifies and explains the various types of requests for HUD documents and testimony by HUD employees that are intended to be covered by the Department's document production and testimony approval regulations. This final rule describes the procedures to be followed by a party in making a demand for HUD documents and HUD testimony. The final rule also explains the standards to be followed by HUD in determining whether production of documents or testimony should be permitted and, if so, any conditions or restrictions that HUD should impose. This final rule follows publication of an August 15, 2006, proposed rule on which HUD received one public comment. After careful consideration of the issues raised by the commenter, HUD has decided to adopt the August 15, 2006, proposed rule with minor changes.

DATES: *Effective Date:* March 28, 2007.

FOR FURTHER INFORMATION CONTACT: Nancy Christopher, Associate General Counsel for Litigation, Office of Litigation, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10258, Washington, DC 20410–5000; telephone (202) 708–0300 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 15 describe the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the policies and procedures governing the production of material or provision of testimony by HUD employees. In § 15.2, HUD employees are defined as all current or former employees who are not employees of the Office of the Inspector General. Currently, HUD's FOIA regulations governing the production of documents and provision of testimony by HUD employees are contained in subparts C and D, respectively. These regulations contain the procedures to be followed when a demand is served upon the Department or a HUD employee, and when employees are asked to provide testimony in legal proceedings.

II. The August 15, 2006, Proposed Rule

On August 15, 2006, HUD published a proposed rule (71 FR 46986) to revise the regulations contained in subparts C and D of 24 CFR part 15. The proposed rule intended to revise and amend subparts C and D in order to clarify the various types of requests for HUD documents and testimony by HUD employees that are intended to be covered by the regulations in 24 CFR part 15. The proposed rule also described the procedures to be followed by a party in making a demand to HUD for documents or testimony. The proposed rule explained the standards that are to be followed by HUD in determining whether production or testimony should be permitted and, if so, any conditions or restrictions that should be imposed on the disclosure. In addition to these changes, the proposed rule outlined technical corrections in both subparts C and D.

This final rule effects these revisions and amendments to subparts C and D. Further, the organization of 24 CFR part 15 is no longer based on a distinction between production of material and provision of testimony, but rather is based on the parties involved in the legal proceeding. Subpart C governs litigation between private parties, while subpart D governs litigation where one of the parties is the federal government. In order to improve clarity and highlight the processes to be followed, subparts C and D have been revised in their entirety.

For more detailed information regarding the regulatory changes, please refer to the preamble of the August 15, 2006, proposed rule.

III. This Final Rule; Changes to the August 15, 2006, Proposed Rule

This final rule follows publication of the August 15, 2006, proposed rule, and takes into consideration the public comment received on the proposed rule. After careful review of the public comment, HUD has made the following changes to the proposed rule:

1. *Inclusion of any other factors that HUD determines to be significant when making a demand.* This final rule provides that any demand made to HUD or a HUD employee to produce any material or provide any testimony in a legal proceeding among private litigants must include specific information. HUD is making a minor revision to § 15.203, which lists the information that must be included in the demand, by adding a provision to require the inclusion of other factors that HUD considers significant. This additional provision does not change the obligation of parties when making a demand to include all information that would assist HUD in making a determination regarding the demand.

2. *Imposition of conditions and restrictions on a demand when the United States is a party to the legal proceeding.* HUD is clarifying the regulations to explicitly state that the Secretary or General Counsel may impose conditions or restrictions on the production of any material or provision of any testimony when the United States is a party to the legal proceeding. The proposed rule set forth the standards to be considered in making a determination of what material and testimony would be provided in legal proceedings between private parties. This final rule now makes these standards applicable to legal proceedings in which the United States is a party.

IV. Discussion of Public Comments Received on the August 15, 2006, Proposed Rule

The public comment period on the proposed rule closed on October 16, 2006. In response to the proposed rule, HUD received one public comment, from the National Leased Housing Association. This section of the preamble presents a summary of the significant issues raised by the public commenter on the August 15, 2006, proposed rule, and HUD's responses to those issues.

Comment: HUD does not have the authority to decline to comply with a court order to produce material or testimony. One commenter wrote that proposed revisions to §§ 15.202 and 15.206 misstate the law, are contrary to FOIA, and would create a constitutional problem by elevating HUD above court authority. The commenter wrote that HUD's reliance on *United States, ex. rel. Touhy* v. *Ragen* is overstated and that the government cannot simply refuse to produce evidence or provide testimony. The commenter recommends that the proposed regulation be replaced with a requirement that information will not be produced without a properly issued subpoena to the properly designated federal official and that all information should be produced unless it is subject to a recognized right or privilege.

HUD Response: HUD has not revised the rule in response to this comment. As proposed, when HUD is not a party to the legal proceeding, an employee is not to produce material or provide testimony unless the Secretary or General Counsel has granted prior approval. If a court or other authority declines to stay the demand until a determination is made by the Secretary or General Counsel, or if a production or provision of testimony is required by a court or other authority in spite of a determination not to provide the requested material, at the direction of legal counsel a HUD employee is to respectfully decline to comply with the demand. HUD, like any other entity that is served with a demand, may take all appropriate steps to limit the scope of or obtain the withdrawal of a demand.

While the regulations governing the production of material and the provision of testimony are included within the same part as the regulations implementing FOIA, these demands are not FOIA requests and are not treated as such. The purpose of FOIA is to provide the public with access to information regarding federal agencies in recognition of the importance of participation by an informed citizenry in the effective functioning of the federal government. Demands for the production of material or the provision of testimony in the context of a legal proceeding between private litigants do not affect a greater understanding of federal agencies for the public and, therefore, are not afforded the protections contained in FOIA's disclosure requirements.

Further, HUD's reliance on *United States, ex. rel. Touhy* v. *Ragen* (340 U.S. 462 (1951)) (*Touhy*) is not inappropriate. The court in *Touhy* recognized that the information contained in the files of a government department and the possibilities of harm from unrestricted disclosure in court necessitates a centralized determination as to whether a demand will be complied with or challenged. With regard to the issue of an executive agency treading on the domain of the judicial branch, the court in *Touhy,* reiterating a holding from an earlier court case, stated that it is lawful for a Secretary to reserve for his/her determination matters of this nature.

Accordingly, because the proposed regulation comports with the law and is consistent with federal agency practice, HUD has not revised it.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this final rule are under review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Approval and the assignment of an OMB control number is pending. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and subject to comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulatory amendments that are made by this final rule are procedural. Accordingly, the rule would not have any impact on the substantive rights or duties of small entities requesting HUD records under the Freedom of Information Act. Furthermore, because the fees charged under this rule are limited by FOIA to direct costs of searching for, reviewing, and duplicating the records processed for requesters, the fees are not economically significant.

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

Environmental Impact

This final rule does not direct, provide for assistance, or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 15 to read as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

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

Authority: 42 U.S.C. 3535(d).

■ 2. Revise § 15.1(b) and (c) to read as follows:

§ 15.1 What is the purpose of this part?

* * * * *

(b) *Subpart C of this part.* Subpart C of this part describes the procedures to be followed and standards to be applied in processing demands for the production of material or provision of testimony in legal proceedings among private litigants.

(c) *Subpart D of this part.* Subpart D of this part describes the procedures to be followed and standards to be applied in processing demands for the production of material or provision of testimony in legal proceedings in which the United States is a party.

* * * * *

■ 3. In § 15.2(b) add, in alphabetical order, definitions of the terms ''*Demand,*'' ''*Good cause,*'' ''*Material,*'' ''*Production,*'' ''*Testimony,*'' and ''*United States*'' to read as follows:

§ 15.2 Definitions.

* * * * *

Demand means a subpoena, order, or other demand of a court or other authority that is issued in a legal

proceeding and any accompanying submissions.

* * * * *

Good cause means necessary to prevent a miscarriage of justice or to promote a significant interest of the Department.

* * * * *

Material means either documents or information contained in, or relating to contents of, the files of the Department or documents or information acquired by any person while such person was an employee of the Department as a part of the performance of his or her official duties or because of his or her official status.

* * * * *

Production refers to the provision of material by any means other than through the provision of oral testimony.

* * * * *

Testimony refers to any oral or written statements made in litigation under oath or penalty of perjury.

* * * * *

United States refers to the Federal Government of the United States (including the Department), the Secretary, and any employees of the Department in their official capacities.

■ 4. Revise subpart C to read as follows:

Subpart C—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants

Sec.
15.201 Purpose and scope.
15.202 Production of material or provision of testimony prohibited unless approved by the Secretary or General Counsel.
15.203 Making a demand for production of material or provision of testimony.
15.204 Consideration of demands for production of material or provision of testimony.
15.205 Method of production of material or provision of testimony.
15.206 Procedure in the event of an adverse ruling regarding production of material or provision of testimony.

Subpart C—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants

§ 15.201 Purpose and scope.

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is issued in a legal proceeding among private litigants for the production or disclosure of any material, whether provided through production of material or provision of testimony.

(b) This subpart does not apply to demands, which are covered by part 2004 of this title, for production of material in the files of the Office of Inspector General or provision of testimony by employees within the Office of Inspector General.

§ 15.202 Production of material or provision of testimony prohibited unless approved by the Secretary or General Counsel.

Neither the Department nor any employee of the Department shall comply with any demand for production of material or provision of testimony in a legal proceeding among private litigants, unless the prior approval of the Secretary or General Counsel has been obtained in accordance with this subpart. This rule does not apply to any legal proceeding in which an employee may be called to participate, either through the production of documents or the provision of testimony, not on official time, as to facts or opinions that are in no way related to material described in § 15.201.

§ 15.203 Making a demand for production of material or provision of testimony.

(a) Any demand made to the Department or an employee of the Department to produce any material or provide any testimony in a legal proceeding among private litigants must:

(1) Be submitted in writing to the Department or employee of the Department, with a copy to the Associate General Counsel for Litigation, no later than 30 days before the date the material or testimony is required;

(2) State, with particularity, the material or testimony sought;

(3) State whether expert or opinion testimony will be sought from the employee;

(4) State whether the production of such material or provision of such testimony could reveal classified, confidential, or privileged material;

(5) Summarize the need for and relevance of the material or testimony sought in the legal proceeding;

(6) State whether the material or testimony is available from any other source and, if so, state all such other sources;

(7) State why no document[s], or declaration or affidavit, could be used in lieu of oral testimony that is being sought;

(8) Estimate the amount of time the employee will need in order to prepare for, travel to, and attend the legal proceeding, as appropriate;

(9) State why the production of the material or provision of the testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (e.g., not unduly burdensome or otherwise inappropriate under the relevant rules governing discovery);

(10) Describe how producing such material or providing such testimony would affect the interests of the United States; and

(11) Include any other factors that the agency determines to be significant.

(b) Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the Associate General Counsel for Litigation or designee shall be notified immediately. The Associate General Counsel for Litigation or designee shall maintain a record of all demands served upon the Department and refer the demand to the appropriate designee for processing and determination.

§ 15.204 Consideration of demands for production of material or provision of testimony.

(a) The Secretary or General Counsel shall determine what material is to be produced or what testimony is to be provided, based upon the following standards:

(1) *Expert or opinion material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201 that is of an expert or opinion nature, unless specifically authorized by the Secretary or the General Counsel for good cause shown.

(2) *Factual material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201 unless specifically authorized by the Secretary or General Counsel. Such authorization may be granted if the Secretary or General Counsel determines that it is warranted based upon an assessment of whether:

(i) Producing such material or providing such testimony would violate a statute or regulation;

(ii) Producing such material or providing such testimony would reveal classified, confidential, or privileged material;

(iii) Such material or testimony is relevant to the legal proceeding;

(iv) Such material or testimony can be obtained from any other source;

(v) One or more documents, or a declaration or affidavit, could reasonably be provided in lieu of oral testimony;

(vi) The amount of employees' time necessary to comply with the demand is reasonable;

(vii) Production of the material or provision of the testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (*e.g.*, unduly burdensome or otherwise inappropriate under the relevant rules governing discovery); and

(viii) Producing such material or providing such testimony would impede a significant interest of the United States.

(b) Once a determination has been made, the requester will be notified of the determination, the reasons for the grant or denial of the demand, and any conditions that have been imposed upon the production of the material or provision of the testimony demanded.

(c) The Secretary or General Counsel may impose conditions or restrictions on the production of any material or provision of any testimony. Such conditions or restrictions may include the following:

(1) A requirement that the parties to the legal proceeding obtain a protective order or execute a confidentiality agreement, the terms of which must be acceptable to the Secretary or General Counsel, to limit access to, and limit any further disclosure of, material or testimony;

(2) A requirement that the requester accept examination of documentary material on HUD premises in lieu of production of copies;

(3) A limitation on the subject areas of testimony permitted;

(4) A requirement that testimony of a HUD employee be provided by deposition at a location prescribed by HUD or by written declaration or affidavit;

(5) A requirement that the parties to the legal proceeding agree that a transcript of the permitted testimony be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was demanded;

(6) A requirement that the requester provide the Department with a copy of a transcript of the employee's testimony free of charge; or

(7) Any other condition or restriction deemed to be in the best interests of the United States.

(d) The determination made with respect to the production of material or provision of testimony is within the sole discretion of the Secretary or General Counsel and shall constitute final agency action from which no administrative appeal is available.

§ 15.205 Method of production of material or provision of testimony.

(a) Where the Secretary or General Counsel has authorized the production of material or provision of testimony, the Department shall produce such material or provide such testimony in accordance with this section and any conditions imposed upon production of material or provision of testimony pursuant to § 15.204.

(b) In any legal proceeding where the Secretary or General Counsel has authorized the production of documents, the Department shall respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed, in accordance with its authentication procedures. That authentication shall be evidence that the documents are true copies of documents in the Department's files and be sufficient for the purposes of Rule 902 of the Federal Rules of Evidence.

(c) If response to the demand is required before the determination from the Secretary or General Counsel is received, the U.S. Attorney, or such other attorney as may be designated for the purpose, will appear or make such filings as are necessary to furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for prompt consideration. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested determination from the Secretary or General Counsel.

§ 15.206 Procedure in the event of an adverse ruling regarding production of material or provision of testimony.

If the court or other authority declines to stay the demand made in accordance with § 15.205 pending receipt of the determination from the Secretary or General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the determination by the Secretary or General Counsel not to produce the material or provide the testimony demanded or to produce subject to conditions or restrictions, the employee upon whom the demand has been made shall, if so directed by an attorney representing the Department, respectfully decline to comply with the demand. (*United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951)).

■ 5. Revise subpart D to read as follows:

Subpart D—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings in Which the United States Is a Party

Sec.
15.301 Purpose and scope.
15.302 Procedure for review of demands for production of material or provision of testimony in any legal proceeding in which the United States is a party.
15.303 Consideration of demands for production of material or provision of testimony.
15.304 Method of production of material or provision of testimony.

Subpart D—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings in Which the United States Is a Party

§ 15.301 Purpose and scope.

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is issued in a legal proceeding in which the United States is a party for the production or disclosure of any material, whether provided through production of material or provision of testimony.

(b) This subpart does not apply to demands, which are covered by part 2004 of this title, for production of material in the files of the Office of Inspector General or provision of testimony by employees within the Office of Inspector General.

§ 15.302 Procedure for review of demands for production of material or provision of testimony in any legal proceeding in which the United States is a party.

All demands for production of material or provision of testimony in any legal proceeding in which the United States is a party shall be directed to the agency through the attorney representing the United States in the proceeding. Whenever the Department or an employee of the Department is notified by the attorney representing the United States of the demand for the production of material or provision of testimony in any legal proceeding in which the United States is a party, the Associate General Counsel for Litigation or designee shall be notified immediately.

§ 15.303 Consideration of demands for production of material or provision of testimony.

(a) The Secretary or General Counsel shall consult with the attorney representing the United States as to the response to the demand for production of material or to the provision of testimony.

(b) An employee of the Department may not testify as an expert or opinion witness unless specifically authorized by the Secretary or the General Counsel for good cause shown.

(c) The Secretary or General Counsel may impose conditions or restrictions on the production of any material or provision of any testimony, as set forth in section 15.204(c).

§ 15.304 Method of production of material or provision of testimony.

Where the Secretary or General Counsel has authorized the production of material or provision of testimony, the Associate General Counsel for Litigation or designee shall arrange for the production of any authorized material or provision of any authorized testimony through the attorney representing the United States. Where the Secretary or General Counsel has authorized the production of documents, the Department may respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed in accordance with its authentication procedures. That authentication shall be evidence that the documents are true copies of documents in the Department's files and be sufficient for the purposes of Rule 902 of the Federal Rules of Evidence.

Dated: February 16, 2007.

Roy A. Bernardi,

Deputy Secretary.

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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.

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Comptroller of the Currency
Risk-based capital:
Advanced capital adequacy framework; comments due by 3-26-07; published 12-26-06 [FR 06-09737]
Domestic capital modifications; capital maintenance and capital adequacy guidelines; comments due by 3-26-07; published 12-26-06 [FR 06-09738]

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Risk-based capital:
Advanced capital adequacy framework; comments due by 3-26-07; published 12-26-06 [FR 06-09737]
Domestic capital modifications; capital maintenance and capital adequacy guidelines; comments due by 3-26-07; published 12-26-06 [FR 06-09738]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcohol, tobacco, and other excise taxes:
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Alcohol; viticultural area designations:
Paso Robles Westside, San Luis Obispo County, CA; comments due by 3-26-07; published 1-24-07 [FR E7-00983]

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Medical benefits:
Medical care or services; reasonable charges; comments due by 3-15-07; published 2-13-07 [FR E7-02391]
National cemeteries:
Headstone and marker application process; comments due by 3-20-07; published 1-19-07 [FR E7-00644]

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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 434/P.L. 110–4

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through July 31, 2007, and for other purposes. (Feb. 15, 2007; 121 Stat. 7; 1 page)

H.J. Res. 20/P.L. 110–5

Making further continuing appropriations for the fiscal year 2007, and for other purposes. (Feb. 15, 2007; 121 Stat. 8; 53 pages)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2005 Compilation and Parts 100 and 102)	(869–060–00003–8)	35.00	[1] Jan. 1, 2006
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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
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27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
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
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200–End	(869–060–00026–7)	58.00	Jan. 1, 2006
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60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
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141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
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300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
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22 Parts:			
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50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

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1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
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700–End	(869–060–00115–8)	58.00	July 1, 2006
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Complete set (one-time mailing)		332.00	2006
Complete set (one-time mailing)		325.00	2005

[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 January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] 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.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.