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**WHEN:** Tuesday, April 4, 2006  
9:00 a.m.–Noon

**WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



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Federal Register

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 27

[Docket No. SW013; Special Condition No. 27-013-SC]

#### Special Condition: Robinson R44 Helicopters, § 27.1309, Installation of an Autopilot (AP) Stabilization Augmentation System (SAS) That Has Potential Failure Modes With Criticality Categories Higher Than Those Envisioned by the Applicable Airworthiness Regulations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special condition.

**SUMMARY:** This special condition is issued for the modification of the Robinson Model R44 helicopter. This modification will have novel or unusual design features associated with installing a complex Autopilot/Stabilization Augmentation System (AP/SAS) that has potential failure modes with more severe adverse consequences than those envisioned by the existing applicable airworthiness regulations. This proposal contains the additional safety standards that the Administrator considers necessary to ensure that the failures and their effects are sufficiently analyzed and contained.

**DATES:** *Effective Date:* April 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76193-0110; telephone (817) 222-5121, FAX (817) 222-5961.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 18, 2000, Hoh Aeronautics, Inc. submitted an application for a Supplemental Type

Certification (STC) for the installation of an Autopilot Stability/Augmentation System (AP/SAS) on a Robinson Model R44 helicopter through the FAA's Los Angeles Aircraft Certification Office (LA ACO). The Robinson Model R44 helicopter is a part 27 Normal category, single reciprocating engine, conventional helicopter designed for civil operation. The helicopter is capable of carrying three passengers with one pilot, and has a maximum gross weight of approximately 2,400 pounds. The major design features include a 2-blade, fully articulated main rotor, a 2-blade anti-torque tail rotor, a skid landing gear, and a visual flight rule (VFR) basic avionics configuration. Hoh Aeronautics, Inc. proposes to install a three-axis AP/SAS.

##### Type Certification Basis

Under the provisions of 14 CFR 21.115, Hoh Aeronautics, Inc. must show that the Robinson Model R44 helicopter, as modified by the installed AP/SAS, meets 14 CFR 21.101 standards. The baseline of the certification basis for the unmodified R44 is listed in Type Certification Data Sheet Number H11NM, Revision 3. Additionally, compliance must be shown to any special conditions prescribed by the Administrator.

If the Administrator finds that the applicable airworthiness regulations, as they pertain to this STC, do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(d).

In addition to the applicable airworthiness regulations and special conditions, Hoh Aeronautics, Inc. must show compliance of the AP/SAS STC-altered Robinson Model R44 helicopter with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to 49 U.S.C. 44715 (formerly § 611 of the Federal Aviation Act of 1958 as amended by section 7 of Pub. L. 92-574, the "Noise Control Act of 1972").

Special conditions, as appropriate, are defined in § 11.19, and issued by following the procedures in § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Hoh Aeronautics,

Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special condition would also apply to the other model under the provisions of § 21.101.

##### Novel or Unusual Design Features

The Hoh Aeronautics, Inc. AP/SAS system incorporates novel or unusual design features, for installation in a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM. This AP/SAS system performs non-critical control functions, since this model helicopter has been certificated to meet the applicable requirements independent of this system. However, the possible failure modes for this system, and their effect on the helicopter's ability to continue safe flight and landing, are more severe than those envisioned by the present rules when they were first promulgated.

##### Discussion of Comments

Notice of proposed special condition No. 27-013-SC for the Robinson R44 Helicopter was published in the **Federal Register** on June 8, 2005 (70 FR 33399). No comments were received on the special condition as proposed. After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the special condition with only minor, non-substantive changes.

##### Definitions

Definitions of Failure Condition Categories—Failure Conditions are classified, according to the severity of their effects on the aircraft, into one of the following categories:

1. *No Effect*—Failure Conditions that would have no effect on safety; for example, Failure Conditions that would not affect the operational capability of the rotorcraft or increase crew workload; however, could result in an inconvenience to the occupants, excluding the flight crew.

2. *Minor*—Failure conditions which would not significantly reduce rotorcraft safety, and which would involve crew actions that are well within their capabilities. Minor failure conditions may include, for example, a slight reduction in safety margins or functional capabilities, a slight increase in crew workload, such as routine flight

plan changes, or some physical discomfort to occupants.

3. *Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be, for example, a significant reduction in safety margins or functional capabilities, a significant increase in crew workload or in conditions impairing crew efficiency, physical distress to occupants, possibly including injuries, or physical discomfort to the flight crew.

4. *Hazardous/Severe-Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be:

- A large reduction in safety margins or functional capabilities;
- Physical distress or excessive workload that would impair the flight crew's ability to the extent that they could not be relied on to perform their tasks accurately or completely; or,
- Possible serious or fatal injury to a passenger or a cabin crewmember, excluding the flight crew.

**Note:** "Hazardous/Severe-Major" failure conditions can include events that are manageable by the crew by use of proper procedures, which, if not implemented correctly or in a timely manner, may result in a Catastrophic Event.

5. *Catastrophic*—Failure Conditions which would result in multiple fatalities to occupants, fatalities or incapacitation to the flight crew, or result in loss of the rotorcraft.

The present §§ 27.1309 (b) and (c) regulations do not adequately address the safety requirements for systems whose failures could result in "Catastrophic" or "Hazardous/Severe-Major" failure conditions, or for complex systems whose failures could result in "Major" failure conditions. The current regulations are inadequate because when §§ 27.1309(b) and (c) were promulgated, it was not envisioned that this type of rotorcraft would use systems that are complex or whose failure could result in "Catastrophic" or "Hazardous/Severe-Major" effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety.

We require that Hoh Aeronautics, Inc. provide the FAA with a Systems Safety Assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives

established by the Functional Hazard Assessment (FHA) and the Preliminary System Safety Assessment (PSSA), including the Fault Tree Analysis (FTA). This will ensure that all failure modes and their resulting effects are adequately addressed for the installed AP/SAS. The SSA process, FHA, PSSA, and FTA are all parts of the overall Safety Assessment (SA) process discussed in FAA Advisory Circular (AC) 27-1B (Certification of Normal Category Rotorcraft) and SAE document ARP 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on civil airborne Systems and Equipment).

#### *Requirements*

We require that the applicant comply with the existing requirements of § 27.1309 for all applicable design and operational aspects of the AP/SAS with the failure condition categories of "No Effect," and "Minor," and for non-complex systems whose failure condition category is classified as "Major." We require that the applicant comply with the requirements of this special condition for all applicable design and operational aspects of the AP/SAS with the failure condition categories of "Catastrophic" and "Hazardous Severe/Major," and for complex systems whose failure condition category is classified as "Major."

**Note:** A complex system is a system whose operations, failure modes, or failure effects are difficult to comprehend without the aid of analytical methods (e.g., Fault Tree Analysis, Failure Modes and Effect Analysis, Functional Hazard Assessment, etc.).

#### *Design Integrity Requirements*

Each of the failure condition categories defined in this special condition relate to corresponding aircraft systems integrity requirements. The systems design integrity requirements, for the Hoh Aeronautics, Inc. AP/SAS, as they relate to the allowed probability of occurrence for each failure condition category, along with the proposed software design assurance level, are as follows:

- "Major"—Failures resulting in Major effects must be shown to be improbable, or on the order of  $1 \times 10^{-5}$  failures/hour, and associated software must be developed to the RTCA/DO-178B (Software Considerations in Airborne Systems And Equipment Certification) Level C software design assurance level.
- "Hazardous/Severe-Major"—Failures resulting in Hazardous/Severe-Major effects must be shown to be

extremely remote, or on the order of  $1 \times 10^{-7}$  failures/hour, and associated software must be developed to the RTCA/DO-178B (Software Considerations in Airborne Systems And Equipment Certification) Level B software assurance level.

- "Catastrophic"—Failures resulting in Catastrophic effects must be shown to be extremely improbable, or on the order of  $1 \times 10^{-9}$  failures/hour, and associated software must be developed to the RTCA/DO-178B (Software Considerations in Airborne Systems And Equipment Certification) Level A design assurance level.

#### *Design Environmental Requirements*

We require that the AP/SAS system equipment be qualified to the appropriate environmental level in the RTCA document DO-160D (Environmental Conditions and Test Procedures for Airborne Equipment), for all relevant aspects. This is to ensure that the AP/SAS system performs its intended function under any foreseeable operating condition, which includes the expected environment in which the AP/SAS is intended to operate. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the AP/SAS system equipment, including considerations for other equipment that may be affected environmentally by the AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure effects on the aircraft.

#### *Test & Analysis Requirements*

Compliance with the requirements contained in this special condition may be shown by a variety of methods, which typically consist of analysis, flight tests, ground tests, and simulation, as a minimum. Compliance methodology is partly related to the associated failure condition category. If the AP/SAS is a complex system, compliance with the requirements contained in this document for aspects of the AP/SAS that can result in failure conditions classified as "Major" may be shown by analysis, in combination with appropriate testing to validate the analysis. Compliance with the requirements contained in this special condition for aspects of the AP/SAS that can result in failure conditions classified as "Hazardous/Severe-Major" may be shown by flight-testing in combination with analysis and simulation, and the appropriate testing to validate the analysis. Flight tests may be limited for this classification of failures due to safety considerations.

Compliance with the requirements contained in this special condition for aspects of the AP/SAS that can result in failure conditions classified as "Catastrophic" may be shown by analysis, and appropriate testing in combination with simulation to validate the analysis. Very limited flight tests in combination with simulation are typically used as a part of a showing of compliance for failures in this classification. Flight tests are performed only in circumstances that use operational variations, or extrapolations from other flight performance aspects to address flight safety.

This special condition requires that the AP/SAS system installed on a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM, Revision 3, meet these requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

#### Applicability

This special condition is applicable to the Hoh Aeronautics, Inc. AP/SAS installed as an STC approval, in a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM, Revision 3.

#### Conclusion

This action affects only certain novel or unusual design features for a Hoh Aeronautics, Inc. AP/SAS STC installed on one model series of helicopter. 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 helicopter.

#### List of Subjects in 14 CFR Part 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

**Authority:** 42 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

#### Final Special Condition Information

##### *The Special Condition*

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the Hoh Aeronautics, Inc. supplemental type certificate basis for an Autopilot/Stability Augmentation System to be installed on a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM, Revision 3.

The Autopilot/Stability Augmentation System must be designed and installed

so that the failure conditions identified in the Functional Hazard Assessment and verified by the System Safety Assessment, after design completion, are adequately addressed in accordance with the "Definitions" and "Requirements" sections (including the design integrity, design environmental, and test and analysis requirements) of this special condition.

Issued in Fort Worth, Texas, on March 21, 2006.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 06–3013 Filed 3–28–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2005–19473; Directorate Identifier 2004–CE–35–AD; Amendment 39–14146; AD 2005–13–09]

RIN 2120–AA64

#### Airworthiness Directives; GROB–WERKE Model G120A Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2005–13–09, which published in the **Federal Register** on August 23, 2005 (70 FR 49184), and applies to certain GROB–WERKE Model G120A airplanes. AD 2005–13–09 requires replacement of the main landing gear (MLG) up-lock hook assembly. Current language in paragraph (e)(2) of AD 2005–13–09 incorrectly references the MLG up-lock hook assembly as "elevator and aileron hinge pins." This AD corrects that paragraph to reference the appropriate part number MLG up-lock hook assembly.

**DATES:** The effective date of this AD (2005–13–09) remains July 26, 2005.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

On August 15, 2005, the FAA issued AD 2005–13–09, Amendment 39–14146 (70 FR 49184, August 23, 2005), which applies to certain GROB–WERKE Model G120A airplanes.

AD 2005–13–09 requires replacement of the MLG up-lock hook assembly. Current language in paragraph (e)(2) of AD 2005–13–09 incorrectly references the MLG up-lock hook assembly as "elevator and aileron hinge pins." This AD corrects that paragraph to reference the appropriate part number MLG up-lock hook assembly.

#### Need for the Correction

This correction is needed to ensure that reference to the MLG up-lock hook assembly part number is correct for future reference. All airplanes currently on the U.S. Register have the actions of AD 2005–13–09 incorporated.

#### Correction of Publication

■ Accordingly, the publication of August 23, 2005 (70 FR 49184), of Amendment 39–14146; AD 2005–13–09, which was the subject of FR Doc. 05–16440, is corrected as follows:

#### § 39.13 [Corrected]

■ On page 49184, in § 39.13 [Amended], in paragraph (e)(2), replace the *Current Text* in the Actions column with the *Replacement Text*.

*Current Text:* "(2) For all serial numbers: Do not install any elevator and aileron hinge pins that are not part number SY991A hinge pins."

*Replacement Text:* "(2) Do not install any MLG up-lock hook assembly that is not part number X03–0020–00–00.00/1 (or FAA-approved later part number that supersedes this part number)."

Action is taken herein to correct this reference in AD 2005–13–09 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains July 26, 2005.

Issued in Kansas City, Missouri, on March 22, 2006.

**William J. Timberlake,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–2983 Filed 3–28–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket No. 2004P–0294]

#### Food Labeling: Health Claims; Dietary Noncariogenic Carbohydrate Sweeteners and Dental Caries

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its decision to authorize the use of a health claim regarding the association between sucralose and the nonpromotion of dental caries. Based on its review of evidence described in the proposed rule and comments submitted on the proposed rule, the agency has concluded that sucralose does not promote dental caries. Therefore, the agency has decided to amend the regulation that authorizes a health claim regarding noncariogenic carbohydrate sweeteners to include sucralose.

**DATES:** This final rule is effective March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:**

James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS-830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 20740-3835, 301-436-1450.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the *Federal Register* of May 13, 2005 (70 FR 25496), the agency published a proposed rule to amend § 101.80 (21 CFR 101.80), the regulation which authorizes a health claim regarding the relationship between noncariogenic carbohydrate sweeteners and dental caries, to include sucralose, a non-nutritive sweetener food ingredient. Under 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)), FDA issued this proposed rule in response to a petition filed under section 403(r)(4) of the act (21 U.S.C. 343(r)(4)). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (Secretary) (and, by delegation, FDA) shall issue a regulation authorizing a health claim only if the Secretary determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also 21 CFR 101.14(c)). Section 403(r)(4) of the act sets out the procedures that FDA is to follow upon receiving a health claim petition.

On April 2, 2004, McNeil Nutritional, of Brunswick, NJ (the petitioner) submitted a petition requesting that the agency amend § 101.80 to include the non-nutritive

sweetener sucralose as one of the substances eligible to bear the dental caries health claim (Ref. 1). FDA filed the petition for comprehensive review in accordance with section 403(r)(4) of the act on July 9, 2004.

FDA considered the scientific evidence presented in the petition as part of its review of the scientific literature on sucralose and dental caries, as well as information previously considered by the agency on the etiology of dental caries and the effects of slowly fermentable carbohydrates. The agency summarized this evidence in the proposed rule (70 FR 25496 at 25498 to 25499). Based on the available evidence, FDA concluded that dental caries is a disease for which the U.S. population is at risk; sucralose is a food because it contributes taste and other technical effects listed in 21 CFR 170.3(o) to food; the use of sucralose as a non-nutritive sweetener in food is safe and lawful; and there is significant scientific agreement among qualified experts that sucralose does not promote dental caries (70 FR 25496 at 25499). Consequently, FDA proposed amending § 101.80 (the sucralose proposed rule) to broaden the health claim to include sucralose as an additional noncariogenic carbohydrate sweetener eligible for the health claim.

**II. Summary of Comments and the Agency's Response**

The agency received four responses, each containing one or more comments, to the sucralose proposed rule. Two responses were from individual consumers, one from an industry trade organization, and the other from the petitioner. One consumer comment had no relevance to the proposed amendment, and the other consumer comment opposed a health claim for this non-nutritive sweetener but provided little specific information. The industry trade organization and the petitioner agreed with the proposed amendment without providing grounds for this support other than those grounds already provided by FDA in the preamble to the sucralose proposed rule. The petitioner also made several comments regarding FDA's evaluation of the evidence, which are discussed in detail in comments 1 to 4 of this section II.

(Comment 1) The petitioner commented that it was inappropriate for FDA to refer to sucralose-based sugar substitute products by brand names in the preamble; specifically in regards to statements about specific SLENDA sugar substitute products not meeting the eligibility criteria of § 101.80(c)(2)(iii). The petitioner noted

that the SLENDA brand name did not appear in the petition and thus FDA's conclusions should have referred to the eligibility of sucralose-based sugar substitute formulations generically. The petitioner further noted that SLENDA brand name product formulations can be changed and may in the future meet § 101.80(c)(2)(iii) eligibility criteria.

(Response) The petitioner cites dental plaque pH studies conducted with sucralose-based formulations representative of commercially marketed SLENDA sugar substitute products. FDA discussed these products in the preamble to clarify that although the petition included plaque pH data representative of these products, FDA was concluding that the available evidence did not support the eligibility of these sucralose-based formulations for the health claim. FDA referred to these formulations by their specific product names (i.e., SLENDA Granular, and SLENDA Packet) for the sake of convenience. The amendment to § 101.80 provides for the use of the dental caries health claim in food labeling of sucralose-containing products in general and does not prohibit the use of the health claim in labeling of any SLENDA brand name product that meets § 101.80(c)(2)(iii) eligibility criteria.

(Comment 2) The petitioner commented that FDA incorrectly concluded that the use of the dental caries health claim in the labeling of SLENDA Granular would not be appropriate. The petitioner asserted that the petition contains insufficient information to warrant this conclusion. FDA had concluded that evidence contained in the petition does not demonstrate that SLENDA Granular would prevent plaque pH from falling below 5.7 when measured, as specified in § 101.80(c)(2)(iii)(C), by the indwelling electrode method (70 FR 24596 at 25500). The petition included data on the impact of SLENDA Granular on plaque pH as measured by the micro-touch method, a measurement method different from the indwelling electrode method specified in § 101.80(c)(2)(iii)(C). The petitioner also asserted in this comment that the tests conducted involved the equivalent of two servings of SLENDA Granular, rather than one, and that this was not taken into consideration by the FDA.

(Response) FDA agrees that a more appropriate conclusion would have been that the submitted evidence is insufficient to establish the eligibility of the sucralose-maltodextrin formulation for the claim, rather than concluding that the available evidence shows the use of the dental caries health claim in

labeling of SPLENDA Granular would not be appropriate. However, this discussion does not bear on the amendment to § 101.80 in the final rule because the amendment addresses sucralose, not specific SPLENDA brand products.

(Comment 3) The petitioner objected to FDA specifically identifying SPLENDA Packet as not eligible for use of the dental caries claim because the product does not meet the definition for "sugar free." The petitioner noted that SPLENDA Packet could in the future be reformulated using nonfermentable bulking agents in order to be "sugar free," or to lower the level of dextrose in each packet in order to meet the "sugar free" criterion. Furthermore, the petitioner asserted that the plaque pH performance criterion is a more important test than is the "sugar free" standard in the health claim requirements, adding that if plaque pH is not lowered below 5.7 by the indwelling pH method, then it should not matter how much sugar the product contains on a per serving basis.

(Response) The preamble of the proposed rule explicitly stated that this specific sucralose formulation, for which the petitioner submitted plaque pH data, was not being included in our consideration and stated the reason for our decision. FDA believes that we correctly decided to exclude the sucralose formulation in question, but we agree that our comment applies only to that formulation, which was tested in the submitted studies, and not to the SPLENDA Packet brand name. In any case, the petition did not request any amendment to the regulation with respect to the "sugar free" requirement. Furthermore, FDA does not rank the importance of the various eligibility criteria in assessing whether the food in question can make the claim, as each of the requirements listed in § 101.80(c), including the "sugar free" standard, must be met for the claim to be made.

(Comment 4) The petitioner commented that the evidence submitted in the petition demonstrates that sucralose is not fermented at all, and therefore FDA's conclusion that sucralose is "minimally fermented" and "not fermented by oral bacteria to an extent sufficient to lower dental plaque pH \* \* \*" is inconsistent with the available evidence.

(Response) FDA considers it a difficult task to demonstrate conclusively that sucralose would not be fermented to any extent by any species of oral bacteria. FDA's decision to add sucralose to the dental caries health claim does not turn on a distinction between "minimally

fermented" or "not fermented." The amount of sucralose, an intense sweetener, used per serving is in milligram amounts. Even if sucralose were fermented by oral bacteria, considering the amount of sucralose involved, the complete and rapid fermentation of the amount of sucralose contained in one serving would likely not contribute significantly to a change in plaque pH. Thus, whether sucralose is "minimally fermented" or "not fermented" does not affect our decision to authorize this amendment to the dental caries health claim.

Given the information discussed in the preamble to the proposed rule and the absence of contrary information in the comments, FDA is adopting as a final rule, without change, the proposed amendment of § 101.80 to include sucralose as a substance eligible for the dental caries health claim.

### III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

### IV. Analysis of Impacts

#### A. Regulatory Impact Analysis

FDA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. We have determined that this final rule is not a significant regulatory action as defined by Executive Order 12866.

FDA identified the following three options regarding this petition: (1) Deny the petition; (2) add sucralose to the

dental caries health claim using the standards previously applied for making that claim; or (3) add sucralose to the dental caries health claim using different standards from those standards previously applied for making that claim, so that the claim could be applied to products such as SPLENDA Granular and SPLENDA Packet. This final rule will affect the following three sets of stakeholders: Consumers, producers using sucralose, and producers not using sucralose. We will evaluate each of the three options with respect to their effect on each of these three sets of stakeholders.

*Option one:* FDA's denial of the petition would mean no change in the dental caries health claim. This option generates no new costs and benefits and is the point of comparison for all other options. Producers using sucralose would not change labels to provide more information on sucralose and dental caries. Producers not using sucralose would not be affected by changes in the information given to consumers about sucralose and dental caries or changes in the relative prices of sweeteners or products using sweeteners. Consumers would continue to experience dental caries unaffected by information on sucralose and dental caries.

If we deny the petition, then the state of treatment of dental caries would not be affected. Dental caries is the most common chronic childhood disease and 94 percent of adults have either untreated decay or fillings in the crowns of their teeth, with an average of 22 affected surfaces, according to the National Oral Health Survey, part of the National Health and Nutrition Examination Survey (Ref. 2). The cost of dental caries includes the costs of dental treatment as well as the value of lost productivity and pain and suffering associated with dental caries. The following are several risk factors for developing dental caries: Genetic factors, eating behaviors, types and characteristics of foods eaten, and dental hygiene (Ref. 3). Specifically, consumption of dietary sugars and starches have been linked to development of dental caries.

*Option two (final rule):* The option chosen by the agency permits producers who use sucralose to place the dental caries health claim in their labeling under certain conditions. If these producers decide to do so they will have to pay to redesign and replace their labels. If they make this choice, then their choice reveals that they value the ability to place the health claim on their products more highly than they value the cost they must bear to make the

labeling change. Producers who use sucralose are better off under option two than under option one because under option two they have additional ways to market their products to consumers.

This option (under certain conditions) permits producers who use sucralose to give consumers more information about sucralose and dental carries. Some consumers may find this information valuable to them while choosing products. As stated previously, FDA has determined that this information has sufficient scientific support, and when provided in labeling under certain conditions is truthful and not misleading to consumers. Consumption of products containing sucralose, such as gum and soft drinks, can reduce the risk of dental caries. This would lead to benefits in reduced expenditures and other health costs related to dental caries. It is possible that the health claim could draw some consumers to choose foods that are more expensive. If they make this choice, they reveal that they value the more expensive products more highly than they value the additional expenditure. It is also possible that the prices of products containing sucralose may rise and cause some consumers to seek other, less expensive products with less protection against dental caries. If they make this choice, they reveal that they value the less expensive products more highly than the increased probability of bearing the consequences of dental caries. Regardless of their choices, consumers are better off under option two than under option one because they can have more information related to their health and can make the choices that seem best to them.

If the agency under certain conditions permits producers who use sucralose to place the dental caries health claim in their labeling, products that do not contain sucralose may be affected. Some producers may be hurt if consumers choose to stop consuming their products and instead consume products containing sucralose. Some producers may be helped if changes in the prices of products using sucralose make their products look less expensive to consumers. Producers not using sucralose will be affected differently depending on the type of product that they produce, and it is impossible to tell beforehand how the approval of this health claim will affect different producers.

Some producers not now using sucralose may decide to reformulate their products to contain sucralose. Substitution of sucralose for sugars in some foods, such as gum and soft drinks can reduce the risk of dental caries. This

reformulation would lead to benefits to consumers in reduced costs associated with dental caries. If some producers choose to reformulate their products, they reveal that they value the ability to place the health claim on their products more highly than they value the cost of reformulating their products. Whatever the effects of this option on producers not using sucralose, they will be the result of the product choices made by consumers who respond to the new information and make the choices that seem best to them.

*Option three:* This option would relax some of the restrictions imposed by the agency in option two so that the claim could be applied to products such as SPLENDA Granular and SPLENDA Packet. Option three would use different standards for approving this claim than previously applied to other products.

Option three would give producers using sucralose more opportunities to make the health claim than under option two. If, when given this option, producers decide to make the claims, they would have to pay to redesign and replace their labels, and they could decide to change more labels than under option two. However, if they voluntarily make this choice, they reveal that they value the ability to place the health claim on their product more highly than they value the cost of the label change regardless of how many labels they would change. Therefore, producers who use sucralose are better off under option three than under option two because they have additional opportunities for marketing their products to consumers using the health claim.

Option three makes producers using sucralose better off while making consumers worse off. As stated previously, the intended use of SPLENDA Granular is in the preparation of foods likely to lower plaque pH below 5.7 when measured by the indwelling electrode method. It also is designed to be used in the cooking and baking of many foods containing starch. Because foods containing starch are associated with increased plaque acidity and thus increased risk of dental caries, consumers would not benefit from seeing the health claim on products such as SPLENDA Granular. Also, as stated previously, SPLENDA Packet contains dextrose, and therefore is not "sugar free" and may promote tooth decay. Therefore, consumers would be made worse off under option three than under option two. Having the health claim on these additional types of products may mislead consumers and undo some of the benefit (reduced dental caries) of allowing the claim on

products containing sucralose that meet the conditions set forth by the agency.

For producers not using sucralose, the effect of option three is generally the same as for option two, though allowing the claim to appear on more products would likely make for larger effects.

We can conclude that the final rule option chosen by the agency (option two) is better for society than option one because the impact on consumers and on producers using sucralose is positive and the impact on producers not using sucralose is indeterminate and depends only on choices made by better informed consumers. We can also conclude that the final rule option chosen by the agency (option two) is better for society than option three because under option three any advantage to producers using sucralose comes at the disadvantage of consumers.

The petition also raises the issue of the effect the increased use of sucralose could have on weight loss in the U.S. population. We have not addressed that issue here because the products involved and the amounts consumed are so small that a health claim relating sucralose to reduced dental caries would not have an impact big enough to cause a noticeable change in weight.

#### *B. Regulatory Flexibility Analysis*

We have examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize the economic impact of the rule on small entities.

As previously explained, this final rule will not generate any compliance costs for any small entities, because it does not require small entities to undertake any new activity. No small business will choose to use the dental caries health claim authorized by this rule unless it believes that doing so will increase private benefits by more than it increases private costs. Accordingly, we certify that this final rule will not have a significant impact on a substantial number of small entities. Under the Regulatory Flexibility Act, no further analysis is required.

#### *C. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of

\$115,000,000 or more (adjusted annually for inflation) in any 1 year. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this rule, because the rule is not expected to result in any 1 year expenditure that would exceed \$115,000,000.

#### V. Paperwork Reduction Act

FDA concludes that the labeling provisions of this final rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between sucralose and the nonpromotion of dental caries is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public." (5 CFR 1320.3(c)(2)).

#### VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule will have a preemptive effect on State law. Section 4 (a) of the Executive Order requires agencies to "construe \* \* \* a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a) of the act (21 U.S.C. 343–1(a)) provides that:

(a) \* \* \* no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce -- \* \* \*

(5) any requirement respecting any claim of the type described in section 403(r)(1) made in the label or labeling of food that is not identical to the requirement of section 403(r). \* \* \*

Currently, this provision operates to preempt States from imposing health claim labeling requirements concerning sucralose and reduced risk of dental caries because no such requirement had been imposed by FDA under section 403(r) of the act. This final rule amends existing food labeling regulations to add sucralose as an eligible noncariogenic carbohydrate sweetener to the dietary noncariogenic carbohydrate sweeteners and dental caries health claim. Although this rule would have a preemptive effect, in that it would preclude States from issuing any health

claim labeling requirements for sucralose and reduced risk of dental caries that are not identical to those required by this final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act. Section 403A(a)(5) of the act displaces both State legislative requirements and State common law duties. *Medtronic v. Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C. J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in judgment in part and dissenting in part).

FDA believes that the preemptive effect of the final rule would be consistent with Executive Order 13132. Section 4(e) of the Executive Order provides that "when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the proposed rule in the **Federal Register** on May 13, 2005 (70 FR 25496). FDA received no comments from any states on the proposed rulemaking.

In addition, on December 23, 2005, FDA's Division of Federal and State Relations provided notice by fax and email transmission to State health commissioners, State agriculture commissioners, food program directors, and drug program directors as well as FDA field personnel of FDA's intended amendment to add sucralose as a sweetener to the noncariogenic carbohydrate sweeteners and dental caries health claim (21 CFR 101.80). The notice provided the States with further opportunity for input on the rule. It advised the States of the publication of the proposed rule and encouraged State and local governments to review the notice and to provide any comments to the docket (docket number 2004P–0294), opened in the May 13, 2005, **Federal Register** notice, by a date 30 days from the date of the notice (i.e., by January 23, 2006), or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in the above numbered docket.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the

Executive Order and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

#### VII. References

The following references have been placed on display in the Division of Dockets Management, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. McNeil Nutritionals, "Petition to Amend the Regulation for 21 CFR Sec. 101.80 to Authorize a Noncariogenic Dental Health Claim for Sucralose," CP–1, Docket No. 2004P–0294, April 2, 2004.

2. U.S. Department of Health and Human Services, National Institute of Dental and Craniofacial Research, "Results of National Oral Health Survey Released" (press release), Rockville MD, <http://www.hhs.gov/news/press/1996pres/960311.html>, March 11, 1996.

3. U.S. Department of Health and Human Services, National Institute of Dental and Craniofacial Research, "Oral Health in America: A Report of the Surgeon General," executive summary (monograph on the Internet), Rockville MD, <http://www.nidcr.nih.gov/AboutNIDCR/SurgeonGeneral/ExecutiveSummary.htm>, May 2000.

#### List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

#### PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.80 is amended by adding (c)(2)(ii)(C) and (e)(1)(v) to read as follows:

#### § 101.80 Health claims: dietary noncariogenic carbohydrate sweeteners and dental caries.

\* \* \* \* \*  
(c) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*  
(C) Sucralose.  
\* \* \* \* \*  
(e) \* \* \*  
(1) \* \* \*

(v) Frequent eating of foods high in sugars and starches as between-meal snacks can promote tooth decay. Sucralose, the sweetening ingredient

used to sweeten this food, unlike sugars, does not promote tooth decay.

\* \* \* \* \*

Dated: March 21, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 06-3007 Filed 3-28-06; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 522**

**Implantation or Injectable Dosage Form New Animal Drugs; Flunixin**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The supplemental ANADA provides for the veterinary prescription use of flunixin meglumine solution by intravenous injection in lactating dairy cattle for control of fever associated with bovine respiratory disease and endotoxemia, and for control of inflammation in endotoxemia.

**DATES:** This rule is effective March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Christopher Melluso, Center for Veterinary Medicine (HFV-104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0169, e-mail: *christopher.melluso@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed supplemental ANADA 200-308 that provides for veterinary prescription use of Flunixin Injection intravenously in lactating dairy cattle for control of fever associated with bovine respiratory disease and endotoxemia, and for control of inflammation in endotoxemia. The supplemental ANADA is approved as of March 1, 2006, and the regulations are amended in 21 CFR 522.970 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to

support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

**PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS**

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. Section 522.970 is amended by revising paragraph (e)(2)(iii) to read as follows:

**§ 522.970 Flunixin.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iii) *Limitations.* Do not slaughter for food use within 4 days of last treatment. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. For Nos. 000061, 055529, and 059130: Do not use in dry dairy cows. Milk that has been taken during treatment and for 36 hours after the last treatment must not be used for food. For No. 057561: Not for use in lactating or dry dairy cows.

\* \* \* \* \*

Dated: March 20, 2006.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 06-3006 Filed 3-28-06; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS THE SULLIVANS (DDG 68) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

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

**FOR FURTHER INFORMATION CONTACT:** Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS THE SULLIVANS (DDG 68) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. All other previously certified deviations from the 72 COLREGS not affected by this amendment remain in effect.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. In Table Four, Paragraph 16 of § 706.2 remove the entry for USS THE SULLIVANS (DDG 68).

■ 3. In Table Five of § 706.2 revise the entry for USS THE SULLIVANS (DDG 68) to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS The SULLIVANS	DDG 68	.....	X	X	21.2
*	*	*	*	*	*

Approved: March 1, 2006.

**Gregg A. Cervi,**  
Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 06-2995 Filed 3-28-06; 8:45 am]

BILLING CODE 3810-FF-P

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** *Effective Date:* March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. All other previously certified deviations from the 72 COLREGS not affected by this amendment remain in effect.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment

for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. In Table Four, Paragraph 16 of § 706.2 remove the entry for USS CARNEY (DDG 64).

■ 3. In Table Five of § 706.2 revise the entry for USS CARNEY (DDG 64) to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* USS CARNEY *	* DDG 64 *	* ..... *	* X *	* X *	* 14.4 *

Approved: March 15, 2006.  
**Gregg A. Cervi**,  
*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate (General Admiralty and Maritime Law).*  
 [FR Doc. 06-2994 Filed 3-28-06; 8:45 am]  
**BILLING CODE 3810-FF-P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS MILIUS (DDG 69) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** *Effective Date:* February 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone (202) 685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MILIUS (DDG 69) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; and Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. All other previously certified deviations from the 72 COLREGS not affected by this amendment remain in effect.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and

701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. In Table Four, Paragraph 16 of § 706.2 remove the entry for USS MILIUS (DDG 69).

■ 3. In Table Five of § 706.2 revise the entry for USS MILIUS (DDG 69) to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* USS MILIUS *	* DDG 69 ... *	* ..... *	* X *	* X *	* 14.7 *

Approved: February 24, 2006.

**Gregg A. Cervi,**

*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. 06-2993 Filed 3-28-06; 8:45 am]

**BILLING CODE 3810-FF-P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** Effective Date: February 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone (202) 685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; and Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. All other previously certified deviations from the 72 COLREGS not affected by this amendment remain in effect.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and

701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. In Table Four, Paragraph 16 of § 706.2 remove the entry for USS BARRY (DDG 52).

■ 3. In Table Five of § 706.2 revise the entry for USS BARRY (DDG 52) to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS BARRY .....	DDG 52 ...	*	X	X	14.7
*	*	*	*	*	*

Approved: February 24, 2006.

**Gregg A. Cervi,**

*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. 06-2992 Filed 3-28-06; 8:45 am]

**BILLING CODE 3810-FF-P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and

exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS FARRAGUT (DDG 99) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** *Effective Date:* December 8, 2005.  
**FOR FURTHER INFORMATION CONTACT:** Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *FARRAGUT* (DDG 99) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear

of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS *FARRAGUT*

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * *	* * *	* * *
USS <i>FARRAGUT</i> .....	DDG 99 .....	1.84 meters.
* * *	* * *	* * *

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical

order, the following entry for USS *FARRAGUT*:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Obstruction angle relative ship's headings
* * *	* * *	* * *
USS <i>FARRAGUT</i> .....	DDG 99 .....	109.12° thru 112.50°.
* * *	* * *	* * *

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS *FARRAGUT*:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS FARRAGUT .....	DDG 99 ...	X	X	X	14.5

Approved: December 8, 2005.

**Anthony J. Mazzeo,**  
*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) (Acting).*

[FR Doc. 06-2991 Filed 3-28-06; 8:45 am]

**BILLING CODE 3810-FF-P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**RIN 1018-AU05**

**Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2006-07 Subsistence Taking of Fish and Shellfish Regulations**

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2006-07 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the fish and shellfish taking regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2005-06 Subsistence Taking of Fish and Wildlife Regulations," which expire on March 31, 2006. This rule also amends the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section \_\_\_\_ .24 of Subpart C).

**DATES:** Sections \_\_\_\_ .24(a)(2) and (3) are effective April 1, 2006. Sections \_\_\_\_ .27 and \_\_\_\_ .28 are effective April 1, 2006, through March 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o

U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786-3592.

**SUPPLEMENTARY INFORMATION:**

**Background**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In 1978, the State implemented a program that the Department of the Interior found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). On January 8, 1999 (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management

Program to the Ninth Circuit's ruling in *Alaska v. Babbitt*. Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

**Applicability of Subparts A, B, and C**

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

**Federal Subsistence Regional Advisory Councils**

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 and 242.22 (2002) and 50 CFR 100.11 and 100.22 (2002), and for the purposes

identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to exercise a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils had a substantial role in reviewing the proposed rule (70 FR 1216, January 6, 2005) and making recommendations for this final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting of January 10–13, 2006. Transcripts from this series of meetings are available at <http://alaska.fws.gov/asm/index.cfm>.

#### Summary of Changes

Section \_\_\_\_ .24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were last published in the **Federal Register** on January 6, 2005 (70 FR 1216). During its January 10–13, 2006, meeting, the Board made new determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained below in Analysis of Proposals Adopted by the Board.

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. We published proposed Subpart D regulations for the 2006–07 seasons, harvest limits, and methods and means on January 6, 2005, in the **Federal Register** (70 FR 1216). A 45-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 34 proposals for

changes to Customary and Traditional Use Determinations or to Subpart D. Subsequent to the review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The 10 Regional Councils then met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Four of the proposals were not considered, being deferred for Board consideration in a future cycle. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments on the remaining proposals.

#### Analysis of Proposals Rejected by the Board

The Board rejected, tabled, or took no action on 14 proposals. With three exceptions, all of these actions were based on recommendations from at least one Regional Council.

The Board rejected one proposal requesting revisions to the subsistence fishing schedule for the Yukon River. The Board rejected this proposal because the current fishing schedule is a result of a coordinated effort by users and government bodies to distribute harvest across the run so as to not overly impact a specific stock, to rebuild depressed salmon stocks, and for the long-term benefit of all users. Additionally, in-season managers already have the authority to modify the schedule when run strength is adequate to allow additional harvest or restrict it when run strength is very weak.

The Board rejected one proposal that requested restrictions to the depth of gill nets used by all fishermen in the Yukon River. The Board rejected this proposal but stated its commitment to work with other interests to resolve issues raised in and during the discussion of this proposal.

The Board took no action on one proposal that requested a revised customary and traditional use determination in the Prince William Sound Fishery Management Area, because a similar proposal adopted with modification by the Board rendered this proposal moot.

The Board rejected one proposal that would have established a fly fishing zone on the Eyak River. The Board rejected this proposal as unnecessary and noted that the in-season manager has the authority to institute restrictive permit conditions if deemed appropriate for resource conservation.

Contrary to the recommendation of the Regional Council, the Board rejected

one proposal that requested restrictions on the harvest methods used by subsistence fishermen in a portion of the Prince William Sound Fishery Management Area. The Board rejected this proposal as unnecessarily restrictive for subsistence users.

Contrary to the recommendation of the Regional Council, the Board rejected a proposal that requested restrictions on the harvest limits for subsistence fishermen in a portion of the Prince William Sound Fishery Management Area. The Board rejected this proposal as an unnecessary restriction on subsistence users.

The Board took no action on one proposal that requested a restriction on the use of fish wheels in the Upper Copper River District, because a similar proposal adopted by the Board rendered this proposal moot.

The Board tabled one proposal that requested a revised customary and traditional use determination in the Southeastern Alaska Fishery Management Area, because the Regional Council will be presenting a more comprehensive proposal for the area in the upcoming regulatory cycle.

The Board took no action on one proposal that requested revising the season start date for harvesting sockeye salmon in the Stikine River, because a similar proposal adopted by the Board rendered this proposal moot.

Contrary to the recommendation of the Regional Council, the Board rejected a proposal that requested allowing subsistence harvested pink salmon to be used as bait in any fishery, including the commercial fishery occurring off of Federal public waters. The Board rejected this proposal as an unwarranted expansion of its authority into a State-managed fishery.

The Board rejected four proposals that would have placed additional harvest restrictions on steelhead in southeast Alaska. These proposals were rejected because the Board believes that proper safeguards are already in place to protect steelhead populations, and the proposals would have placed unnecessary restrictions on subsistence users.

#### Analysis of Proposals Adopted by the Board

The Board adopted 16 proposals. A number of proposals dealing with the same issue were dealt with as a package. Some proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, conforming with harvest practices, or protecting fish populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska, or on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/index.cfm>). Additional technical clarifications and removal of excess or duplicative text have been made, which result in a more readable document.

In the final rule, we deleted the reference to net fishing between Cape Douglas and Rocky Point in § \_\_\_\_\_.27(i)(2) because that area is not within jurisdiction as identified in § \_\_\_\_\_.3(b). When questions of jurisdiction are brought to our attention, we immediately review the issue and make any appropriate modifications to our regulations as we have done here. In addition, we revised the regulations pertaining to specific management areas as follows:

#### *Statewide Proposal*

The Board adopted one proposal affecting all rural residents and areas of the State, which will result in a change to the regulations found in § \_\_\_\_\_.25 that will be published the next time (June 2006) that section is published in the **Federal Register**.

- Permitted the sale of handicrafts made by rural Alaskans from the nonedible byproducts (including, but not limited to skin, shell, fins, and bones) of subsistence-harvested fish or shellfish.

#### *Yukon-Northern Fishery Management Area*

The Board adopted one proposal affecting residents of the Yukon-Northern Fishery Management Area, resulting in the following change to the regulations found in § \_\_\_\_\_.24.

- Revised the customary and traditional use determination for freshwater fish (other than salmon) in the Tanana River drainage.

#### *Kuskokwim Fishery Management Area*

The Board adopted one proposal affecting residents of the Kuskokwim Fishery Management Area, resulting in the following change to the regulations found in § \_\_\_\_\_.27.

- Removed in a portion of the Area the fishing time restrictions before and after commercial salmon openings.

#### *Alaska Peninsula Fishery Management Area*

The Board adopted one proposal affecting residents of the Alaska Peninsula Fishery Management Area, resulting in the following change to the regulations found in § \_\_\_\_\_.27.

- Reduced the area closed to subsistence fishing when there are commercial salmon openings nearby.

#### *Chignik Fishery Management Area*

The Board adopted two proposals affecting residents of the Chignik Fishery Management Area, resulting in the following changes to the regulations found in § \_\_\_\_\_.27.

- Reduced the restrictions to subsistence fishing when there are commercial salmon openings nearby.
- Opened additional areas in the Chignik River to subsistence fishing.

#### *Cook Inlet Fishery Management Area*

The Board adopted one proposal, resulting in the following change to the regulations found in § \_\_\_\_\_.24.

- Established a customary and traditional use determination for all fish species for residents of specific rural communities on the Kenai Peninsula and a determination for salmon on the west side of Cook Inlet.

#### *Prince William Sound Fishery Management Area*

The Board adopted four proposals affecting residents of the Prince William Sound Fishery Management Area, resulting in the following changes to the regulations found in §§ \_\_\_\_\_.24 or \_\_\_\_\_.27.

- Revised the customary and traditional use determination for freshwater fish in the southern portion of the Prince William Sound Area.
- Allowed for the accumulation of Federal harvest limits with State sport fishing limits in a portion of the area.
- Required that fish wheels in the Upper Copper River District be checked and fish removed at least once every 10 hours.
- Allowed the use of a fyke net in Tanada Creek upstream of the National Park Service weir.

#### *Yakutat Fishery Management Area*

The Board adopted two proposals for the Southeastern Alaska Fishery Management Area that also affected residents of the Yakutat Fishery Management Area, resulting in the following change to the regulations found in § \_\_\_\_\_.27.

- Allowed the use of bait in subsistence rod and reel fisheries.
- Revised the marking requirements for subsistence-taken salmon.

#### *Southeastern Alaska Fishery Management Area*

The Board adopted three proposals affecting residents of the Southeastern Alaska Fishery Management Area, resulting in the following changes to the regulations found in § \_\_\_\_\_.27.

- Allowed the use of bait in subsistence rod and reel fisheries.
- Aligned harvest limits for sockeye salmon in the Bay of Pillars drainage with State harvest limits.
- Revised the marking requirements for subsistence-taken salmon.

Additionally, the Board adopted two proposals affecting residents of the Southeastern Alaska Fishery Management Area, resulting in the following changes to the regulations found in § \_\_\_\_\_.27, that will be implemented following consultation with the Transboundary Panel and the Pacific Salmon Commission.

- Relaxed the gillnet mesh size restrictions during the Chinook salmon season on the Stikine River.
- Changed the start date of the sockeye salmon season on the Stikine River.

#### **Administrative Procedure Act Compliance**

The Board finds that additional public notice under the Administrative Procedure Act (APA) for this final rule is unnecessary and contrary to the public interest. The Board has provided extensive opportunity for public input and involvement in excess of standard APA requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Over the 15 years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of regulations. A lapse in regulatory control could seriously affect the continued viability of fish and shellfish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d) to make this rule effective less than 30 days after publication.

## Conformance with Statutory and Regulatory Authorities

### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992; amended January 8, 1999, 64 FR 1276; June 12, 2001, 66 FR 31533; May 7, 2002, 67 FR 30559; April 30, 2003, 68 FR 23035; October 14, 2004, 68 FR 60957; and December 27, 2005, 70 FR 76400) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture, determined that the expansion of Federal jurisdiction did

not constitute a major Federal action significantly affecting the human environment and has therefore signed a Finding of No Significant Impact.

### *Compliance with Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

### *Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018-0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

### *Other Requirements*

**Regulatory Planning and Review (Executive Order 12866)**—In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action subject to OMB review. OMB makes this determination. This action will not have an annual economic effect of \$100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required. This action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This action will not raise novel legal or policy issues.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small

businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that about 26.2 million pounds of fish (including about 9 million pounds of salmon) are harvested by the local subsistence users annually and, if based on a replacement value of \$3.00 per pound, would equate to \$78.6 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations

with Native American Tribal Governments” (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

*Drafting Information*

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife

Service, Anchorage, Alaska. Dennis Tol, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA–Forest Service, provided additional guidance.

**List of Subjects**

*36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

*50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons set out in the preamble, the Federal Subsistence Board amends Title 36, part 242, and

Title 50, part 100, of the Code of Federal Regulations, as set forth below.

**PART \_\_\_\_\_—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA**

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

**Subpart C—Board Determinations**

■ 2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, §§\_\_\_\_.24(a)(2) and (3) are revised to read as follows:

**§ \_\_\_\_\_.24 Customary and traditional use determinations.**

(a) \* \* \*

(2) *Fish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
KOTZEBUE AREA .....	All fish .....	Residents of the Kotzebue Area.
NORTON SOUND—PORT CLARENCE AREA: Norton Sound—Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point.	All fish .....	Residents of Stebbins, St. Michael, and Kotlik.
Norton Sound—Port Clarence Area, remainder	All fish .....	Residents of the Norton Sound-Port Clarence Area.
YUKON-NORTHERN AREA:		
Yukon River drainage .....	Salmon, other than fall chum salmon .....	Residents of the Yukon River drainage and the community of Stebbins.
Yukon River drainage .....	Fall chum salmon .....	Residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage .....	Freshwater fish (other than salmon) .....	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area .....	All fish .....	Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B.
Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP.	Freshwater fish (other than salmon) .....	Residents of the Yukon-Northern Area and residents of Mentasta Lake, Chistochina, Slana, and all residents living between Mentasta Lake and Chistochina.
KUSKOKWIM AREA .....	Salmon .....	Residents of the Kuskokwim Area, except those persons residing on the United States military installations located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.
	Rainbow trout .....	Residents of the communities of Akiachak, Akiak, Aniak, Atmautluak, Bethel, Chuathbaluk, Crooked Creek, Eek, Goodnews Bay, Kasigluk, Kwethluk, Lower Kalskag, Napakiak, Napaskiak, Nunapitchuk, Oscarville, Platinum, Quinhagak, Tuluksak, Tuntutuliak, and Upper Kalskag.
	Pacific cod .....	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.

Area	Species	Determination
	All other fish other than herring .....	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.
Waters around Nunivak Island .....	Herring and herring roe .....	Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.
<b>BRISTOL BAY AREA:</b>		
Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish .....	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and freshwater fish .....	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Kvichak/Iliamna Lake Clark drainage.	Salmon and freshwater fish .....	Residents of the Kvichak/Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and freshwater fish .....	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Egegik District, including drainages flowing into the district.	Salmon and freshwater fish .....	Residents of South Naknek, the Egegik District and freshwater drainages flowing into the district.
Ugashik District, including drainages flowing into the district.	Salmon and freshwater fish.	
Togiak District .....	Herring spawn on.	
<b>ALEUTIAN ISLANDS AREA</b> .....	All fish .....	Residents of the Aleutian Islands Area and the Pribilof Islands.
<b>ALASKA PENINSULA AREA</b> .....	Halibut .....	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area .....	Residents of the Alaska Peninsula Area.
<b>CHIGNIK AREA</b> .....	Halibut, salmon and fish other than rainbow/steelhead trout.	Residents of the Chignik Area.
<b>KODIAK AREA</b> —except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude).	Salmon .....	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area .....	Fish other than rainbow/steelhead trout and salmon.	Residents of the Kodiak Area.
<b>COOK INLET AREA:</b>		
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	All fish .....	Residents of the communities of Hope and Cooper Landing.
Waters within the Kasilof River drainage within the Kenai NWR.	All fish .....	Residents of the community of Ninilchik.
Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.	Salmon .....	Residents of the Tuxedni Bay area.
Cook Inlet Area .....	Fish other than salmon, Dolly Varden, trout, char, grayling and burbot.	Residents of the Cook Inlet Area.
<b>PRINCE WILLIAM SOUND AREA:</b>		
Southwestern District and Green Island .....	Salmon .....	Residents of the Southwestern District, which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon .....	Residents of the villages of Tatitlek and Ellamar.

Area	Species	Determination
Copper River drainage upstream from Haley Creek.	Freshwater fish .....	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Gulkana National Wild and Scenic River ....	Freshwater fish .....	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Prince William Sound Area, except for the Copper River drainage upstream of Haley Creek.	Freshwater fish (trout, char, whitefish, suckers, grayling, and burbot).	Residents of the Prince William Sound Area, except those living in the Copper River drainage upstream of Haley Creek.
Chitna Subdistrict of the Upper Copper River District.	Salmon .....	Residents of Cantwell, Chickaloon, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Glennallen Subdistrict of the Upper Copper River District.	Salmon .....	Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nebesna Road.
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon .....	Residents of Mentasta Lake and Dot Lake.
Remainder of the Prince William Sound Area.	Salmon .....	Residents of the Prince William Sound Area.
Waters of the Bering River area from Point Martin to Cape Suckling.	Eulachon .....	Residents of Cordova.
Waters of the Copper River Delta from the Eyak River to Point Martin.	Eulachon .....	Residents of Cordova, Chenega Bay, and Tatitlek.
YAKUTAT AREA:		
Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon .....	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby..	Dolly Varden, steelhead trout, and smelt .....	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area .....	Dolly Varden, trout, smelt, and eulachon .....	Residents of Southeastern Alaska and Yakutat Areas.
SOUTHEASTERN ALASKA AREA:		
District 1—Section 1E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Saxman.
District 1—Section 1F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, and smelt, and eulachon.	Residents of the City of Saxman.

Area	Species	Determination
Districts 2, 3, and 5 and waters draining into those Districts.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 6 and waters draining into that District.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents living south of Sumner Strait and Kashevaroff Passage; residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.
District 7 and waters draining into that District.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of drainage flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.
District 8 and waters draining into that District.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of drainages flowing into Districts 7 & 8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.
District 9—Section 9A .....	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9B north of the latitude of Swain Point.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' West longitude, including Killisnoo Island.
District 13—Section 13A south of the latitude of Cape Edward.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13B north of the latitude of Redfish Cape.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13C .....	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13C east of the longitude of Point Elizabeth.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' West longitude, including Killisnoo Island.
District 14—Section 14B and 14C .....	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Remainder of the Southeastern Alaska Area.	Salmon, Dolly eulachon. Varden, trout, smelt, and	Residents of Southeastern Alaska and Yakutat Areas.

(3) *Shellfish determinations.* The following communities and areas have been found to have a positive customary

and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
BERING SEA AREA .....	All shellfish .....	Residents of the Bering Sea Area.
ALASKA PENINSULA—ALEUTIAN ISLANDS AREA.	Shrimp, Dungeness, king, and Tanner crab ....	Residents of the Alaska Peninsula-Aleutian Island Area.
KODIAK AREA .....	Shrimp, Dungeness, and Tanner crab .....	Residents of Kodiak Area.
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab .....	Residents of the Kodiak Island Borough, except those residents on the Kodiak Coast Guard base.
COOK INLET AREA:		
Federal waters in the Tuxedni Bay Area within the boundaries of Lake Clark National Park.	Shellfish .....	Residents of Tuxedni Bay, Chisik Island, and Tyonek.
PRINCE WILLIAM SOUND AREA .....	Shrimp, clams, Dungeness, king, and Tanner crab.	Residents of the Prince William Sound Area.
SOUTHEASTERN ALASKA—YAKUTAT AREA:		
Section 1E south of the latitude of Grant Island light.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 1F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 3A and 3B .....	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
District 13 .....	Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.	

\* \* \* \* \*

■ 3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, §§ \_\_\_\_\_.27 and \_\_\_\_\_.28 are added effective April 1, 2006, through March 31, 2007, to read as follows:

**§ \_\_\_\_\_.27 Subsistence taking of fish.**

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in § \_\_\_\_\_.27(i). This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) [Reserved]

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

- (i) A set gillnet;
- (ii) A drift gillnet;
- (iii) A purse seine;
- (iv) A hand purse seine;
- (v) A beach seine;
- (vi) Troll gear;
- (vii) A fish wheel;

- (viii) A trawl;
- (ix) A pot;
- (x) A longline;
- (xi) A fyke net;
- (xii) A lead;
- (xiii) A herring pound;
- (xiv) A dip net;
- (xv) Jigging gear;
- (xvi) A mechanical jigging machine;
- (xvii) A handline;
- (xviii) A cast net;
- (xix) A rod and reel; and
- (xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of

this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed-release device, designed to release in no more than 30 days in saltwater, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed-release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live nonindigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fish wheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear,

except in the following areas where kegs or buoys of any color, including red, may be used:

- (i) Yukon-Northern Area; and
- (ii) Kuskokwim Area.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) *Transactions between rural residents.* Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed \$500.00 annually.

(ii) Upper Copper River District—The total number of salmon per household taken within the Upper Copper River District and exchanged in customary trade to rural residents may not exceed 50% of the annual harvest of salmon by the household. No more than 50% of the annual household limit may be sold under paragraphs .27(c)(11) and (12) when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.

(12) *Transactions between a rural resident and others.* In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and

define customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed \$400.00 annually. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(ii) Upper Copper River District—The total cash value of salmon per household taken within the Upper Copper River District and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed \$500.00 annually. No more than 50% of the annual household limit may be sold under paragraphs .27(c)(11) and (12) when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(13) *No sale to, nor purchase by, fisheries businesses.*

(i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions.

(ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken under the regulations in this part as part of your business transactions.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) [Reserved]

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing

permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

(20) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally taken subsistence fish.

(21) The taking of fish from waters within Federal jurisdiction is authorized outside of published open seasons or harvest limits if the harvested fish will be used for food in traditional or religious ceremonies that are part of funerary or mortuary cycles, including memorial potlatches, provided that:

(i) Prior to attempting to take fish, the person (or designee) or Tribal Government organizing the ceremony contacts the appropriate Federal fisheries manager to provide the nature of the ceremony, the parties and/or clans involved, the species and the number of fish to be taken, and the Federal waters from which the harvest will occur;

(ii) The taking does not violate recognized principles of fisheries conservation, and uses the methods and means allowable for the particular species published in the applicable

Federal regulations (the Federal fisheries manager will establish the number, species, or place of taking if necessary for conservation purposes);

(iii) Each person who takes fish under this section must, as soon as practical, and not more than 15 days after the harvest, submit a written report to the appropriate Federal fisheries manager, specifying the harvester's name and address, the number and species of fish taken, and the date and locations of the taking; and

(iv) No permit is required for taking under this section; however, the harvester must be eligible to harvest the resource under Federal regulations.

(d) [Reserved]

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you must record, prior to leaving the harvest site, daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a stretched-mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October 31 when taking whitefish or pike in streams, creeks, or sloughs within the

Kobuk River drainage and from May 15 to October 31 in the Selawik River drainage. Only one gillnet 100 feet or less in length with a stretched-mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a stretched-mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8 a.m. Monday until 8 p.m. Saturday.

(iii) You may take salmon only by gillnets, beach seines, fish wheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored gillnet.

(vi) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-

Northern Area at any time. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in § \_\_\_\_\_.27(i)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4B and 4C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5D, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take Chinook salmon during the State commercial fishing season, with drift gillnet gear only, from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches stretch-measure may be used from June 15 through September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed).

From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used.

From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xiv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with stretched-mesh larger than 6-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4A upstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less

than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4A downstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14;

(C) In the Yukon River mainstem, Subdistricts 4B and 4C with a Federal subsistence fishing permit, you may take Chinook salmon during the last 18-hour period of the weekly regulatory opening(s) by drift gillnets no more than 150 feet long and no more than 35 meshes deep, from June 10 through July 14.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial use, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the "Slide," you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear, and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels;

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods;

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure from June 15 through September 15.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, you may not possess Chinook salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxi) In the Yukon River drainage, Chinook salmon must be used primarily for human consumption and may not be targeted for dog food. Dried Chinook salmon may not be used for dog food anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole Chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5D, upstream of Circle City.

(4) *Kuskokwim Area*. The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In District 1, Kuskokuak Slough, from June 1 through July 31 only, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before or during, and for 6 hours after each State open

commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon by net gear or fish wheel for 16 hours before or during, and for 6 hours after each open commercial salmon fishing period in the district. You may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by paragraph (i)(4) of this section.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(ix) You may only take salmon by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller stretched-mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch stretched-mesh may not be more than 35 meshes in depth.

(xv) You may take halibut only by a single handheld line with no more than two hooks attached to it.

(xvi) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvii) You may take rainbow trout only in accordance with the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15 through June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area*. The Bristol Bay Area includes all waters of Bristol Bay, including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9 a.m. Monday until 9 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9 a.m. June 23 through 9 a.m. July 17, you may take salmon only during the following times: from 9 a.m. Tuesday to 9 a.m. Wednesday and from 9 a.m. Saturday to 9 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin by drift and set gillnets only.

(vii) Outside the boundaries of any district, you may take salmon by set gillnet only, except that you may also take salmon by spear in the Togiak River, excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon only under authority of a subsistence fishing permit.

(xv) Only one subsistence fishing permit for salmon may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage, you may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are 2 per day/2 in possession with no size limit from April 10 through October 31 and 5 per day/5 in possession with no size limit from November 1 through April 9.

(xviii) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54°36' North latitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(D) Waters of McLees Lake and its tributaries and outlet stream;

(E) All fresh water on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not

possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all waters of Alaska on the north side of the Alaska peninsula southwest of a line from Cape Menshikof (57°28.34' North latitude, 157°55.84' West longitude) to Cape Newenham (58°39.00' North latitude, 162° West longitude) and east of the longitude of Cape Sarichef Light (164°55.70' West longitude) and on the south side of the Alaska Peninsula from a line extending from Scotch Cape through the easternmost tip of Ugamak Island to a line extending 135° southeast from Kupreanof Point (55°33.98' North latitude, 159°35.88' West longitude).

(i) You may take fish, other than salmon, rainbow/steelhead trout, or char, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula bounded by a line extending 135° southeast for 3 miles from a point near Kilokak Rocks at 57°10.34' North latitude, 156°20.22' West longitude (the longitude of the southern entrance to Imuya Bay) then due south, and a line extending 135° southeast from Kupreanof Point at 55°33.98' North latitude, 159°35.88' West longitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time, except as may be specified by a subsistence fishing permit. For salmon, Federal subsistence fishing openings, closings and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31. You may not take salmon in Black Lake or any tributary to Black or Chignik Lakes.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may only subsistence fish for salmon as specified on a State subsistence salmon fishing permit.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily harvest limit for halibut is two fish, and the possession limit is

two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10' North latitude), west of 150° West longitude, north of 55°30.00' North latitude, and north and east of a line extending 135° southeast for three miles from a point near Kilokak Rocks at 57°10.34' North latitude, 156°20.22' West longitude (the longitude of the southern entrance of Imuya Bay), then due south.

(i) You may take fish other than salmon, rainbow/steelhead trout, char, bottomfish, or herring at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before or during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—all waters inside a line from the tip of the Nyman Peninsula (57°43.23' North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' North latitude, 152°31.50' West longitude;

(B) Buskin River closed waters—all waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards

seaward of the terminus of Little Kitoi Creek;

(F) All fresh water systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single handheld line with not more than two hooks attached to it.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51'06" North latitude) and a line extending south from Cape Fairfield (148°50'15" West longitude).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take grayling or burbot for subsistence purposes.

(iii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iv) You may only take salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and

means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56).

(v) You may only take smelt with dip nets in fresh water from April 1 through June 15. There are no harvest or possession limits for smelt.

(vi) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon. You may not take rainbow/steelhead trout, except as otherwise provided for in this § .27(i)(11).

(A) In the Prince William Sound Area within Chugach National Forest and in the Copper River drainage downstream of Haley Creek you may accumulate Federal subsistence fishing harvest limits with harvest limits under State of Alaska sport fishing regulations provided that accumulation of fishing harvest limits does not occur during the same day.

(B) You may accumulate harvest limits of salmon authorized for the Copper River drainage upstream from Haley Creek with harvest limits for salmon authorized under State of Alaska sport fishing regulations.

(ii) You may take fish by gear listed in paragraph (c)(1) of this part unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fish wheel, unless the anal (ventral) fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District from May 15 through September 30 only.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for Chinook salmon taken by dip net or rod and reel does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year;

(B) Multiple types of gear may be specified on a permit, although only one unit of gear may be operated at any one time;

(C) You must return your permit no later than October 31 of the year in

which the permit is issued, or you may be denied a permit for the following year;

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by Section .27(i)(11) and during fishing operations;

(E) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(F) You must personally operate your fish wheel or dip net;

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) If you are a fish wheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board;

(B) Your registration number and a wood, metal, or plastic plate at least 12 inches high by 12 inches wide bearing either your name and address, or your Alaska driver's license number, or your Alaska State identification card number in letters and numerals at least 1 inch high, must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water;

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel;

(D) You must check your fish wheel at least once every 10 hours and remove all fish;

(E) You are responsible for the fish wheel; you must remove the fish wheel from the water at the end of the permit period;

(F) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fish wheel:

(A) You may operate only one fish wheel at any one time;

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel;

(C) No fish wheel may have more than two baskets;

(D) If you are a permittee other than the owner, you must attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its

village or organization. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xiv):

(A) The permit will list all households and household members for whom the fish wheel is being operated. The permit will identify a person who will be responsible for each fish wheel in a similar manner to a fish wheel owner as described in paragraph (i)(11)(xii) of this section;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligible for a separate household subsistence fishing permit for the Upper Copper River District;

(D) The permit will include provisions for recording daily catches for each fish wheel; location and number of fish wheels; full legal name of the individual responsible for the lawful operation of each fish wheel as described in paragraph (i)(11)(xii) of this section; and other information determined to be necessary for effective resource management.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, fyke nets, and rod and reel in Tanada Creek. One fyke net and associated lead may be used in Tanada Creek upstream of the National Park Service weir;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain Chinook salmon taken in a fish wheel in the Copper River. You must return to the water unharmed any Chinook salmon caught in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15;

(F) You may only use a fyke net after consultation with the in-season manager. You must be present when the fyke net is actively fishing. You may take no more than 1,000 sockeye salmon in Tanada Creek with a fyke net;

(xvi) You may take pink salmon for subsistence purposes from fresh water with a dip net from May 15 until September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(12) *Yakutat Area*. The Yakutat Area includes all waters and drainages of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before a State opening of commercial salmon net fishing season and ending 48 hours after the closure. This applies to each river or bay fishery individually.

(iii) When the length of the weekly State commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6 a.m. to 6 p.m. on Saturday in that location.

(iv) You may take salmon, trout (other than steelhead), and char only under authority of a subsistence fishing permit. You may take steelhead trout only in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit. In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless

restricted by Federal permit. If you use bait, you must retain all Federally-regulated fish species caught, and they apply to your applicable daily and annual harvest limits for that species. For streams with steelhead, once your daily or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gillnet at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must immediately remove both lobes of the caudal (tail) fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) You must possess a subsistence fishing permit to take Dolly Varden. The daily harvest and possession limit is 10 Dolly Varden of any size.

(13) *Southeastern Alaska Area*. The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish other than salmon, trout, grayling, and char in the Southeastern Alaska Area at any time.

(ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D.

(iii) In the Southeastern Alaska Area, a rainbow trout is defined as a fish of the species *Oncorhynchus mykiss* less than 22 inches in overall length. A steelhead is defined as a rainbow trout with an overall length of 22 inches or larger.

(iv)(A) In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all Federally-regulated fish species caught, and they apply to your applicable daily, seasonal, and annual harvest limits for that species. For streams with steelhead, once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(B) Unless otherwise specified in this § \_\_\_.27(i)(13), allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this § \_\_\_\_.27(i)(13), you may use a handline for snagging salmon or steelhead.

(vi) You may fish with a rod and reel within 300 feet of a fish ladder unless the site is otherwise posted by the USDA Forest Service. You may not fish from, on, or in a fish ladder.

(vii) You may accumulate annual Federal subsistence harvest limits authorized for the Southeastern Alaska Area with harvest limits authorized under State of Alaska sport fishing regulations.

(viii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your subsistence fishing permit.

(ix) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(x) You must immediately remove both lobes of the caudal (tail) fin of subsistence-caught salmon when taken.

(xi) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xii) If a harvest limit is not otherwise listed for sockeye in this § \_\_\_\_.27(i)(13), the harvest limit for sockeye salmon is the same as provided for State subsistence or personal use fisheries. If a harvest limit is not established for the State subsistence or personal use fisheries, the possession limit is 10 sockeye and the annual harvest limit is 20 sockeye per household for that stream.

(xiii) For the Salmon Bay Lake system, the daily harvest and season limit per household is 30 sockeye salmon.

(xiv) For Virginia Lake (Mill Creek), the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xv) For Thoms Creek, the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xvi) The Sarkar River system above the bridge is closed to the use of all nets by both Federally-qualified and non-Federally qualified users.

(xvii) Only Federally-qualified subsistence users may harvest sockeye salmon in streams draining into Falls Lake Bay, Gut Bay, or Bay of Pillars. In the Falls Lake Bay and Gut Bay drainages, the possession limit is 10 sockeye salmon per household.

(xviii) From July 7 through July 31, you may take sockeye salmon in the

waters of the Klawock River and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(xix) You may take Chinook, sockeye, and coho salmon in the mainstem of the Stikine River only under the authority of a Federal subsistence fishing permit. Each Stikine River permit will be issued to a household and will be valid for 15 days. Permits may be revalidated for additional 15-day periods. Only dip nets, spears, gaffs, rod and reel, beach seine, or gillnets not exceeding 15 fathoms in length may be used. The maximum gillnet mesh size is 5½-inches, except during the Chinook season when the maximum gillnet mesh size is 8 inches.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is 5 Chinook salmon per household.

(B) You may take sockeye salmon from June 21 through July 31. The annual limit is 40 sockeye salmon per household.

(C) You may take coho salmon from August 15 through October 1. The annual limit is 20 coho salmon per household.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

(E) The total annual guideline harvest level for the Stikine River fishery is 125 Chinook, 600 sockeye, and 400 coho salmon. All salmon harvested, including incidentally taken salmon, will count against the guideline for that species.

(xx) You may take coho salmon under the terms of a subsistence fishing permit, except in the Stikine and Taku Rivers. There is no closed season. The daily harvest limit is 20 coho salmon per household. Only dip nets, spears, gaffs, handlines, and rod and reel may be used.

(xxi) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

(xxii) Unless otherwise specified in this § \_\_\_\_.27(i)(13), you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xxiii) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal

subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of 2 fish per household. You may use only a dip net, handline, spear, or rod and reel. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko Islands has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of 5 fish per household. You may use only a dip net, handline, spear, or rod and reel. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xxiv) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout apply:

(A) The daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit;

(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit;

(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit;

(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat or rainbow trout in combination; there is no closed season or size limit;

(E) You may only use a rod and reel;

(F) The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

#### § \_\_\_\_.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab,

king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) [Reserved]

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) *Methods, means, and general restrictions.* (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

- (i) Abalone iron;
- (ii) Diving gear;
- (iii) A grappling hook;
- (iv) A handline;
- (v) A hydraulic clam digger;
- (vi) A mechanical clam digger;
- (vii) A pot;
- (viii) A ring net;
- (ix) A scallop dredge;
- (x) A sea urchin rake;
- (xi) A shovel; and
- (xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You must plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, when you may substitute for the keg or buoy a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) Kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § \_\_\_\_\_.27(c)(2).

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(e) *Taking shellfish by designated harvest permit.* (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you must keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other

information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) *Subsistence take by commercial vessels.* No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening and ending 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) *Unlawful possession of subsistence shellfish.* You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this section, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a Federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) *Subsistence shellfish areas and pertinent restrictions.* (1) *Southeastern Alaska-Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified

under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* (i) You may take shellfish for subsistence purposes only as allowed in this section (k)(3).

(ii) You may not take king crab, Dungeness crab, or shrimp for subsistence purposes.

(iii) In the subsistence taking of Tanner crab:

(A) Male Tanner crab may be taken only from July 15 through March 15;

(B) The daily harvest and possession limit is 5 male Tanner crabs;

(C) Only male Tanner crabs 5½ inches or greater in width of shell may be taken or possessed;

(D) No more than 2 pots per person, regardless of type, with a maximum of 2 pots per vessel, regardless of type, may be used to take Tanner crab.

(iv) In the subsistence taking of clams: (A) The daily harvest and possession limit for littleneck clams is 1,000 and the minimum size is 1.5 inches in length;

(B) The daily harvest and possession limit for butter clams is 700 and the minimum size is 2.5 inches in length.

(v) Other than as specified in this section, there are no harvest, possession, or size limits for other shellfish, and the season is open all year.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a State closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit must specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the State opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have

all bait and bait containers removed and all doors secured fully open;

(C) You may only use one crab pot, which may be of any size, to take king crab;

(D) You may take king crab only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit per person is 12 male crabs with a shell width 5½ inches or greater.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed State commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1 through January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily harvest and possession limit is six male crabs per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° North latitude, you may take crab only from June 1 through January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Tanner crabs.

Dated: February 6, 2006.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: February 9, 2006.

**Steve Kessler,**

*Subsistence Program Leader, USDA—Forest Service.*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 82**

[EPA-HQ-OAR-2003-0118; FRL-8050-9]

RIN 2060-AG12

**Protection of Stratospheric Ozone: Notice 20 for Significant New Alternatives Policy Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of acceptability.

**SUMMARY:** This Notice of Acceptability expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The substitutes are for use in the following sectors: refrigeration and air conditioning, foam blowing, and fire suppression and explosion protection. The determinations concern new substitutes.

**DATES:** This notice of acceptability is effective on March 29, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0118 (continuation of Air Docket A-91-42). All electronic documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Air Docket (No. A-91-42), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Swain by telephone at (202) 343-9956, by facsimile at (202) 343-2342, by e-mail at [swain.evelyn@epa.gov](mailto:swain.evelyn@epa.gov), or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1310 L Street, NW., 8th floor, Washington, DC 20005.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP

rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available at EPA's Ozone Depletion World Wide Web site at <http://www.epa.gov/ozone/> including the SNAP portion at <http://www.epa.gov/ozone/snap/>.

**SUPPLEMENTARY INFORMATION:**

- I. Listing of New Acceptable Substitutes
    - A. Refrigeration and Air Conditioning
    - B. Foam Blowing
    - C. Fire Suppression and Explosion Protection
  - II. Section 612 Program
    - A. Statutory Requirements
    - B. Regulatory History
- Appendix A—Summary of Decisions for New Acceptable Substitutes

**I. Listing of New Acceptable Substitutes**

This section presents EPA's most recent acceptable listing decisions for substitutes in the following industrial sectors: refrigeration and air conditioning, foam blowing, and fire suppression and explosion protection. For copies of the full list of ODS substitutes in all industrial sectors, visit EPA's Ozone Depletion Web site at <http://www.epa.gov/ozone/snap/lists/index.html>.

The sections below discuss each substitute listing in detail. Appendix A contains a table summarizing today's listing decisions for new substitutes. The statements in the "Further Information" column in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the "further information" may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the "further information" column of the table to use a substitute, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

Submissions to EPA for the use of the substitutes listed in this document may be found under category VI-D of EPA air docket A-91-42 at the address described above under **ADDRESSES**. You can find other materials supporting the decisions in this action under category IX-B of EPA docket A-91-42 and in e-docket EPA-HQ-OAR-2003-0118 at <http://www.regulations.gov>.

**A. Refrigeration and Air Conditioning**

## 1. ICOR AT-22

*EPA's decision:* ICOR AT-22 [R-125/290/134a/600a (55.0/1.0/42.5/1.5)] is acceptable for use in new and retrofit equipment as a substitute for HCFC-22 in:

- Chillers (centrifugal, screw, reciprocating)
- Industrial process refrigeration
- Industrial process air conditioning
- Retail food refrigeration
- Cold storage warehouses
- Refrigerated transport
- Commercial ice machines
- Ice skating rinks
- Household refrigerators and freezers
- Vending machines
- Water coolers
- Residential dehumidifiers
- Non-mechanical heat transfer
- Household and light commercial air conditioning and heat pumps
- Very low temperature refrigeration

ICOR AT-22 is a blend of 55.0% by weight HFC-125 (pentafluoroethane, Chemical Abstracts Service Registry Number (CAS) ID #354-33-6), 1.0% by weight R-290 (propane, CAS ID #74-98-6), 42.5% by weight HFC-134a (1,1,1,2-tetrafluoroethane, CAS ID #811-97-2), and 1.5% by weight isobutane (2-methyl propane, CAS ID #75-28-5). You may find the submission under EPA Air Docket A-91-42, item VI-D-310.

*Environmental information:* The ozone depletion potential (ODP) of ICOR AT-22 is zero. The global warming potentials (GWPs) of HFC-125 and HFC-134a are 3450 and 1320, respectively (relative to carbon dioxide, using a 100-year time horizon (United Nations Environment Programme (UNEP)) and World Meteorological Organization (WMO) Scientific Assessment of Ozone Depletion: 2002). The atmospheric lifetimes of these constituents are 29 and 14 years, respectively.

HFC-125 and HFC-134a are excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations (see 40 CFR 51.100(s)) addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards.

EPA is concerned with the relatively high GWP of this substitute. The contribution of this blend to greenhouse gas emissions will be minimized through the implementation of the venting prohibition under section 608 (c)(2) of the Clean Air Act (see 40 CFR, part 82, subpart F). This section and EPA's implementing regulations

prohibit venting or release of substitutes for class I or class II ozone ODSs used in refrigeration and air conditioning and require proper handling, such as recycling or recovery, and disposal of these substances.

**Flammability information:** While two of the blend components, isobutane and propane, are flammable, the blend as formulated and under worst case fractionated formulation scenarios is not flammable.

**Toxicity and exposure data:** HFC-125 and HFC-134a have 8 hour/day, 40 hour/week workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). Isobutane and propane have an 8 hour/day, 40 hour/week threshold limit value (TLV) established by the American Conference of Governmental Industrial Hygienists (ACGIH) of 1000 ppm and 2500 ppm, respectively. EPA recommends that users follow all requirements and recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of ICOR AT-22 adhere to the AIHA's WEELs and the ACGIH's TLV.

**Comparison to other refrigerants:** ICOR AT-22 is not an ozone depleter; thus, it poses a lower risk for ozone depletion than HCFC-22, the ozone-depleting substance (ODS) it replaces. ICOR AT-22 has a GWP of about 2500, slightly higher than other substitutes for HCFC-22. For example, the GWP of R-407C is about 1700 and the GWP of R-410A is about 2000. Flammability and toxicity risks are low, as discussed above. Thus, we find that ICOR AT-22 is acceptable because it does not pose a greater overall risk to public health and the environment in the end uses and applications listed above.

## 2. ICOR XLT1 (R-422C)

**EPA's decision:** ICOR XLT1 [R-125/134a/600a (82/15/3)] is acceptable for use in new and retrofit equipment as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A in:

- Chillers (centrifugal, screw, reciprocating)
- Industrial process refrigeration
- Industrial process air conditioning
- Retail food refrigeration
- Cold storage warehouses
- Refrigerated transport
- Commercial ice machines
- Ice skating rinks
- Household refrigerators and freezers
- Vending machines
- Water coolers

- Residential dehumidifiers
- Non-mechanical heat transfer
- Household and light commercial air conditioning and heat pumps
- Very low temperature refrigeration

ICOR XLT1 is a blend of 82% by weight HFC-125 (pentafluoroethane, CAS ID # 354-33-6), 15% by weight HFC-134a (1,1,1,2-tetrafluoroethane, CAS ID #811-97-2), and 3% by weight isobutane (2-methyl propane, CAS ID #75-28-5). The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 34 has designated this blend as R-422C. You may find the submission under EPA Air Docket A-91-42, item VI-D-313.

**Environmental information:** The ODP of ICOR XLT1 is zero. For environmental information on the components of this blend see the section on environmental information above for ICOR AT-22.

HFC-125 and HFC-134a are excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations (see 40 CFR 51.100(s)) addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards.

EPA is concerned with the relatively high GWP of this substitute. The contribution of this blend to greenhouse gas emissions will be minimized through the implementation of the venting prohibition under section 608 (c)(2) of the Clean Air Act (see 40 CFR, part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I or class II ozone ODSs used in refrigeration and air conditioning and require proper handling, such as recycling or recovery, and disposal of these substances.

**Flammability information:** While one component of the blend, isobutane, is flammable, the blend as formulated and under worst case fractionated formulation scenarios is not flammable.

**Toxicity and exposure data:** For information on the workplace exposure limits for the components of this blend see the section toxicity and exposure data above for ICOR AT-22. EPA recommends that users follow all requirements and recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of ICOR XLT1 adhere to the AIHA's WEELs and the ACGIH's TLV.

**Comparison to other refrigerants:** ICOR-XLT1 is not an ozone depleter;

thus, it poses a lower risk for ozone depletion than the ODSs it replaces. ICOR XLT1 has a GWP of about 3000, comparable to other substitutes for the ODSs listed above. For example, the GWP of R-407C is about 1700, the GWP of R-410A is about 2000, and the GWP of R-404A and R-507 are about 3900. Flammability and toxicity risks are low, as discussed above. Thus, we find that ICOR XLT1 is acceptable because there are no other substitutes that are currently or potentially available and that provide a substantially reduced risk to public health and the environment in the end uses listed.

## 3. ICOR XAC1 (R-422B)

**EPA's decision:** ICOR XAC1 [R-125/134a/600a (55/42/3)] is acceptable for use in new and retrofit equipment as a substitute for HCFC-22 in:

- Chillers (centrifugal, screw, reciprocating)
- Industrial process refrigeration
- Industrial process air conditioning
- Retail food refrigeration
- Cold storage warehouses
- Refrigerated transport
- Commercial ice machines
- Ice skating rinks
- Household refrigerators and freezers
- Vending machines
- Water coolers
- Residential dehumidifiers
- Non-mechanical heat transfer
- Household and light commercial air conditioning and heat pumps
- Very low temperature refrigeration
- Motor vehicle air conditioning (buses and passenger trains only)

ICOR XAC1 is a blend of 55% by weight HFC-125 (pentafluoroethane, CAS ID # 354-33-6), 42% by weight HFC-134a (1,1,1,2-tetrafluoroethane, CAS ID #811-97-2), and 3% by weight isobutane (2-methyl propane, CAS ID #75-28-5). ASHRAE Standard 34 has designated this blend as R-422B. You may find the submission under EPA Air Docket A-91-42, item VI-D-312.

**Environmental information:** The ODP of ICOR XAC1 is zero. For environmental information on the components of this blend see the section on environmental information above for ICOR AT-22.

HFC-125 and HFC-134a are excluded from the definition of volatile organic compound (VOC) under Clean Air Act (see 40 CFR 51.100(s)) regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards.

EPA is concerned with the relatively high GWP of this substitute. The contribution of this blend to greenhouse

gas emissions will be minimized through the implementation of the venting prohibition under section 608 (c)(2) of the Clean Air Act (see 40 CFR, part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I or class II ODSs used in refrigeration and air conditioning and require proper handling, such as recycling or recovery, and disposal of these substances.

**Flammability information:** While one component of the blend, isobutane, is flammable, the blend as formulated and under worst case fractionated formulation scenarios is not flammable.

**Toxicity and exposure data:** For information on the workplace exposure limits for the components of this blend see the section toxicity and exposure data above for ICOR AT-22. EPA recommends that users follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of ICOR XAC1 adhere to the AIHA's WEELs and the ACGIH's TLV.

**Comparison to other refrigerants:** ICOR XAC1 is not an ozone depleter; thus, it poses a lower risk for ozone depletion than HCFC-22, the ODS it replaces. ICOR XAC1 has a GWP of about 2500, slightly higher than other substitutes for HCFC-22. For example, the GWP of R-407C is about 1700 and the GWP of R-410A is about 2000. Flammability and toxicity risks are low, as discussed above. Thus, we find that ICOR XAC1 is acceptable because it does not pose a greater overall risk to public health and the environment in the end uses listed.

#### 4. R-417A

**EPA's decision:** R-417A [R-125/134a/600 (46.6/50.0/3.4)] is acceptable for use in new and retrofit equipment as a substitute for R-22 in:

- Motor vehicle air conditioning (busses and passenger trains only)

R-417A is a blend of 46.6 percent HFC-125 (pentafluoroethane, CAS ID #354-33-6), 50.0 percent HFC-134a (1,1,1,2-tetrafluoroethane, CAS ID #811-97-2), and 3.4 percent n-butane (CAS ID #106-97-8). You can find the most recent submission in EPA Air Docket A-91-42, item VI-D-286.

In SNAP Notice of Acceptability #16 (March 22, 2002; 67 FR 13272), EPA noted that the composition of NU-22 was changed to match that of ISCEON 59, also known as R-417A, and that

EPA previously found ISCEON 59 acceptable as a substitute for R-22 in a number of end uses in SNAP Notice of Acceptability #11 (December 6, 1999; 64 FR 68039). R-417A is sold under the trade names NU-22 and ISCEON 59. In SNAP Notice of Acceptability #17 (December 20, 2002; 67 FR 77927), EPA found R-417A acceptable as a substitute for R-502 in several end uses. Today's decision adds this refrigerant to the acceptable list for HCFC-22 in bus and passenger train motor vehicle air conditioners.

**Environmental information:** For environmental information on HFC-125 and HFC-134a, see above in section I.A.1. for ICOR AT-22. The ozone depletion potential (ODP) of R-417A is zero. The GWP of butane is less than 10 (relative to carbon dioxide, using a 100-year time horizon). Butane is a VOC under Clean Air Act regulations (see 40 CFR 51.100(s)) concerning the development of SIPs.

**Flammability information:** While butane, one component of the blend, is flammable, the blend is not flammable.

**Toxicity and exposure data:** HFC-125 and HFC-134a have guidance level WEELs of 1000 ppm established by the AIHA. Butane has a threshold limit value (TLV) of 800 ppm established by the American Conference of Government Industrial Hygienists (ACGIH). EPA recommends that users follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of R-417A will adhere to the AIHA's WEELs and the ACGIH's TLVs.

**Comparison to other refrigerants:** R-417A is not an ozone depleter; thus, it reduces risk from ozone depletion compared to R-22, the ODS it replaces. R-417A has a comparable or lower GWP than the other substitutes for R-22. Flammability and toxicity risks are low, as discussed above. Thus, we find that R-417A is acceptable because it does not pose a greater overall risk to public health and the environment in the end uses listed.

#### 5. HFC-245fa (Genetron® 245fa)

**EPA's decision:** HFC-245fa [Genetron® 245fa] is acceptable for use in new and retrofit equipment as a substitute for CFC-11, CFC-113, CFC-114, HCFC-21, HCFC-123, and HCFC-141b in:

- Low pressure centrifugal chillers
- Non-mechanical heat transfer
- Very low temperature refrigeration
- Industrial process air conditioning
- And industrial process refrigeration

Refer to the table in *Appendix A* for specific information as to which ODS HFC-245fa substitutes for in each end use. HFC-245fa is sold under the trade name of Genetron® 245fa. HFC-245fa is also known as 1,1,1,3,3-pentafluoropropane, Chemical Abstracts Service Registry Number (CAS ID #) 460-73-1. You may find the submission under EPA Air Docket A-91-42, item VI-D-316.

**Environmental information:** ODP of HFC-245fa is zero. The GWP of HFC-245fa is 950. The atmospheric lifetime of HFC-245fa is 7.2 years.

HFC-245fa is excluded from the definition of a VOC under Clean Air Act regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards.

**Flammability information:** HFC-245fa is nonflammable.

**Toxicity and exposure data:** EPA recommends that users follow all requirements and recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of HFC-245fa adhere to the AIHA's WEEL of 300 ppm (time weighted average for 8 hour/day, 40 hour/week).

**Comparison to other refrigerants:** HFC-245fa is not an ozone depleter; thus, it poses a lower risk for ozone depletion than the ODSs it replaces. HFC-245fa has a lower GWP than the CFC refrigerants it replaces. HFC-245fa is non-flammable. HFC-245fa exhibits moderate to low toxicity and guidance is available from the AIHA and the ACGIH on its use in the workplace. Thus, we find that HFC-245fa is acceptable because it does not pose a greater overall risk to public health and the environment in the end uses listed.

#### 6. R-420A

**EPA's decision:** R-420A is acceptable for use, subject to use conditions, in retrofit equipment as a substitute for CFC-12 in motor vehicle air conditioning.

R-420A is a blend of 88% by weight HFC-134a (1,1,1,2-tetrafluoroethane, CAS ID #811-97-2), and 12% by weight HCFC-142b (1-chloro-1,1-difluoroethane, CAS ID #75-68-3). Note that HCFC-142b is an ozone-depleting substance (ODS). Regulations regarding recycling and prohibiting venting issued under section 609 of the Clean Air Act apply to this blend. A common trade name for this refrigerant blend is Choice refrigerant. You may find the submission under EPA Air Docket A-

91–42, item VI–D–302 (or see e-docket EPA–HQ–OAR–2003–0118). R–420A was previously approved as a substitute refrigerant in other refrigeration and air conditioning end-uses in SNAP Notice 19 (69 FR 58905, October 4, 2004).

*Conditions for use in motor vehicle air conditioning systems:* On October 16, 1996 (61 FR 54029), EPA promulgated a final rule that prospectively applied certain conditions on the use of any refrigerant used as a substitute for CFC–

12 in motor vehicle air conditioning systems (Appendix D of subpart G of 40 CFR part 82). That rule provided that EPA would list new refrigerants in future notices of acceptability. Therefore, the use of R–420A as a CFC–12 substitute in motor vehicle air conditioning systems must follow the standard conditions imposed on previous refrigerants, including:

- The use of unique fittings designed by the refrigerant manufacturer,

- The application of a detailed label,
- The removal of the original refrigerant prior to charging with R–420A, and
- The installation of a high-pressure compressor cutoff switch on systems equipped with pressure relief devices.

The October 16, 1996 rule gives full details on these use conditions.

You must use the following fittings to use R–420A in motor vehicle air conditioning systems:

Fitting type	Diameter (inches)	Thread pitch (threads/inch)	Thread direction
Low-side service port .....	.5625 (9/16)	18	Left.
High-side service port .....	.5625 (9/16)	18	Right.
Large containers (>20 lb.) .....	.5625 (9/16)	18	Left.
Small Cans .....	.5625 (9/16)	18	Right.

The labels will have a dark green background (PMS #347) and white text.

*Environmental information:* The ODP of HCFC–142b is 0.065 and HFC–134a has an ODP of zero. The GWPs of HCFC–142b and HFC–134a are 2400 and 1320, respectively. The atmospheric lifetimes of these constituents are 17.9 and 14.0 years, respectively.

Because R–420A contains an ODS, regulations on its use apply, including the requirements for technician certification, mandatory recovery of refrigerant during service of equipment containing R–420A, a requirement that sales of the refrigerants be made only to EPA-certified technicians, and the statutory prohibition under section 608(c) of the Clean Air Act against knowingly venting refrigerants. Production and/or import of HCFC–142b is currently restricted to persons holding production and/or consumption allowances under 40 CFR part 82 subpart A. Hence, manufacturers and importers of R–420A may have difficulty obtaining adequate supply of the HCFC–142b component necessary to formulate the blend. HCFC–142b will be subject to further control beginning in 2010 when the next major milestone in the HCFC phaseout occurs and supplies may be further limited. As of January 1, 2010, production and import of HCFC–22 or HCFC–142b will be limited to the purposes of use in equipment manufactured before January 1, 2010, transformation or destruction of the HCFC, or for export in accordance with 40 CFR Part 82 Subpart A. Thus, blends containing HCFC–142b such as R–420A are only transitional substitutes. EPA has proposed a rule prohibiting the use of HCFC–142b and HCFC–22 as ODS substitutes for foam blowing (70 FR 67120), and is considering similar

action restricting HCFC–142b and HCFC–22 in other industrial sectors.

HCFC–142b and HFC–134a are excluded from the definition of VOC under Clean Air Act regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards.

*Flammability information:* Although the component HCFC–142b is moderately flammable, the blend is not flammable as formulated or under worst-case fractionated formulation scenarios.

*Toxicity and exposure data:* HCFC–142b and HFC–134a have 8 hour/day, 40 hour/week WEELs of 1000 ppm established by the AIHA. EPA recommends that users follow all recommendations specified in the MSDS for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of R–420A adhere to the AIHA’s WEELs.

*Comparison to other refrigerants:* R–420A has a lower ODP than that of the Class I ODS it replaces, CFC–12, and lower than that of other blends containing Class II ODS in this end use. R–420A has a comparable GWP to that of most other substitutes for CFC–12. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–420A is acceptable as a substitute for CFC–12 in the end use listed.

Although this substitute has an ozone depleting potential, the contribution of this blend to ozone depletion will be minimized through the implementation of the venting prohibition under section 608 (c) of the Clean Air Act (see 40 CFR, part 82, subpart F). This section and EPA’s implementing regulations prohibit venting or release of substitutes

for class I or class II ozone ODS used in refrigeration and air conditioning and require proper handling, such as recycling or recovery, and disposal of these substances.

*B. Foam Blowing*

1. Transcend™ Technologies

*EPA’s decision:* Transcend(™) Technologies is acceptable, as an additive to other SNAP-approved foam blowing agents, in blends making up to 5% by weight of the total foam formulation, as a substitute for CFCs and HCFCs in the following end-uses:

- Rigid polyurethane and polyisocyanurate laminated boardstock;
- Rigid polyurethane appliance;
- Rigid polyurethane, spray, commercial refrigeration, and sandwich
- Rigid polyurethane slabstock and other foams;
- Polyurethane integral skin foam;
- Polyurethane: extruded sheet

For the spray foam application within the rigid polyurethane, spray, commercial refrigeration, and sandwich end use, Transcend™ Technologies may only be used with other blowing agents that are SNAP-approved specifically for spray foam. It is not acceptable to use Transcend™ Technologies for saturated light hydrocarbons or for other blowing agents that are not SNAP-approved specifically for use in spray foam. The blowing agent blended with Transcend™ Technologies must be SNAP-approved for that specific end use.

The submitter, Arkema Inc, claims that the composition of Transcend™ Technologies is confidential business information (see docket A–91–42, item VI–D–311).

*Environmental information:*

Transcend™ Technologies has no ODP and very low or zero GWP. Users should be aware that Transcend™ Technologies is considered a VOC under Clean Air Act regulations (see 40 CFR 51.100(s)) addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. For more information refer to the manufacturer of Transcend™ Technologies, EPA regulations at 40 CFR part 51, and your state or local air quality agency.

*Flammability information:*

Transcend™ Technologies is flammable and should be handled with proper precautions. Use of Transcend™ Technologies will require safe handling and shipping as prescribed by OSHA and DOT (for example, using personal safety equipment and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173). However, when blended with fire retardant and/or other SNAP-approved alternatives, the flammability of Transcend™ Technologies can be reduced to make a formulation that is either combustible or non-flammable (contact the manufacturer of Transcend™ Technologies for more information). For example, in blowing-agent blends of 50% Transcend™ Technologies and 50% HFC-134a, or in blends of less than 97% Transcend™ Technologies and 3% or more HFC-245fa, the resultant formulation is nonflammable.

For information on the safety training requirements for use of flammable blowing agents in spray foam, refer to SNAP Notice of Acceptability 11 (64 FR 68039, December 6, 1999) or contact the EPA SNAP program.

*Toxicity and exposure data:*

Transcend™ Technologies should be handled with proper precautions. EPA recommends that users follow all recommendations specified in the MSDS for Transcend™ Technologies. OSHA has established a permissible exposure limit for the main component of Transcend™ Technologies of 200 ppm for a time-weighted average over an eight-hour work shift.

*Comparison to other foam blowing agents:* Transcend™ Technologies is not an ozone depleter; thus, it reduces risk overall compared to the ODSs it replaces. Transcend™ Technologies has a comparable or lower GWP than the other substitutes for CFCs and HCFCs in these end uses. Thus, we find that Transcend™ Technologies is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

*C. Fire Suppression and Explosion Protection*

## 1. Uni-light Advanced Fire Fighting Foam 1% (Uni-light AFFF 1%)

*EPA's decision:* Uni-light AFFF 1% is acceptable for use as a substitute for halon 1301 in the total flooding end use in both normally occupied and unoccupied spaces.

Uni-light AFFF 1% is a water mist system with 1 percent (by mass) foam enhancement mixed with water. It is intended for use in machinery spaces onboard ships and off-shore installations. You may find the submission under Docket A-91-42, item VI-D-315 (or see e-docket EPA-HQ-OAR-2003-0118-116).

EPA previously found water mist systems with potable water or natural sea water acceptable in total flooding (July 28, 1995; 60 FR 38729). In the same listing, EPA required that water mist systems containing additives different than those in potable water, and water mist systems comprised of mixtures in solution must be submitted to EPA for SNAP review on a case-by-case basis. With regard to a water mist and foam system, any changes to the foam mixture may constitute a new formulation and is, therefore, subject to SNAP review.

*Environmental information:* All of the components of Uni-light AFFF 1% have an ozone depletion potential of zero. Its components have a negligible atmospheric lifetime and global warming potential.

One component of Uni-light's foam mixture, 2-(2-Butoxyethoxy) ethanol (also called diethylene glycol monobutyl ether, or DGBE, CAS ID# 112-34-5), is defined as a hazardous air pollutant (HAP) under the Clean Air Act.

The component DGBE is also regulated as a controlled substance by the Toxic Substance Control Act (TSCA). Therefore, all materials used to clean spaces after an accidental should be handled and disposed of as hazardous waste in accordance with federal, state, or local requirements.

*Flammability:* The blend is non-flammable.

*Toxicity and exposure data:* The most toxic component of the foam blend, DGBE, has an occupational exposure limit, 8-hour time-weighted average, of 100 mg/m<sup>3</sup> as a Maximum Concentration Value in the Workplace set by the Federal Republic of Germany. All but two components of the foam blend are classified as "generally recognized as safe" by the U.S. Food and Drug Administration.

As with other fire suppressants, EPA recommends that users minimize exposure to this agent. In order to keep exposure levels as low as possible, EPA recommends the following for establishments installing and maintaining total flooding systems:

- Make self-contained breathing apparatus (SCBA) available in normally occupied areas;
- Wear proper personal protection equipment (impervious butyl gloves, eye protection, and SCBA);
- Clean up all spills immediately in accordance with good industrial hygiene practices; and
- Provide training for safe handling procedures to all employees that would be likely to handle the containers of foam additive.

Use of this agent should conform to relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR part 1910, subpart L, Sec. 1910.160 for fixed fire extinguishing systems, Sec. 1910.163 for water spray and foam systems and Sec. 1910.165 for predischARGE employee alarms. Per OSHA requirements, protective gear (SCBA) should be available in the event of a discharge.

*Comparison to other fire suppressants:* Uni-light AFFF 1% has no ODP; thus, its use will be less harmful to the atmosphere than the continued use of halon 1301. The components of Uni-light AFFF 1% have a GWP comparable with or lower than that of many other acceptable substitutes for halon 1301. Thus, we find that Uni-light AFFF 1% acceptable because it does not pose a greater overall risk to human health and the environment than other acceptable substitutes in the end uses and applications listed above.

**II. Section 612 Program***A. Statutory Requirements*

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1)

reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.

- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are

available for products and manufacturing processes which use class I and II substances.

*B. Regulatory History*

On March 18, 1994, EPA published the final rulemaking (59 FR 13044) which described the process for administering the SNAP program. In the same notice, we issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

- Refrigeration and air conditioning;
- Foam blowing;
- Solvents cleaning;
- Fire suppression and explosion protection;
- Sterilants;
- Aerosols;
- Adhesives, coatings and inks; and
- Tobacco expansion.

These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to

remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register**.

The Agency defines a “substitute” as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at <http://www.epa.gov/ozone/snap/chron.html>. This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

**List of Subjects in 40 CFR Part 82**

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

Dated: March 17, 2006.

**Brian J. McLean,**

*Director, Office of Atmospheric Programs.*

**Appendix A: Summary of Acceptable Decisions**

End-use	Substitute	Decision	Further information
<b>Refrigeration and Air Conditioning</b>			
Motor vehicle air conditioning (retrofit).	R-420A as a substitute for CFC-12.	Acceptable Subject to Use Conditions.	Must be used with fittings and labels specified above.
Motor vehicle air conditioning (new and retrofit) (busses and passenger trains only).	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Industrial process refrigeration (retrofit and new).	R-417A as a substitute for HCFC-22.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Industrial process air conditioning (retrofit and new).	HFC-245fa as a substitute for CFC-114.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	

End-use	Substitute	Decision	Further information
Ice skating rinks (retrofit and new)	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
	HFC-245fa as a substitute for CFC-114.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Cold storage warehouses (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Refrigerated transport (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Retail food refrigeration (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Vending machines (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Water coolers (retrofit and new) ....	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Commercial ice machines (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Household refrigerators and freezers (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Centrifugal chillers (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
Centrifugal chillers (new) .....	HFC-245fa as a substitute for CFC-114 and HCFC-123.	Acceptable.	
	HFC-245fa as a substitute for CFC-11.	Acceptable.	
Reciprocating chillers (retrofit and new).	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	

End-use	Substitute	Decision	Further information
Screw chillers (retrofit and new) ....	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
Residential dehumidifiers (retrofit and new).	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
Non-mechanical heat transfer (retrofit and new).	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
Very low temperature refrigeration (retrofit and new).	HFC-245fa as a substitute for CFC-11, CFC-113, HCFC-21, and HCFC-141b.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
Very low temperature refrigeration (new).	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
	HFC-245fa as a substitute for CFC-11, CFC-114, and HCFC-141b.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	
Household and light commercial air conditioning and heat pumps (retrofit and new).	ICOR XLT1 (R-422C) as a substitute for HCFC-22, R-502, R-402A, R-402B, and R-408A.	Acceptable.	
	ICOR XAC1 (R-422B) as a substitute for HCFC-22.	Acceptable.	
	ICOR AT-22 as a substitute for HCFC-22.	Acceptable.	

**Foam Blowing**

Rigid polyurethane and polyisocyanurate laminated boardstock.	Transcend™ Technologies as an additive to other SNAP-approved foam blowing agents for this end use as substitutes for CFCs and HCFCs.	Acceptable .....	Decision only applies where the foam blowing blend makes up to 5% by weight of the total foam formulation.
Rigid polyurethane appliance .....	Transcend™ Technologies as an additive to other SNAP-approved foam blowing agents for this end use as substitutes for CFCs and HCFCs.	Acceptable .....	Decision only applies where the foam blowing blend makes up to 5% by weight of the total foam formulation.
Rigid polyurethane, spray .....	Transcend™ Technologies as an additive to other SNAP-approved foam blowing agents for this end use as substitutes for CFCs and HCFCs.	Acceptable .....	Decision only applies where the foam blowing blend makes up to 5% by weight of the total foam formulation. Follow manufacturers' safety guidance for any flammable components in the blend.
Rigid polyurethane, commercial refrigeration and sandwich.	Transcend™ Technologies as an additive to other SNAP-approved foam blowing agents for this end use as substitutes for CFCs and HCFCs.	Acceptable .....	Decision only applies where the foam blowing blend makes up to 5% by weight of the total foam formulation.

End-use	Substitute	Decision	Further information
Rigid polyurethane slabstock and other foams.	Transcend™ Technologies as an additive to other SNAP-approved foam blowing agents for this end use as substitutes for CFCs and HCFCs.	Acceptable .....	Decision only applies where the foam blowing blend makes up to 5% by weight of the total foam formulation.
Polyurethane integral skin foam ....	Transcend™ Technologies as an additive to other SNAP-approved foam blowing agents for this end use as substitutes for CFCs and HCFCs.	Acceptable .....	Decision only applies where the foam blowing blend makes up to 5% by weight of the total foam formulation.
Polyurethane: extruded sheet .....	Transcend™ Technologies as an additive to other SNAP-approved foam blowing agents for this end use as substitutes for CFCs and HCFCs.	Acceptable .....	Decision only applies where the foam blowing blend makes up to 5% by weight of the total foam formulation.

**Fire Suppression and Explosion Protection**

Total flooding .....	Uni-light AFFF 1% as a substitute for Halon 1301.	Acceptable .....	<p>This agent is intended for use on-board ships and in off-shore installations.</p> <p>Appropriate personal protective equipment should be worn during manufacture or in the event of a release. Personal protective equipment should include safety goggles, protective gloves, and a self-contained breathing apparatus.</p> <p>Supply bottles for the foam should be clearly labeled with the potential hazards associated with the use of the chemicals in the foam, as well as handling procedures to reduce risk resulting from these hazards.</p> <p>Use should conform with relevant OSHA requirements, including 29 CFR part 1910, subpart L, §§ 1910.160 and 1910.163.</p> <p>EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protection equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.</p>
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2005-0299; FRL-7759-9]

**Trifloxystrobin; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of trifloxystrobin (benzeneacetic acid,

*(E,E)*- $\alpha$ -(methoxyimino)-2-[[[1-[3-(trifluoromethyl)phenyl]ethylidene]amino]oxy)methyl]-methyl ester) and the free form of its acid metabolite CGA-321113 (*(E,E)*-methoxyimino-[2-[1-(3-trifluoromethylphenyl)-ethylideneamino]oxy]methyl-phenyl)acetic acid) pesticide petition (PP 4F6892) in or on corn, sweet, kernel plus cob with husks removed at 0.04 parts per million (ppm), corn, sweet, forage at 0.6 ppm, corn, sweet, stover at 0.25 ppm, and corn, sweet, cannery waste at 0.6 ppm; (PP 3E6769) oat, forage at 0.3 ppm, oat, grain at 0.05 ppm, oat, hay at 0.3 ppm, oat, straw at 5.0 ppm, barley, grain at 0.05 ppm, barley, hay at 0.3 ppm, barley, straw at

5.0 ppm. Bayer Crop Science requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective March 29, 2006. Objections and requests for hearings must be received on or before May 30, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA-HQ-OPP-2005-0299. All documents in the docket are listed on the

www.regulations.gov web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.) 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 EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Janet Whitehurst, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6129; e-mail address: [whitehurst.janet@epa.gov](mailto:whitehurst.janet@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

In the **Federal Register** of January 4, 2006 (71 FR 340) (FRL-7750-6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petition (PP 4F6892) by Bayer Crop Science, P.O. Box 12014, 2T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.555 be amended by establishing a tolerance for combined residues of the fungicide trifloxystrobin (benzeneacetic acid, (*E,E*)- $\alpha$ -(methoxyimino)-2-[[[1-(3-(trifluoromethyl)phenyl)ethylidene]amino]oxy]methyl]-, methylester) and the free form of its acid metabolite CGA-321113 ((*E,E*)-methoxyimino-[2-[1-(3-(trifluoromethyl)phenyl)-ethylideneamino]oxy]methyl)-phenyl)acetic acid), (PP 4F6892) in or on corn, sweet, kernel plus cob with husks removed at 0.04 ppm, corn, sweet, forage at 0.6 ppm, corn, sweet, stover at 0.25 ppm, and corn, sweet, cannery waste at 0.6 ppm. That notice included a summary of the petition prepared by Bayer Crop Science, the registrant. There were no comments received in response to the notice of filing.

In the **Federal Register** of January 18, 2006 (71 FR 2929) (FRL-7756-9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petition (PP 3E6769) by the Interregional Research Project Number 4 (IR-4), 681 U. S. Highway #1 South, North Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.555 be amended by establishing a tolerance for residues of the fungicide trifloxystrobin, in or on the following raw agricultural commodities: barley,

grain at 0.05 parts per million (ppm); barley, hay at 0.3 ppm; barley, straw at 5.0 ppm; oat, forage at 0.3 ppm; oat, grain at 0.05 ppm; oat, hay at 0.3 ppm; and oat, straw at 5.0 ppm. That notice included a summary of the petition prepared by IR-4. There were no comments received on the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

**III. Aggregate Risk Assessment and Determination of Safety**

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of trifloxystrobin and CGA-321113 (PP 4F6892) in or on corn, sweet, kernel plus cob with husks removed at 0.04 ppm, corn, sweet, forage at 0.6 ppm, corn, sweet, stover at 0.25 ppm, and corn, sweet, cannery waste at 0.6 ppm; (PP 3E6769) oat, forage at 0.3 ppm, oat, grain at 0.05 ppm, oat, hay at 0.3 ppm, oat, straw at 5.0 ppm, barley, grain at 0.05 ppm, barley, hay at 0.3 ppm, barley, straw at 5.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the

sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by trifloxystrobin and CGA-321113 as well as the no-observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found in the **Federal Register** of May 22, 2002 (67 FR 35915)(FRL-7178-6).

#### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable

risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members

of the human population as well as other unknowns.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases.

A summary of the toxicological endpoints for trifloxystrobin and CGA-321113 used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL ENDPOINTS FOR USE IN HUMAN HEALTH RISK ASSESSMENT<sup>1</sup>

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (females 13-49 only)	NOAEL = 250 mg/kg/day UF = 100 Acute RfD = 2.5 mg/kg/day	FQPA SF = 1X aPAD = aRfD FQPA SF = 2.5 mg/kg/day	Developmental Toxicity-Rat LOAEL = 500 mg/kg/day, based upon increased fetal skeletal anomalies
Acute Dietary General Population including infants and children	There were no appropriate toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including maternal effects in developmental studies in rats and rabbits. Therefore, a dose and endpoint were not identified for this risk assessment.		
Chronic Dietary all populations	Parental NOAEL = 3.8 mg/kg/day UF = 100 Chronic RfD = 0.038 mg/kg/day	FQPA SF = 1X cPAD = cRfD FQPA SF = 0.038 mg/kg/day	Two-Generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon decreases in body weight, body weight gains, reduced food consumption and histopathological lesions in the liver, kidneys and spleen
Short- (1-30 days) and Intermed-Term(1- 6 months) Oral	Offspring NOAEL = 3.8 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Two-Generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon reduced pup body weights during lactation
Short- (1-30 days) and Intermed-Term(1-6 months) Dermal	Dermal study NOAEL = 100 mg/kg/day	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	28-Day Dermal Toxicity Study-Rat LOAEL = 1,000 mg/kg/day, based upon increases in mean absolute and relative liver and kidney weights
Long-Term Dermal (> 6 months)	Oral study NOAEL = 3.8 mg/kg/day (dermal absorption rate = 33%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Two-Generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon decreases in body weight, body weight gains, reduced food consumption and histopathological lesions in the liver, kidneys and spleen
Short- (1-30 days), Intermed-(1-6 months) and Long-Term (> 6 months) Inhalation	Oral study NOAEL = 3.8 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Two-Generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon decreases in body weight, body weight gains, reduced food consumption and histopathological lesions in the liver, kidneys and spleen

TABLE 1.—SUMMARY OF TOXICOLOGICAL ENDPOINTS FOR USE IN HUMAN HEALTH RISK ASSESSMENT<sup>1</sup>—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	Trifloxystrobin is classified as “Not Likely Human Carcinogen” based on the lack of evidence of carcinogenicity in mouse and rat cancer studies.		

<sup>1</sup> UF = uncertainty factor, FQPA SF = Special FQPA SF, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern

### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.555) for the combined residues of trifloxystrobin and CGA-321113, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from trifloxystrobin and CGA-321113 in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified in the toxicological studies for trifloxystrobin and CGA-321113 applicable only to Females 13-49 years old. In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID<sup>TM</sup>), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: One hundred percent of proposed and registered crops are assumed treated with trifloxystrobin (100% CT) and tolerance-level residues were used in the analysis. The acute dietary endpoint (increased fetal incidence of fused sternebrae) is only applicable to the population subgroup females 13-49 years old. An acute dietary endpoint for the general population including infants and children was not identified. The highest estimate for acute drinking water exposure, 92 ppb, was used in the analysis.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID<sup>TM</sup>, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 CSFII, and accumulated exposure to the chemical for each commodity. The following

assumptions were made for the chronic exposure assessments: One hundred percent of proposed and registered crops are assumed treated with trifloxystrobin (100% CT) and tolerance-level residues were used in the analysis. The chronic dietary endpoint applies to all population subgroups including infants and children. The highest estimate for chronic drinking water exposure, 140 ppb, was used in the analysis.

iii. *Cancer.* EPA determined that trifloxystrobin should be classified as a “Not Likely Human Carcinogen.” Due to the classification, no cancer exposure assessment was performed.

2. *Dietary exposure from drinking water.* Based on the FIRST, and Screening Concentrations in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of trifloxystrobin and CGA-321113 for acute exposures are estimated to be 92 parts per billion (ppb) for surface water and 34 ppb for ground water. The EECs for chronic exposures are estimated to be 50 ppb for surface water and 3.4 ppb for ground water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Trifloxystrobin is currently registered for use on the following residential non-dietary sites: Turfgrass and ornamentals. The risk assessment was conducted using the following residential exposure assumptions: There is potential for dermal (adults and children) and incidental oral exposure (children only) during postapplication activities. The following postapplication exposure scenarios resulting from lawn treatment were assessed:

- Dermal exposure from pesticide residues on lawns,
- Incidental non-dietary ingestion of pesticide residues on lawns from hand-to-mouth transfer,
- Incidental non-dietary ingestion of residues from object-to-mouth activities (pesticide-treated turfgrass), and

d. Incidental non-dietary ingestion of soil from pesticide-treated residential areas. Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. The exposure via incidental non-dietary ingestion involving other plant material may occur but is considered negligible.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to trifloxystrobin and any other substances and trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that trifloxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA’s Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA’s website at <http://www.epa.gov/pesticides/cumulative/>.

### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA

determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor (SF) value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* The EPA concluded that the toxicology database was complete for Food Quality Protection Act (FQPA) purposes and that there are no residual uncertainties for prenatal/postnatal toxicity.

3. *Conclusion.* EPA determined that the 10X SF to protect infants and children should be reduced to 1X. The FQPA, SF is reduced because:

- i. There is a complete toxicity data base for trifloxystrobin.
- ii. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the developmental and reproduction toxicity studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity;
- iii. EPA determined that a developmental neurotoxicity study in rats is not required;
- iv. Although an acute neurotoxicity study is required (the submitted study was unacceptable), the lack of an acute neurotoxicity study does not impact EPA's ability to make an FQPA safety factor decision because upgrading the study would not result in a lower NOAEL than what is present for the acute RfD;
- v. The acute and chronic dietary food exposure assessments utilize existing and proposed tolerance level residues

and 100% crop treated information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated;

vi. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters, which are designed to provide conservative, health protective, high-end estimates of water concentrations, which are not likely to be exceeded; and

vii. The residential postapplication assessment is based upon the residential SOPs. The assessment is based upon surrogate study data. These data are reliable and are not expected to underestimate risk to adults or children. The residential SOPs are based upon reasonable "worst-case" assumptions and are not expected to underestimate risk.

#### *E. Aggregate Risks and Determination of Safety*

1. *Acute risk.* The aggregate acute risk estimates include exposure to residues of trifloxystrobin in food and water, and does not include dermal, inhalation or incidental oral exposure. Since the dietary exposure assessment already includes the highest acute exposure from the drinking water modeling data, no further calculations are necessary. The acute risk estimate for females 13-49 years, resulting from aggregate exposure to trifloxystrobin in food and drinking water is below Health Effects Division (HED)'s level of concern. The food and water exposure estimates for females 13-49 yrs old is <1% aPAD.

2. *Chronic risk.* The aggregate chronic risk assessment takes into account average exposure estimates from dietary consumption of trifloxystrobin (food and drinking water) and residential uses. Since the exposure from turf is considered short-term, the aggregate chronic assessment included food and drinking water only. Since the dietary exposure assessment already includes the highest chronic exposure from the

drinking water modeling data, no further calculations are necessary. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's level of concern (i.e., the percentages of the chronic population adjusted doses (cPADs) are all below 100%). The exposure to the U.S. population was 21% cPAD and the most highly exposed subgroup, children 1-2 yrs old, at 62% cPAD. Therefore, chronic risk estimates resulting from aggregate exposure to trifloxystrobin in food and drinking water are below EPA's level of concern from all population subgroups.

3. *Short-term risk.* The short-term aggregate risk assessment estimates risks likely to result from 1- to 30-day exposure to trifloxystrobin residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the short-term assessment, while average values are used for food and drinking water exposure (i.e. chronic exposures).

Different endpoints were identified by EPA for short-term incidental oral and dermal risk assessment (the basis for the oral endpoint is reduced pup body weights and the dermal endpoint is based on increases in liver and kidney weights). Therefore, it is not possible to combine dietary/incidental oral exposure with dermal exposure.

A short-term risk assessment was not required for adults, because no incidental oral exposure is expected for adults. A short-term risk assessment is required for infants and children because there are residential postapplication oral exposure scenarios. Toddlers' incidental oral exposure is assumed to include hand-to-mouth exposure, object-to-mouth exposure and exposure through incidental ingestion of soil. Table 2 summarizes short-term aggregate risk from incidental oral and dietary food and water sources for children.

TABLE 2.—SHORT-TERM AGGREGATE RISK (FOOD, WATER AND INCIDENTAL ORAL EXPOSURE)

Population	Short-Term Scenario				
	NOAEL mg/kg/day	LOC MOE <sup>1</sup>	Average Food + Water Exposure mg/kg/day	Residential Exposure <sup>2</sup> mg/kg/day	Aggregate MOE (food and residential) <sup>3</sup>
U.S. population	3.8	100	0.008030	N/A	470
Youth (13-19 years)	N/A	N/A	0.005867	N/A	650
All Infants (>1 year)	N/A	N/A	0.021883	0.00642	130
Children (1-2 years)	N/A	N/A	0.023429	0.00642	130

TABLE 2.—SHORT-TERM AGGREGATE RISK (FOOD, WATER AND INCIDENTAL ORAL EXPOSURE)—Continued

Population	Short-Term Scenario				
	NOAEL mg/kg/day	LOC MOE <sup>1</sup>	Average Food + Water Exposure mg/kg/day	Residential Exposure <sup>2</sup> mg/kg/day	Aggregate MOE (food and residential) <sup>3</sup>
Females (13-49 years old)	N/A	N/A	0.006312	N/A	600

<sup>1</sup> The level of concern (LOC) MOE is 100, based on inter- and intra-species safety factors totaling 100.

<sup>2</sup> Residential Exposure = Incidental Oral exposure from all possible sources. No residential oral exposure is expected for adults.

<sup>3</sup> Aggregate MOE = NOAEL (3.8 mg/kg/day) ÷ (Avg Food Exposure + Residential Exposure).

As shown above in Table 2, the aggregate short-term MOE for all infants less than 1 yr old and children 1-2 years old at 130 does not exceed EPA's level of concern, a MOE of 100. It should be noted that the maximum surface water concentration, which is included in the average food and water exposure, results from the use on rice, is considered to be an overestimate of the true value found in the environment due to the intricacies of the drinking water model, and should be viewed as very conservative. Further, EPA considers the turfgrass estimate (50 ppb) to be a more realistic estimate of drinking water residues. EPA does not consider short-term aggregate risk for children to be a concern.

4. *Intermediate-term risk.* An intermediate-term aggregate risk (1 to 6 months of exposure to trifloxystrobin residues from food, drinking water, and residential pesticide uses) is not expected to occur based on the short soil half-life (about 2 days).

5. *Aggregate cancer risk for U.S. population.* Trifloxystrobin is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to trifloxystrobin residues.

**IV. Other Considerations**

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (gas chromatography method using nitrogen/phosphorus detector) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

*B. International Residue Limits*

The Codex Alimentarius Commission has established maximum residue limits (MRLs) for trifloxystrobin in/on corn and barley grain. The U.S. tolerances are

not compatible with the Codex MRLs because the U.S. and Codex tolerance expressions are different. The current U.S. tolerance for corn grain (i.e., field corn) is set at 0.05 ppm, while we are proposing a tolerance of 0.04 ppm for sweet corn. Both of these U.S. tolerances are not compatible with the Codex MRL for maize, because the U.S. and Codex tolerance expressions are different. The U.S. and Codex residue definitions differ in that the U.S. tolerance includes the acid metabolite whereas the Codex does not. Although non-quantifiable residues of each compound were observed in both the North American and European field trials, the U.S. tolerance on sweet corn (0.04 ppm) is being established at twice the level of Codex MRL for maize (0.02 ppm). For barley, the European GAP use rate is almost four times the U.S. use rate, which partly explains the much higher Codex MRL (0.5 ppm).

The Canadian MRLs have been established for wheat, oats and barley at 0.05 ppm. The U.S. tolerances for barley and oats are being established at 0.05 ppm and the wheat tolerance has already been established at 0.05 ppm. Harmonization is thus not an issue.

**V. Conclusion**

Therefore, the tolerance is established for combined residues of trifloxystrobin and CGA-321113, (PP 4F6892) in or on corn, sweet, kernel plus cob with husks removed at 0.04 ppm, corn, sweet, forage at 0.6 ppm, corn, sweet, stover at 0.25 ppm, and corn, sweet, cannery waste at 0.6 ppm; (PP 3E6769) oat, forage at 0.3 ppm, oat, grain at 0.05 ppm, oat, hay at 0.3 ppm, oat, straw at 5.0 ppm, barley, grain at 0.05 ppm, barley, hay at 0.3 ppm, barley, straw at 5.0 ppm.

**VI. Objections and Hearing Requests**

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178.

Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2005-0299 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 30, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14<sup>th</sup> St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA-HQ-OPP-2005-0299, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **VII. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735,

October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule

directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### **VIII. 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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 180**

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

Dated: March 20, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—AMENDED**

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

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

2. Section 180.555 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

**§ 180.555 Trifloxystrobin; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
* * *	* *
Barley, grain .....	0.05
Barley, hay .....	0.3
Barley, straw .....	5.0
* * *	* *
Corn, sweet, cannery waste .....	0.6
Corn, sweet, forage .....	0.6
Corn, sweet, kernel plus cob with husks removed .....	0.04
Corn, sweet, stover .....	0.25
* * *	* *
Oat, forage .....	0.3
Oat, grain .....	0.05
Oat, hay .....	0.3
Oat, straw .....	5.0
* * *	* *

\* \* \*

[FR Doc. 06-2978 Filed 3-28-06; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2004-0132; FRL-7769-1]

**Flonicamid; Pesticide Tolerance**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of flonicamid and its metabolites in or on head and stem brassica and mustard greens. ISK Biosciences Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective March 29, 2006. Objections and requests

for hearings must be received on or before May 30, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA-HQ-OPP-2004-0132. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.) 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 EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6502; e-mail address: [sibold.ann@epa.gov](mailto:sibold.ann@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers;

commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

In the **Federal Register** of July 7, 2004 (69 FR 40916) (FRL-7362-5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6832) by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio 44077. The petition requested that 40 CFR 180.613 be amended by establishing a tolerance for combined residues of the insecticide flonicamid [*N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide] and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA-AM [4-trifluoromethylnicotinamide] TFNG [*N*-(4-trifluoromethylnicotinoyl)glycine] in or on the raw agricultural commodities brassica, head and stem, subgroup 5A at 1.5 parts per million (ppm) and mustard greens at 11 ppm. That notice included a summary of the petition prepared by ISK Biosciences Corporation, the registrant. There were no comments received in response to the notice of filing. There was one comment received in response to the final rule published in the **Federal Register** of August 31, 2005 (70 FR 51604) (FRL-7731-6), which is referenced in today's rule. The Agency's response is set forth in Unit IV.C.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

### III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of flonicamid [N-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide] and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA-AM [4-trifluoromethylnicotinamide] TFNG [N-(4-trifluoromethylnicotinoyl)glycine] in or on the raw agricultural commodities brassica, head and stem, subgroup 5A at 1.5 ppm and mustard greens at 11 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the

sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by flonicamid and its metabolites as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at Unit III.A. of the final rule published in the **Federal Register** of August 31, 2005 (70 FR 51604) (FRL-7731-6).

#### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases.

A summary of the toxicological endpoints for flonicamid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of August 31, 2005 (70 FR 51604) (FRL-7731-6).

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.613) for the combined residues of flonicamid [N-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide] and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA-AM [4-trifluoromethylnicotinamide] and TFNG [N-(4-trifluoromethylnicotinoyl)glycine], in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from flonicamid and its metabolites in food as follows:

i. *Acute exposure.* No acute dietary exposure and risk assessment was

conducted as discussed in the final rule published in the **Federal Register** of August 31, 2005.

ii. *Chronic exposure.* The proposed tolerances for head and stem brassica and mustard greens were included in the chronic dietary exposure assessment for flonicamid residues on certain commodities as set forth in the final rule published in the **Federal Register** of August 31, 2005. Tolerances for head and stem brassica and mustard greens were not established in that final rule for the following reason: Acceptable residue chemistry data for a commodity is required before a tolerance may be established; the review of residue chemistry data for head and stem brassica and mustard greens had not been completed at that time. The residue chemistry data review for head and stem brassica and mustard greens is now complete. There is no increment to dietary exposure as it has already been taken into account.

2. *Dietary exposure from drinking water.* The dietary exposure from drinking water is discussed in the final rule published in the **Federal Register** of August 31, 2005.

3. *From non-dietary exposure.* As discussed in the final rule published in the **Federal Register** of August 31, 2005, flonicamid is not registered for any uses that are likely to result in non-dietary exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to flonicamid and any other substances and flonicamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that flonicamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from

substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* As discussed in the final rule published in the **Federal Register** of August 31, 2005, there is no evidence of prenatal or postnatal sensitivity.

3. *Conclusion.* As discussed in the final rule published in the **Federal Register** of August 31, 2005, the FQPA Safety Factor is reduced to 1X because:

- i. There is a complete toxicity data base.
- ii. There is a lack of susceptibility evidence in the developmental studies and reproductive study (The effects seen in offspring were mild and occurred only in one species.
- iii. The dietary food exposure assessment utilizes proposed tolerance level, or higher residues and 100% crop treated information for all commodities.
- iv. The dietary drinking water assessment (Tier 1 estimates) utilizes values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations.

#### E. Aggregate Risks and Determination of Safety

1. *Acute risk.* No acute risk is expected for reasons that are discussed in the final rule published in the **Federal Register** of August 31, 2005.

2. *Chronic risk.* The proposed tolerances for head and stem brassica and mustard greens were included in

the chronic dietary risk assessment for flonicamid residues on certain commodities as set forth in the final rule published in the **Federal Register** of August 31, 2005. Chronic risk does not exceed levels of concern.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term risk assessment was not conducted because residential exposure is not expected from the use pattern and/or appropriate toxicity endpoints were not identified.

4. *Determination of safety.* EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to flonicamid residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate enforcement methodology liquid chromatography/mass spectrometry (LC/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

There are no Codex, Mexican or Canadian Maximum residue limits tolerances. Therefore, no compatibility questions exist with respect to Codex.

##### C. Response to Comments

One comment was received from a private citizen who opposes the approval of any pesticide that leaves a residue on food. The comment contained no specific information pertaining to flonicamid but was limited to general claims such as EPA was providing inadequate protection for Americans. The Agency has received the same comment from this commentator on numerous previous occasions and rejects it for the reasons previously stated (70 FR 1349, 1354, January 7, 2005), (70 FR 37686, June 30, 2005), and (69 FR 63096, 63098, (October 29, 2004).

#### V. Conclusion

Therefore, the tolerance is established for combined residues of flonicamid [N-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide] and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA-AM [4-trifluoromethylnicotinamide] TFNG [N-(4-trifluoromethylnicotinoyl)glycine] in or on the raw agricultural commodities brassica, head and stem, subgroup 5A at 1.5 ppm and mustard greens at 11 ppm.

#### VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

##### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2004-0132 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 30, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14<sup>th</sup> St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA-HQ-OPP-2004-0132, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **VII. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of

power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### **VIII. 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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 180**

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

Dated: March 20, 2006.

#### **Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—AMENDED**

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

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

■ 2. Section 180.613 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

**§ 180.613 Fonicamid; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity	Parts per million
Brassica, head and stem, sub-group 5A .....	1.5
Mustard greens .....	11

\* \* \* \* \*

[FR Doc. 06-2977 Filed 3-28-06; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2005-0105; FRL-7761-3]

**Fenpropimorph; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of fenpropimorph in or on bananas. BASF Corporation Agricultural Products requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

**DATES:** This regulation is effective March 29, 2006. Objections and requests for hearings must be received on or before May 30, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA-HQ-OPP-2005-0105. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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 EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Lana Coppolino, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0086; e-mail address: [coppolino.lana@epa.gov](mailto:coppolino.lana@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet

under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.html>.

**II. Background and Statutory Findings**

In the **Federal Register** of June 22, 2005 (70 FR 36155)(FRL-7710-1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E4874) by BASF Corporation Agricultural Products, 26 Davis Drive, P.O. Box 13528; Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.616 be amended by establishing a tolerance for residues of the fungicide fenpropimorph, (+)-cis-4-(3-((4-tert-butylphenyl))-2-methylpropyl)-2,6-dimethylmorpholine, in or on bananas at 1.5 parts per million (ppm). This petition was previously published in the **Federal Register** on December 7, 1998, identified by the docket control number PF-848. That notice included a summary of the petition prepared by BASF Corporation Agricultural Products, the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see <http://>

[www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm](http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm).

### III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of fenpropimorph on bananas at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information

concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by fenpropimorph as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.epa.gov/opprd001/factsheets/>.

#### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL

was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at <http://www.epa.gov/oppfead1/trac/science>.

A summary of the toxicological endpoints for fenpropimorph used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENPROPIMORPH FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13-49 years of age)	NOAEL = 15 mg/kg/day UF = 100X Acute RfD = 0.15 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/Special FQPA SF = 0.15 mg/kg/day	Rabbit developmental study LOAEL = 30 mg/kg/day based on cleft palate
Chronic dietary (all populations)	NOAEL = 3.2 mg/kg/day UF = 100X Chronic RfD = 0.032 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = 0.032 mg/kg/day	One year dog and chronic/carcinogenicity rat studies LOAEL = 9-11 mg/kg/day based on liver histopathology
Cancer (oral, dermal, inhalation)	Classification: "Not likely to be carcinogenic to humans." No increased incidences in tumors in a chronic/carcinogenicity rat study or a carcinogenicity mouse study.		

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* This final rule establishes the first tolerance for residues of fenpropimorph. There are no registered uses in the United States, therefore, the only expected exposure is from imported foods. Risk assessments were conducted by EPA to assess dietary exposures from fenpropimorph in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

The Dietary Exposure Evaluation Model (DEEM™-FDIC) Version 2.03 analysis evaluated the individual food consumption as reported by respondents in the U.S Department of

Agriculture (USDA), 1994–1996, and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The DEEM™-FCID assessment was based on tolerance-level residues in banana commodities, a processing factor of 3.9 for dried banana commodities, and 100% crop treated (CT) assumptions. An acute dietary dose and an endpoint attributable to a single dose were identified for only one population subgroup, females ages 13 through 49. An appropriate endpoint attributable to a single exposure was not identified for the general population.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM software with the FCID, Version 2.03, which incorporates

food consumption data as reported by respondents in the USDA 1994–1996, and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The DEEM-FCID assessment was based on tolerance-level residues in banana commodities, a processing factor of 3.9 for dried banana commodities, and 100% CT assumptions.

iii. *Cancer.* The Agency classified fenpropimorph as "not likely to be carcinogenic to humans." There were no increased incidences of benign or malignant tumors in either a rat chronic/carcinogenicity or a mouse carcinogenicity study. Therefore, a quantitative cancer exposure assessment was unnecessary.

2. *Dietary exposure from drinking water.* There is no expectation that

fenpropimorph residues would occur in surface water or ground water sources of drinking water. Fenpropimorph is proposed for use only on imported bananas, the sole anticipated exposure route for the U.S. population is via dietary (food) exposure. There are no registered uses of fenpropimorph in the United States.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenpropimorph is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fenpropimorph and any other substances and fenpropimorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenpropimorph has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for

infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Although there is evidence for increased qualitative susceptibility in the developmental rat and rabbit studies, the Agency concluded that there is a low degree of concern (and no residual uncertainty) because:

- i. The increased susceptibility was seen at the LOAELs of 160 milligrams/kilogram/day (mg/kg/day) in the rat study and at 30 mg/kg/day in the rabbit study (NOAELs were 40 and 15 mg/kg/day for the rat and rabbit studies, respectively);
- ii. Cleft palate was not reported in a second rabbit developmental study with doses up to 36 mg/kg/day;
- iii. No mention was made of cleft palate in another developmental rat study at doses up to 160 mg/kg/day (however, there were no visceral or skeletal examinations of fetuses/pups);
- iv. At doses up to 2.79 mg/kg/day in a 2-generation reproduction study in rats, cleft palate was not reported;
- v. Developmental effects were observed only in the presence of maternal toxicity; and
- vi. The doses selected for acute and chronic dietary exposure and risk assessment were considerably lower than the doses at which developmental effects were observed.

3. *Conclusion.* Based on the review of the toxicology database, the Agency recommends that the Special FQPA Safety Factor (10X) be removed (reduced to 1X). This recommendation is applicable to all population subgroups for all exposure routes and durations, and is based on the following factors:

- i. There is a complete toxicity data base.
- ii. There is a low degree of concern for the qualitative susceptibility in developmental rat and rabbit studies, because the fetal effects were observed only in the presence of maternal toxicity.
- iii. There is no concern for prenatal/postnatal toxicity since no off-spring toxicity was seen in the 2 generation reproduction study.

iv. The endpoints of concern are addressed in this risk assessment.

v. The dietary exposure assessment assumed tolerance level residues and 100% CT.

#### E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fenpropimorph will occupy 2.6% of the acute population adjusted dose (aPAD) for females ages 13 through 49. An appropriate endpoint attributable to a single exposure was not identified for the general population nor any of the other population subgroup. Aggregate risk is limited to dietary exposure (food only). EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenpropimorph from food will utilize 2.2% of the cPAD for the U.S. population, 9.1% of the cPAD for all infants <1 year, and 11% of the cPAD for children 1-2 years, the population subgroup having the highest exposure. Aggregate risk is limited to dietary exposure (food only). EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fenpropimorph is not registered for use on any sites that would result in residential exposure, and there is no expectation that fenpropimorph residues would occur via drinking water consumption. Therefore, the aggregate risk is the sum of the risk from food only, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fenpropimorph is not registered for use on any sites that would result in residential exposure, and there is no expectation that fenpropimorph residues would occur via drinking water consumption. Therefore, the aggregate risk is the sum of the risk from food only, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Fenpropimorph has not been shown to be carcinogenic. Therefore, fenpropimorph is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fenpropimorph residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

The proposed method is adequate for collecting data on residues in bananas. Adequate method validation data were submitted. The method has been adequately radiovalidated, and has undergone a marginally successful independent laboratory validation (ILV) trial. The petitioner has been requested to submit acceptable recovery data from bananas using other suggested methods.

The method, gas chromatography with nitrogen-phosphorous detection (GC/NPD), is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

There are no established Mexican or Canadian maximum residue limits (MRLs) for fenpropimorph residues. There are Codex MRLs established for fenpropimorph residues in various commodities, including an MRL of 2 mg/kg in bananas.

#### V. Conclusion

Therefore, the tolerance is established for residues of fenpropimorph, [rel-(2R,6S)-4-[3-[4-(1,1-dimethylethyl)phenyl]-2-methylpropyl]-2,6-dimethylmorpholine], in or on banana at 2.0 ppm with no U.S. registration.

#### VI. Objections and Hearing Requests

Under section 408(g) of FFDCFA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCFA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCFA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a

tolerance issued by EPA under new section 408(d) of FFDCFA, as was provided in the old sections 408 and 409 of FFDCFA. However, the period for filing objections is now 60 days, rather than 30 days.

##### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2005-0105 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 30, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

2. *Mail your written request to:* Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in ADDRESSES. Mail your copies, identified by docket ID number EPA-HQ-OPP-2005-0105, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C),

Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in ADDRESSES. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

##### B. When Will the Agency Grant a Request for a Hearing?

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#### VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCFA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16,

1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCFA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule

directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCFA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**VIII. 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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

Dated: March 20, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. Section 180.616 is added to read as follows:

**§ 180.616 Fenpropimorph; tolerances for residues.**

Tolerances are established for the residues of the fungicide fenpropimorph (rel-(2R,6S)-4-[3-[4-(1,1-dimethylethyl)phenyl]-2-methylpropyl]-2,6-dimethylmorpholine) in or on the following commodity:

Commodity	Parts per million
Banana* .....	2.0

\*No U.S. registration as of February 10, 2006.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 06-3029 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2004-0328; FRL-7769-6]

**Fenhexamid; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of fenhexamid in or on ginseng and pear. The Interregional Research Project 4 (IR-4), Center for Minor Crop Pest Management

requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective March 29, 2006. Objections and requests for hearings must be received on or before May 30, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA-HQ-OPP-2004-0328. All documents in the

docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.) 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 EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Maria I. Rodriguez, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6710; e-mail address: [rodriguez.maria@epa.gov](mailto:rodriguez.maria@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### *B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

##### **II. Background and Statutory Findings**

In the **Federal Register** of August 27, 2004 (69 FR 52684) (FRL-7675-2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6799) by The Interregional Research Project 4 (IR-4), Center for Minor Crop Pest Management, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.553 be amended by establishing a tolerance for residues of the fungicide fenhexamid, in or on apple, wet pomace at 25 parts per million (ppm) and fruit, pome, group 11 at 10 ppm. That notice included a summary of the petition prepared by IR-4, the registrant. Comments were received from one individual in New Jersey opposing and objecting the establishment of tolerances for residues of fenhexamid. The individual criticized IR-4's involvement in the pesticide registration as well as EPA's way of conducting pesticide registration. EPA's response to the public comments received is in Unit IV. of this document. It should be noted that the petition for apple, wet pomace will be addressed at a later time in another ruling.

In the **Federal Register** of November 30, 2005 (70 FR 71838)(FRL-7735-7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E6859 and PP 4E6860) by The Interregional Research Project 4 (IR-4), Center for Minor Crop Pest Management, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.553 be amended by establishing a tolerance for residues of the fungicide fenhexamid, in or on

cilantro (as part of crop subgroup 4A) at 30 ppm, ginseng at 0.3 ppm, non-bell pepper at 0.02 ppm, and pomegranate at 3.0 ppm. That notice included a summary of the petition prepared by IR-4, the registrant. It should be noted that the petition for cilantro, non-bell pepper, and pomegranate will be addressed at a later time in another ruling.

Currently, there is an expired time-limited tolerance for fenhexamid in or on pears that is still listed in the CFR. As part of this final rule, EPA is taking the ministerial action of removing that expired tolerance.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

##### **III. Aggregate Risk Assessment and Determination of Safety**

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of fenhexamid in/on ginseng at 0.3 ppm and pear at 10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by fenhexamid as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found in the **Federal Register** of April 13, 2000 (65 FR 19842) (FRL-6553-7).

### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases.

A summary of the toxicological endpoints for fenhexamid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 26, 2003 (68 FR 55513) (FRL-7326-7).

### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.553) for the residues of fenhexamid, in or on a variety of raw agricultural commodities. There are existing permanent tolerances (40 CFR 180.553(a)) for fenhexamid in/on almond, hull (2.0 ppm), almond (0.02 ppm), bushberry subgroup 13B (5.0 ppm), caneberry subgroup 13A

(20.0 ppm), cucumber (2.0 ppm), fruit, stone, group 12, except plum, prune, fresh, postharvest (10.0 ppm), grape (4.0 ppm), grape, raisin (6.0 ppm), juneberry (5.0 ppm), kiwifruit, postharvest (15.0 ppm), leafy greens, subgroups 4A, except spinach (30.0), lingonberry (5.0 ppm), pistachio (0.02 ppm), plum, prune, dried (2.5 ppm), plum, prune, fresh (1.5 ppm), salal (5.0 ppm), strawberry (3.0 ppm), vegetable, fruiting, group 8, except nonbell pepper (2.0 ppm). Risk assessments were conducted by EPA to assess dietary exposures from fenhexamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

No such effects were identified in the toxicological studies for fenhexamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues, 100% crop treated (CT) and incorporating estimated exposure concentrations (EECs). Default processing factors were used for all commodities. This represents an unrefined conservative approach for quantifying risk. For chronic dietary risk, HED's level of concern is >100% chronic population adjusted dose (cPAD).

iii. *Cancer.* EPA has classified fenhexamid as a "not likely" human carcinogen based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, a quantitative cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenhexamid in drinking water. Because the Agency does not have comprehensive monitoring data,

drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenhexamid.

Based on the FQPA Index Reservoir Screening Tool (FIRST), or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), and Screening Concentrations in Groundwater (SCI-GROW) models, the EECs of fenhexamid for acute exposures are estimated to be 29 parts per billion (ppb) for surface water and 0.0007 ppb for ground water. The EECs for chronic exposures are estimated to be 1.14 ppb for surface water and 0.0007 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenhexamid is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCFA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fenhexamid and any other substances and fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCFA provides that EPA shall apply an

additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Fenhexamid is not acutely toxic,

neurotoxic, carcinogenic or mutagenic and is not a developmental or reproductive toxicant. There is low concern for prenatal and/or postnatal toxicity resulting from exposure to fenhexamid. (See **Federal Register** of September 26, 2003 (68 FR 55513) (FRL-7326-7). In addition, there are no concerns for developmental neurotoxicity resulting from exposure to fenhexamid.

3. *Conclusion.* Because there is a complete toxicity data base for fenhexamid, and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures, and there is low concern for prenatal or postnatal toxicity, the additional 10X safety factor has been removed. (See September 26, 2003).

#### *E. Aggregate Risks and Determination of Safety*

1. *Acute risk.* An acute risk assessment was not performed. No toxicological endpoint attributable to a

single (acute) dietary exposure was identified. Therefore, acute risk from exposure to fenhexamid is not expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenhexamid from food will utilize 10% of the cPAD for the U.S. population, 0.55% of the cPAD for all infants < 1 year old, and 68% of the cPAD for children 1-2 years old. There are no residential uses for fenhexamid that result in chronic residential exposure to fenhexamid. There is potential for chronic dietary exposure to fenhexamid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table.

#### AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FENHEXAMID

Population/Subgroup	cPAD/mg/kg/day	%cPAD/(Food)	Surface Water EEC/(ppb)	Ground/Water EEC/(ppb)	Chronic/DWLOC (ppb)
U.S. population	0.17	10	1.14	0.0007	5,328
All Infants (<1 year old)	0.17	55	1.14	0.0007	839
Children (1-2 years)	0.17	68	1.14	0.0007	547

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fenhexamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

#### 4. *Intermediate-term risk.*

Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fenhexamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified fenhexamid as a "not likely" human carcinogen based on lack of evidence of carcinogenicity in male and female rats as well as in male and female mice, and on the lack of genotoxicity in an

acceptable battery of mutagenicity studies. Therefore, fenhexamid is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fenhexamid residues.

#### IV. Other Considerations

##### A. *Analytical Enforcement Methodology*

Adequate enforcement methodology (LC with MS detection or HPLC/ECD) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. *International Residue Limits*

There is a Canadian maximum residue level (MRL) of 0.3 ppm for fenhexamid in/on ginseng. There are no Mexican, or Codex MRL's. As such,

there are no issues regarding international harmonization.

##### C. *Response to Public Comments Received Regarding Notice of Filing*

Comments were received from one individual in New Jersey opposing and objecting the establishment of tolerances for residues of fenhexamid. The individual criticized IR-4's involvement in the pesticide registration as well as EPA's way of conducting pesticide registration. The comments were in response to the notice of filing published in the **Federal Register** of August 27, 2004.

One comment indicated that IR-4 and Rutgers University are profiteering by registering pesticides. The Interregional Research Project Number 4 (IR-4) Program was created by Congress in 1963 in order to assist minor crop growers in the process of obtaining pesticide registrations. IR-4 National Coordinating Headquarters is located at Rutgers University in NJ and receives the majority (90%) of its funding from the U.S. Department of Agriculture (USDA). It is the only publicly funded program that conducts research and

submits petitions for tolerances. IR-4 operates in collaboration with USDA, the Land Grant University System, the agrochemical industry, commodity associations, and the EPA. IR-4 identifies needs, prioritizes accordingly, and conducts research. The majority (over 80%) of IR-4's research is conducted on reduced-risk chemicals. Under the Pesticide Registration Improvement Act (PRIA), IR-4 works in cooperation with the registrant to request a waiver for the registration services. The waiver may be granted if the application is solely associated by simultaneous submission with a tolerance petition in connection with IR-4 and if it is in the public interest. This fee waiver serves as an incentive to pursue registration of minor uses supported by the IR-4 Program. In addition to the work done in pesticide registration, IR-4 develops risk mitigation measures for existing registered products. Therefore, IR-4 and Rutgers University are not profiteering from registering pesticides.

An additional comment indicated that during animal testing, rabbits are abused, tortured, and fed toxic chemicals. The EPA Test Guidelines recommend rabbits as test animals in acute eye irritation studies as well as in longer term studies such as developmental toxicity and reproduction studies. Results obtained from studies conducted with animals (in general) are relevant to humans because cells and molecules of humans can be very similar to those of animals. Therefore, if a pesticide causes toxicity in animals, it is likely to do so in humans as well. The EPA supports the use of the least possible number of animals in the pertinent studies. In addition, it should be noted that currently there are no *in vitro* studies that can address the concerns these studies satisfy. The EPA is working with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) to investigate *in vitro* methods to determine the toxicological concerns associated with the use of pesticides.

#### V. Conclusion

Therefore, the tolerances are established for residues of fenhexamid in or on ginseng at 0.3 ppm and pear at 10 ppm.

#### VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the

submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

#### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2004-0328 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 30, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14<sup>th</sup> St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA-HQ-OPP-2004-0328, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the

Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDC, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDC. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175,

entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### VIII. 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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

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

Dated: March 20, 2006.

#### Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—AMENDED

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

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

■ 2. Section 180.553(a) is amended by alphabetically adding entries for the commodities “ginseng” and “pear” to the table in paragraph (a); removing the text in paragraph (b); and reserving paragraph (b) with the paragraph heading to read as follows:

#### § 180.553 Fenhexamid; tolerances for residues.

(a) \* \* \*

Commodity	Parts per million
* * *	* *
Ginseng .....	* 0.3
* * *	* *
Pear .....	* 10
* * *	* *

(b) *Section 18 emergency exemptions.*  
[Reserved]

\* \* \* \* \*

[FR Doc. 06-2975 Filed 3-28-06; 8:45 am]

BILLING CODE 6560-50-S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0 and 1

### Nomenclature Changes to the Code of Federal Regulations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document makes several nomenclature changes throughout the Commission’s title of the Code of Federal Regulations. This action is necessary in order to update several addresses and office designations.

**DATES:** Effective March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Alethea Small, Office of the Secretary, (202) 418-0310.

**SUPPLEMENTARY INFORMATION:** This amendment is made pursuant to § 0.231(b) of the Commission’s rules, 47 CFR 0.231. Because the rule amendments adopted here are a matter of agency practice and procedure, compliance with the notice and comment and effective date provisions of the Administrative Procedure Act is not required.<sup>1</sup>

#### List of Subjects

47 CFR Part 0

Reporting and recordkeeping requirements.

<sup>1</sup> 5 U.S.C. 553(b)(A); (d).

47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch, Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends parts 0 and 1 of title 47 of the Code of Federal Regulations as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.251 is amended by revising paragraph (e) to read as follows:

0.251 Authority delegated.

(e) The official record of all actions taken by the General Counsel pursuant to 0.251 (c) and (d) is contained in the original docket folder, which is maintained by the Reference Information Center.

3. Section 0.401 is amended by revising paragraph (a)(1)(ii) to read as follows:

0.401 Location of Commission offices.

(a) (1) (ii) Hand-carried documents should be delivered to the Secretary's Office at 236 Massachusetts Avenue, NE., Washington, DC 20002.

4. Section 0.491 is revised to read as follows:

0.491 Application for exemption from compulsory ship radio requirements.

Applications for exemption filed under the provisions of sections 352(b) or 383 of the Communications Act; Regulation 4, chapter I of the Safety Convention; Regulation 5, chapter IV of the Safety Convention; or Article IX of the Great Lakes Agreement, must be filed as a waiver request using the procedures specified in 0.482 of this part. Emergency requests must be filed via the Universal Licensing System or at the Federal Communications Commission, Office of the Secretary.

5. Section 0.606 is amended by revising the last sentence of paragraph (a) to read as follows:

0.606 Procedures for closing a meeting to the public.

(a) Certifications will be retained in a public file in the Office of the Secretary.

6. Section 0.607 is amended by revising the first sentence in paragraph (b) to read as follows:

0.607 Transcript, recording or minutes; availability to the public.

(b) A public file of transcripts (or minutes) of closed meetings will be maintained in the Office of the Secretary.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

8. Section 1.4 is amended by revising the first sentence of paragraph (f) to read as follows:

1.4 Computation of time.

(f) Except as provided in 0.401(b) of this chapter, all petitions, pleadings, tariffs or other documents not required to be accompanied by a fee and which are hand-delivered must be tendered for filing in complete form, as directed by the Rules, with the Office of the Secretary before 7 p.m., at 236 Massachusetts Ave, NE., Washington, DC 20002.

9. Section 1.260 is revised to read as follows:

1.260 Certification of transcript.

After the close of the hearing, the complete transcript of testimony, together with all exhibits, shall be certified as to identity by the presiding officer and filed in the Office of the Secretary. Notice of such certification shall be served on all parties to the proceedings.

10. Section 1.277 is amended by revising the first sentence of paragraph (e) to read as follows:

1.277 Exceptions; oral arguments.

(e) Within 10 days after a transcript of oral argument has been filed in the Office of the Secretary, any party who participated in the oral argument may file with the Commission a motion requesting correction of the transcript, which motion shall be accompanied by

proof of service thereof upon all other parties who participated in the oral argument.

11. Section 1.773 is amended by revising paragraphs (a)(4) and (b)(3) to read as follows:

1.773 Petitions for suspension or rejection of new tariff filings.

(4) Copies, service. An original and four copies of each petition shall be filed with the Commission as follows: The original and three copies of each petition shall be filed with the Secretary, 236 Massachusetts Ave., NE., Washington, DC 20002; one copy must be delivered directly to the Commission's copy contractor.

Additional, separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau; and the Chief, Pricing Policy Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on more than 15 days notice may be served on the filing carrier by mail.

(3) Copies, service. An original and four copies of each reply shall be filed with the Commission, as follows: the original and three copies must be filed with the Secretary, 236 Massachusetts Ave., NE., Washington, DC 20002; one copy must be delivered directly to the Commission's copy contractor.

Additional separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau, the Chief, Pricing Policy Division and the petitioner. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served on petitioners personally or via facsimile. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on more than 15 days notice may be served upon petitioner personally, by mail or via facsimile.

12. Section 1.774 is amended by revising paragraph (e)(2)(ii) to read as follows:

1.774 Pricing flexibility.

(e) (2)

(ii) Any interested party electing to file an opposition or comment in response to a pricing flexibility petition through a method other than ETFS must file an original and four copies of each opposition or comment with the Commission, as follows: the original and three copies of each pleading shall be filed with the Secretary, 236 Massachusetts Ave., NE., Washington, DC 20002; one copy must be delivered directly to the Commission's copy contractor. Additional, separate copies shall be served upon the Chief, Wireline Competition Bureau and the Chief, Pricing Policy Division.

\* \* \* \* \*

■ 13. Section 1.939 is amended by revising paragraph (b) to read as follows:

**§ 1.939 Petitions to deny.**

\* \* \* \* \*

(b) *Filing of petitions.* Petitions to deny and related pleadings may be filed electronically via ULS. Manually filed petitions to deny must be filed with the Office of the Secretary, 236 Massachusetts Ave., NE., Washington, DC 20002. Attachments to manually filed applications may be filed on a standard 3¼" magnetic diskette formatted to be readable by high density floppy drives operating under MS-DOS (version 3.X or later compatible versions). Each diskette submitted must contain an ASCII text file listing each filename and a brief description of the contents of each file on the diskette. The files on the diskette, other than the table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible. Petitions to deny and related pleadings must reference the file number of the pending application that is the subject of the petition.

\* \* \* \* \*

■ 14. Section 1.2105 is amended by revising paragraph (c)(6) to read as follows:

**§ 1.2105 Bidding application and certification procedures; prohibition of collusion.**

(c) \* \* \*

(6) Any applicant that makes or receives a communication of bids or bidding strategies prohibited under paragraph (c)(1) of this section shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Such reports shall be filed with the Office of the Secretary, and a copy shall be sent to the Chief of the Auctions and

Spectrum Access Division, Wireless Telecommunications Bureau.

\* \* \* \* \*

[FR Doc. 06-2917 Filed 3-28-06; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 2**

[ET Docket No. 04-139; FCC 05-70]

**WRC-03 Omnibus**

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations, which were published in the **Federal Register** on Wednesday, August 10, 2005 (70 FR 46576). The Commission published final rules in the Report and Order, which implemented allocation changes to the frequency range between 5900 kHz and 27.5 GHz in furtherance of decisions that were made at the World Radiocommunication Conference (Geneva 2003). This document contains corrections to 47 CFR 2.106.

**DATES:** Effective September 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Office of Engineering and Technology, (202) 418-2450, e-mail: [Tom.Mooring@fcc.gov](mailto:Tom.Mooring@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction relate to final rules in the Report and Order, which implemented allocation changes to the frequency range between 5900 kHz and 27.5 GHz in furtherance of decisions that were made at the World Radiocommunication Conference (Geneva 2003), under § 2.106 of the rules.

**Need for Correction**

As published, the final regulations contain errors, which require immediate correction.

**List of Subjects in 47 CFR Part 2**

Radio, Telecommunications.

■ Accordingly, 47 CFR part 2 is corrected by making the following correcting amendments:

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS**

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.1 is amended by removing the second definition of "Administration" in paragraph (c).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-2871 Filed 3-28-06; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 2**

[ET Docket No. 03-201; FCC 04-165]

**Unlicensed Devices and Equipment Approval**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Commission adopted rules which required that all paper filings required in 47 CFR 2.913(c), 2.926(c) introductory text, and 2.929(c) and (d) must be filed electronically via the Internet on FCC Form 731. The rules required Office of Management and Budget approval and the Commission stated in its previous **Federal Register** publication that it would announce the effective date of that section when approved. This document announces the effective date of §§ 2.913(c), 2.926(c) introductory text, and 2.929(c) and (d).

**DATES:** The amendment to 47 CFR 2.913(c), 2.926(c) introductory text, and 2.929(c) and (d) published at 69 FR 54027, September 7, 2004, became effective on December 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Brooks, (202) 418-2454, Office of Engineering and Technology.

**SUPPLEMENTARY INFORMATION:** The FCC published a document in the **Federal Register** 69 FR 54027, September 7, 2004, that sets forth an effective date of October 7, 2004, except for amendment to §§ 2.913(c), 2.926(c) introductory text, and 2.929(c) and (d), which contained information collection requirements that had not been approved by the Office of Management and Budget. The document stated that the Commission will publish a document in the **Federal Register** announcing the effective date for §§ 2.913(c), 2.926(c) introductory text, and 2.929(c) and (d) and the information collection contained therein. On December 7, 2005, the Office of Management and Budget (OMB) approved the information collection requirements contained 47 CFR 2.913(c), 2.926(c) introductory text, and 2.929(c) and (d) pursuant to OMB

Control No. 3060–0057. Accordingly, the information collection requirement contained in this rule became effective on December 7, 2005. The expiration date for the information collection requirement will be December 31, 2008.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. 06–2971 Filed 3–28–06; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AF49

#### Endangered and Threatened Wildlife and Plants; Final Rule To List the Tibetan Antelope as Endangered Throughout Its Range

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine that the classification of the Tibetan antelope (*Pantholops hodgsonii*) as endangered throughout its range is warranted, pursuant to the Endangered Species Act of 1973, as amended (Act, 16 U.S.C. 1531 *et seq.*). The best available information indicates that the total population of Tibetan antelope has declined drastically over the past three decades such that it is in danger of extinction throughout all or a significant portion of its range. This decline has resulted primarily from overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Accordingly, we are listing the Tibetan antelope as endangered, pursuant to the Act.

**DATES:** This rule is effective April 28, 2006.

**ADDRESSES:** The complete supporting file for this rule is available for public inspection, by appointment, during normal business hours at the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Scientific Authority, at the above

address; or by telephone, 703–358–1708; fax, 703–358–2276; or e-mail, [ScientificAuthority@fws.gov](mailto:ScientificAuthority@fws.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Tibetan antelope (*Pantholops hodgsonii* sensu Wilson and Reeder 1993) is a medium-sized bovid endemic to the Tibetan Plateau in China (Tibet Autonomous Region, Xinjiang—Uygur Autonomous Region, and Qinghai Province) and small portions of India (Ladakh) and western Nepal (although there is no evidence that they still occur in Nepal). The Tibetan antelope is also known by its Tibetan name “chiru.”

Adult males are characterized by long, slender, antelope-like black horns. Although the Tibetan antelope has been placed in the subfamily Antilopinae, recent morphological and molecular research indicates that it is most closely allied to the goats and other members of the subfamily Caprinae (Gentry 1992; Gatesy et al. 1992; both cited in Ginsberg et al. 1999). The species is uniquely adapted to the high elevation and cold, dry climate of the Tibetan Plateau (Schaller 1998). Seasonal migrations constitute a critical aspect of the Tibetan antelope’s ecology and help define its ecosystem as a whole. The sexes segregate almost completely during the spring and early summer (May and June), when adult females and their female young migrate north to calving grounds. They return south by late July or early August, covering distances up to 300 kilometers (km) each way (Schaller 1998).

##### Previous Federal Action

Section 4(b)(3)(A) of the Act requires the Service to make a finding known as a “90-day finding” on whether a petition to list, delist, or reclassify a species has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and published promptly in the **Federal Register**. If the 90-day finding is positive (i.e., the petition has presented substantial information indicating that the requested action may be warranted), Section 4(b)(3)(A) of the Act requires the Service to commence a status review of the species if one has not already been initiated under the Service’s internal candidate assessment process. In addition, Section 4(b)(3)(B) of the Act also requires the Service to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not

warranted, or warranted but precluded by higher-priority listing actions (this finding is referred to as the “12-month finding”). The 12-month finding is also to be published promptly in the **Federal Register**. On October 6, 1999, the Service received a petition from the Wildlife Conservation Society (Joshua R. Ginsberg, Ph.D., Director, Asia Program, and George B. Schaller, Ph.D., Director of Science) and the Tibetan Plateau Project of Earth Island Institute (Justin Lowe, Director) requesting that the Tibetan antelope be listed as endangered throughout its entire range. The petition was actually dated October 7, 1999, but was received via electronic mail the previous day. On April 14, 2000, the Service made a positive 90-day finding on the Wildlife Conservation Society—Tibetan Plateau Project petition (i.e., the Service found that the petition presented substantial information indicating that the requested action may be warranted). That finding was published in the **Federal Register** on April 25, 2000 (65 FR 24171), thereby initiating a public comment period and status review for the species. The public comment period remained open until June 26, 2000.

In our 90-day finding, we stated that we had reviewed and considered all known relevant literature and information available at that time (April 2000) on the current status of and threats to the Tibetan antelope. Since then, a limited amount of relevant new information has become available as a result of the status review and public comment period. That information was incorporated, as appropriate, in the 12-month finding, which was published on October 6, 2003 (68 FR 57646). Together with the 12-month finding, in that document we proposed to list the Tibetan antelope as endangered throughout its range, and we sought public comments until January 5, 2004.

In accordance with the Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities published on July 1, 1994 (59 FR 34270), we selected three appropriate independent specialists to review the proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analysis. We selected three appropriate independent specialists to review the proposed rule who have considerable knowledge and field experience in Tibetan antelope biology and conservation. We also sent letters requesting comments from the Management and Scientific Authorities for CITES (Convention on International Trade in Endangered Species of Wild

Fauna and Flora) in the range countries of China, India, and Nepal.

### Summary of Comments and Recommendations

We received 272 comments during the public comment period on the 90-day finding, including 1 comment from a range country government (People's Republic of China), 4 comments from non-governmental organizations, 41 letters from individuals, 86 postcards from individuals, and 1 letter of petition signed by 140 individuals. All comments fully supported an endangered listing for the Tibetan antelope, although only five comments provided any new information on the status of or threats to the species. Particularly important among these was the letter from Zhen Rende, Director General of the CITES Management Authority of China, in which he expressed strong support for listing the species as endangered. The comments were used in the development of the proposed rule to list the species.

During the comment period for the proposed rule, we received 11 comments: 2 from range countries, 3 from peer reviewers, 4 from non-governmental organizations, and 2 from private individuals. Except for one reviewer and a private individual, all comments were strongly supportive of the endangered listing.

A range country Scientific Authority response was received from Mr. Wang Sung, Research Professor, Institute of Zoology, Chinese Academy of Sciences, and Executive Vice Chairman, Endangered Species Scientific Commission, Beijing, China. We also received a response from The Wildlife Trust of India (WTI), a non-governmental organization, in New Delhi, India. These commenters supported the listing rule.

With the exceptions of the peer reviewers, range country contacts, a private individual, and William Bleisch, PhD, China Programme Manager, Fauna and Flora International, Beijing, China, all other comments were submitted by the following organizations: American Zoo and Aquarium Association (AZA), Earth Island Institute (EII), The Humane Society of the United States (HSUS), and International Fund for Animal Welfare (IFAW). Most of the comments supported listing the Tibetan antelope as endangered.

### Opposition to the Proposed Listing of the Tibetan Antelope as Endangered

There were two opponents to listing the Tibetan antelope as endangered. These were one private individual and one peer reviewer.

*Issue 1:* The private individual claimed that the proposed rule relied on anecdotal population information and lacked quantitative trend data necessary to determine whether or not the population is declining. This person also noted that, even if a decline is determined, it may be indicative of a natural long-term population cycle.

*Service Response 1:* In making our determination, the Service relied on the best available scientific information. Thorough population censuses are difficult with this species due to its relative isolation and the harsh environment of the Tibetan Plateau. We have received population information from experts, such as Dr. George B. Schaller, who has observed the Tibetan antelope throughout its range and has estimated and compared current and historical population numbers and distribution. Based on our review of the literature and comments we received, Dr. Schaller's 1998 estimate remains the best scientific estimate of the Tibetan antelope population.

Additional quantification of a decline was provided by a reviewer and another commenter. The reviewer commented that the Service failed to include the quantitative trend assessment of Tibetan antelope in Yeniugou, Qinghai Province, China (Harris et al. 1999). Observations made on foot and horseback as well as interviews with local and provincial officials indicated that the population of Tibetan antelope declined from over 2,000 animals in 1991 to 2 animals (observed) in 1997. The authors concluded that an entire subpopulation of the Tibetan antelope can be extirpated in the short term. They hypothesized that the decline may be due to increased poaching or the antelope moving to alternative areas, or both. The commenter provided population estimates that indicated a decline from 13.6 individuals/km<sup>2</sup> to 5.9 individuals/km<sup>2</sup> between 1991 and 2001 in the summer calving grounds north of Mount Muztagh Ulugh in Xinjiang Province, China (Bleisch et al. unpublished). The decline was attributed solely to poaching. It should be noted that a decline caused by natural, non-anthropogenic factors could also place a species in danger of extinction throughout all or a significant portion of its range.

*Issue 2:* The Service provided few details regarding the threat of habitat destruction.

*Service Response 2:* We disagree. The Service has reviewed the scientific literature and explained that human activities, such as resource extraction, livestock grazing, and road or railway construction, have resulted in habitat

fragmentation or desertification throughout the range of the Tibetan antelope. We described some specific projects and how they have obstructed Tibetan antelope migration routes to calving grounds (See Factor A below).

*Issue 3:* It is unclear what conservation benefits will accrue to the Tibetan antelope from listing under the Act. The species is listed in CITES Appendix-I, yet current laws within range countries do not seem to effectively deter poaching or habitat loss.

*Service Response 3:* Listings under the Act are not restricted to species that will benefit from the protections of the Act. Rather, the Act calls for listing if the species meets the definitions of endangered or threatened, following an analysis of threats factors. In addition, the protections of the Act, along with the current protections under CITES, may provide a conservation benefit by further limiting import and export from the United States. Upon listing, import and export into and from the United States as well as movement and sale in interstate or foreign commerce of Tibetan antelope, including parts and products, will be prohibited under the Act unless authorized. Such activities can be authorized, but only for scientific purposes or to enhance the propagation or survival of the species. Thus, for example, if the Service receives an application to import a live Tibetan antelope or Tibetan antelope parts or products, the import can only occur if the Service determines that the activity is for scientific purposes or will enhance the propagation or survival of the species.

### Support for the Proposed Listing of the Tibetan Antelope as Endangered

*Issue 1:* One reviewer noted that the only quantitative trend assessment of any Tibetan antelope population (Harris et al. 1999) was not cited in the proposed rule. The commenter provided a copy of the article.

*Service Response 1:* We acknowledge the oversight and are including the assessment in our Summary of Factors Affecting the Species (Factor B) analysis. The article strengthens our conclusion that wild populations have declined precipitously in the short term.

*Issue 2:* In the proposed rule, we had concluded that fences will have the effect of excluding Tibetan antelope from grassland needed for forage (68 FR 57647). One reviewer claimed that although this may be a legitimate concern, there is no data to support the statement for this species.

*Service Response 2:* We reported that changes in Chinese Government policy

have resulted in an attempt to permanently settle many Tibetan pastoralists. This has led to a proliferation of rangeland fencing on portions of the Tibetan Plateau (Miller 2000, Los Angeles Times 2002). Increasingly, nomads are fencing grasslands for livestock grazing and fodder production, thereby excluding Tibetan antelope from the fenced areas. Tibetan antelope need open range to survive (Miller and Schaller 1997). Thus, fencing reduces habitat that would otherwise be available to Tibetan antelope.

*Issue 3:* The same reviewer added that gold mining in Qinghai Province, China, is declining. Another reviewer stated that itinerant gold mining in China has until recently been legal.

*Service Response 3:* Professor Wang of the Chinese Academy of Sciences agreed with the proposed rule and emphasized that human activity, including road construction and mining (legal and illegal), is detrimental to the species' survival. These activities are discussed in the proposed rule and Factor A (below).

*Issue 4:* A reviewer indicated that there has been increased coordination of anti-poaching activities in Qinghai, Xinjiang, and Tibet, which included a workshop in Xinjiang in 2002. According to one organization, workshop participants included national and local agencies from China and the Tibet Autonomous Region. The workshop resulted in a resolution calling for increased habitat protection, *in situ* conservation of the Tibetan antelope, and international collaboration to eliminate illegal trade. In addition, the CITES Management Authority of China and the CITES Secretariat convened an enforcement workshop in Lhasa, Tibet Autonomous Region, in August 2003. The workshop covered international and national wildlife law enforcement, intelligence techniques, and collaboration with other international law enforcement agencies as well as national agencies.

*Service Response 4:* The workshop information has been considered in the Factor D analysis of this rule.

*Issue 5:* One reviewer noted that the Service erred in saying that the Jammu and Kashmir Wildlife Protection Act has not been amended to comply with India's national wildlife protection law (68 FR 57650). The reviewer stated that the Jammu and Kashmir Wildlife Protection Act was amended in June 2002 so that the Tibetan antelope has been elevated from Schedule II to Schedule I of the Act, thus providing complete protection to the species, parts, and products. While the

amendment conforms to the national wildlife protection act, the Government of Jammu and Kashmir is not implementing the new provision, and the manufacture of shahtoosh shawls and trade continues in that State. The reviewer provided photographs, a testimonial letter from a visitor from the United States, and a newspaper article attesting to the weaving and sale of the shawls in the State. Indeed, the WTI has filed a case in the Supreme Court of India against the State of Jammu and Kashmir to force the implementation of the amended wildlife law. The CITES Secretariat prepared a document for the 13th Meeting of the Conference of the Parties to CITES in which the Parties were asked to support new language in Resolution Conf. 11.8 (Rev. CoP12) “\* \* \* that the State of Jammu and Kashmir in India halts the processing of such wool and the manufacture of shahtoosh products” (CITES Secretariat 2004). However, the new language was rejected by the Conference of the Parties (October 2–14, 2004). So culturally entrenched is shahtoosh shawl manufacturing in Jammu and Kashmir that a recent WTI-IFAW census of shahtoosh workers indicated that 14,293 individuals were directly involved in shahtoosh production (Gopinath et al. 2003, submitted during the comment period). This number appears to be lower than expected and declining due to legal restrictions and alternative employment for pashmina production (cashmere from the domesticated mountain goat *Capra hircus*).

One reviewer noted that a study conducted by the WTI in partnership with IFAW in December 2003 found shahtoosh shawls available illegally to tourists in New Delhi and other towns in India. From his study of the shahtoosh trade since 1992, Dr. Ashok Kumar, Senior Advisor and Trustee, WTI, observed that methods of concealment and porous borders between Tibet, India, and Nepal have made enforcement of Tibetan antelope protection laws difficult. Indeed, in 2004, the Dubai Government seized 100 shahtoosh shawls from Kashmiri traders (Bindra 2004). The shawls are believed to have been manufactured in India.

*Service Response 5:* The new information about the Jammu and Kashmir shahtoosh trade was considered in the Factor D analysis of this rule.

*Issue 6:* One reviewer recommended that the United States adopt a registration scheme for privately owned shahtoosh shawls as India has done.

*Service Response 6:* Such a process would be difficult to administer. However, once the listing becomes

effective, the Service's Office of Law Enforcement will seek information on the legal origin of shawls (for example, if the shawl qualifies under the pre-Act exemption) if there is evidence of a violation of the Act.

*Issue 7:* New information that strengthens our argument for listing the Tibetan antelope as endangered was provided by Dr. William Bleisch, China Programme Manager, Fauna and Flora International, Beijing, China. Since 1998, Dr. Bleisch has been working on a Tibetan antelope conservation project in the Arjin Mountain Nature Reserve and has recently been involved in community-based wildlife conservation in the Qinghai Province of China. To our list of protected Tibetan antelope populations and habitat in western China (68 FR 57648), Dr. Bleisch added the recent approval by the Chinese Government of the Snowlands Three Rivers Source National Nature Reserve (158,000 km<sup>2</sup> in Qinghai Province) and the Mid-Kunlun Mountains Nature Reserve (size not provided, in Xinjiang Province). He noted that the five contiguous reserves protect most of the remaining habitat for Tibetan antelope. Based on his experience, Dr. Bleisch commented that the reserves are only partially effective in protecting the Tibetan antelope because of the impact of illegal mining operations, inconsistencies in governmental jurisdiction, and lack of environmental safeguards. He also provided unpublished population information on Tibetan antelope observed from vehicle-based transects through summer calving grounds north of Mount Muztagh Ulugh in Xinjiang Province. In 1999, he observed a density of 13.6 individuals/km<sup>2</sup>. The same transects revealed 5.9 individuals/km<sup>2</sup> in 2001 (Bleisch et al. unpublished). The decline is believed to have been caused by poaching, which reduced the density of females by about 50 percent in just 2 years.

*Service Response 7:* We have added the areas mentioned by Dr. Bleisch to our list of protected Tibetan antelope populations and habitat in western China discussed under Factor A. The new population and threats information was also considered in the analysis of this rule.

*Issue 8:* Dr. Bleisch disagreed with our assertion in the proposed rule that poaching has declined in some areas because there are not enough animals to warrant an organized poaching effort (68 FR 57649). He said that poaching has decreased even where Tibetan antelopes are still abundant and believes this is due to increased law enforcement within China and in other countries

coupled with a lower international demand for shahtoosh wool.

*Service Response 8:* Although there may be evidence of less poaching at the summer calving grounds since the peak in 1999 when 909 carcasses were observed, we do not have enough information to determine whether or not poaching declined due to better law enforcement, lower demand, or our original assertion that there may not be enough animals to warrant an organized poaching effort. It may be due to any or all of these factors.

*Issue 9:* Two commenters representing two non-governmental organizations commented that a specific threat to the Tibetan antelope in southwestern Qinghai Province is the construction of the Qinghai-Tibet Railway, which began in 2001. The railway and the highway that runs parallel to it bisect the migratory route of the antelope in that region. The ideal construction season coincides with the peak migration. Population of the area with construction personnel and eventual further human settlement along the railway and highway may further destroy antelope habitat and may reduce the antelope population size, particularly if females cannot migrate to calving grounds.

*Service Response 9:* The Service acknowledged this threat in the proposed rule.

*Issue 10:* The same two commenters also provided the Service with recent examples of seizures of Tibetan antelope wool and shahtoosh shawls. Of particular concern is the continued poaching in Kekexili Nature Reserve in Qinghai Province at which most of the animals killed were pregnant females en route to the calving grounds. One commenter noted that John Sellar, Senior Enforcement Officer at the CITES Secretariat, told the Workshop on Enforcement of Tibetan Antelope that, despite international and national initiatives, “\* \* \* we seem to still be disappointingly far away from eliminating the poaching of the Chiru and the illegal trade in its parts (Sellar 2003).”

*Service Response 10:* Although we addressed law enforcement issues in the proposed rule, we have included the assessment by John Sellar in our Factor D analysis of this rule.

*Issue 11:* One commenter suggested that the Service use the term “tsod” instead of “chiru” or “Tibetan antelope” because it is the term recognized by native Tibetan speakers.

*Service Response 11:* While we try to be sensitive to local or native names, due to the pervasiveness of “chiru” and “Tibetan antelope” and the absence of “tsod” in the international literature, we

will continue to use the terms “chiru” or “Tibetan antelope.”

*Issue 12:* This commenter also pointed out that the World Conservation Union (IUCN) lists the Tibetan antelope as endangered due to the sharp decrease in animal numbers and distribution as a result of commercial killing for the shahtoosh underfur (IUCN 2003).

*Service Response 12:* This information has been added to the Factor B analysis.

*Issue 13:* The same commenter provided additional information about the number of Tibetan antelope in Ladakh, India, and poaching and commercial killing in China, and reiterated the information provided by other commenters regarding the regulation of shahtoosh trade in Jammu and Kashmir, India. The commenter noted that listing the Tibetan antelope as endangered will encourage U.S. law enforcement personnel to more effectively control and prosecute shahtoosh-related crimes.

Two other commenters representing non-governmental organizations also agreed with the proposal. One organization offered its assistance to the Service should we consider long-term captive breeding, reintroduction, and recovery programs for the Tibetan antelope.

*Service Response 13:* We thank the commenters for their comments and offer of assistance.

#### **Summary of Factors Affecting the Species**

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species on the basis of one or more of the five factors described in section 4(a)(1). These factors and their application to the Tibetan antelope are as follows:

##### *A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Tibetan antelope are endemic to the high Tibetan Plateau. Most of their range lies above 4,000 meters (m) in elevation, but they occur at elevations as low as 3,250 m in parts of Xinjiang (Schaller 1998). They prefer flat to rolling topography and alpine steppe or similar semi-arid plant associations (Schaller 1998). They occasionally occur in alpine desert steppe habitats, at least on a seasonal basis, but are not known to have occurred in the Qaidam Basin of Qinghai Province (Schaller 1998). They do not occur in alpine meadow areas

receiving greater than 400 millimeters (mm) annual precipitation (Schaller 1998).

Although the current east-west distribution of Tibetan antelope appears much as it was described a century ago by Bower (1894, cited in Schaller 1998), the distribution is now fragmented where previously it was continuous. Schaller (1998) determined that Tibetan antelope no longer occur, or occur in low numbers, in several areas where early explorers noted them to be abundant. The current range is divided into two areas: a northern area of about 490,000 km<sup>2</sup> and a central area of about 115,000 km<sup>2</sup>. Distribution between the two areas was continuous until recent decades, and there may still be rare contact near the western end. However, current Tibetan antelope populations in the central Chang Tang of the Tibet Autonomous Region are highly fragmented and occur in small, scattered herds. The range has also contracted in eastern Qinghai Province (Schaller 1998).

Changes in Chinese government policy have led to increasing human development and activity on the Tibetan Plateau, including transportation development (roads and railways), resource extraction activities (minerals, oil, and gas), permanent settlement of traditionally nomadic or semi-nomadic pastoralists, and rangeland use for domestic livestock grazing (Ginsberg et al. 1999). These activities have already adversely modified or destroyed Tibetan antelope habitat in some areas and threaten to modify or destroy habitat over a large area in the near future.

Nomadic and semi-nomadic pastoralists have grazed a mix of domestic livestock (primarily sheep, goats, yaks, and some horses) on the Tibetan Plateau for millennia in relative harmony with the environment (Miller 2000, 2002). Livestock can directly and indirectly compete with Tibetan antelope for available vegetation resources, both within and outside established protected areas (Schaller 1998; Ginsberg et al. 1999). In recent decades, as a result of government policy changes, excessive livestock grazing has degraded or destroyed Tibetan antelope habitat in some areas, and could eventually lead to the destruction of some portion of the species' range through physical displacement, overgrazing, or both, which may contribute to desertification (Ginsberg et al. 1999; Miller 2001). Recent changes in Chinese Government policy have resulted in an attempt to permanently settle many Tibetan pastoralists, with a resultant proliferation of rangeland fencing on

portions of the Plateau (Miller 2000; Los Angeles Times 2002). Livestock frequently graze year-round in antelope habitat, and increasingly, nomads are fencing for winter-spring grazing and fodder production, thereby excluding Tibetan antelope from the fenced grassland resources. Tibetan antelope need open range to survive (Miller and Schaller 1997). Although not studied specifically for this species, enclosure and conversion of grasslands may disrupt antelope habitat, posing a particular threat in the spring, when weakened Tibetan antelope are attempting to rebuild their energy reserves, and in the fall, as antelope are preparing for the harsh winter.

The Tibetan Plateau has extensive gold deposits. Gold mining can have significant impacts on Tibetan antelope habitat. Mining degrades or destroys habitat through environmental contamination and disturbance, and through pollution of surface waters (U.S. Embassy, China [USEC] 1996).

Oil exploration and some production have commenced within the Tibetan antelope's range, and pose threats of destroying habitat; polluting the environment with toxic production chemicals, effluents, and emissions; increasing disturbance levels; and increasing the incidence of poaching by drawing additional settlers into the region (Ginsberg et al. 1999). In 2001, Chinese researchers announced the discovery of a potentially huge oil and gas deposit, extending over 100 km in length, in the Qiangtang Basin of the Tibet Autonomous Region (Global Policy Forum 2001). The deposit could potentially produce hundreds of millions of tons of oil.

Construction of the Qinghai-Tibet Railway, currently in progress, threatens to destroy important Tibetan antelope habitat and, perhaps more importantly, significantly disrupt Tibetan antelope migration corridors in southwestern Qinghai Province. One news service report mentioned that construction on the railway, the first to link the Tibet Autonomous Region with the rest of China, was temporarily suspended in June 2002 because up to 1,000 migrating Tibetan antelope were unable to cross the construction area (People's Daily 2002; Xinhuanet 2002a). All activity was stopped and construction workers removed from the area until these animals had passed the construction site. Although the news service report mentioned that a passage specifically for animals will be set aside when the railway is built, so as to ensure the free migration for wildlife in the locality, it is not certain how successful such a passage would be in ensuring freedom

of movement for thousands of migrating Tibetan antelope.

Five contiguous protected areas have been established to protect Tibetan antelope populations and habitat in western China: Chang Tang Nature Reserve (approximately 334,000 km<sup>2</sup> in the Tibet Autonomous Region), Kekexili (aka Kokoxili or Hoh Xil) National Reserve (approximately 45,000 km<sup>2</sup> in Qinghai Province), Arjin Shan Reserve (45,000 km<sup>2</sup> in Xinjiang Province), Snowlands Three Rivers Source National Nature Reserve (158,000 km<sup>2</sup> in Qinghai Province), and the Mid-Kunlun Mountains Nature Reserve (size not provided, in Xinjiang Province). The five reserves protect most of the remaining habitat for Tibetan antelope. A sixth protected area, Xianza Reserve (40,000 km<sup>2</sup> in the Tibet Autonomous Region), also includes some Tibetan antelope habitat. These reserves are only partially effective in protecting the Tibetan antelope and its habitat due to a combination of inadequate management, limited enforcement capacity, illegal mining operations, inconsistencies in governmental jurisdiction, lack of environmental safeguards, an influx of settlers, and domestic livestock grazing (Bleisch in litt. Jan. 2004; WTI-IFAW 2001). Whereas many of the protected areas in the Tibetan Plateau region encompass high-elevation rangelands, protected areas at lower grassland elevations are scarce (Miller 1997).

It has been difficult for reserve staffs to keep poachers and illegal gold miners out, a fact that prompted the Qinghai Provincial Government in late 1999 to close the Kekexili Reserve to all activities that were not expressly authorized in advance by the State Forestry Administration (SFA) (China Daily 1999).

The Chang Tang Reserve staff lacks the funding, experience, personnel, and equipment to adequately prevent Tibetan antelope poaching and other threats to the species (SFA 1998). Formerly nomadic pastoralists are establishing settlements within the Chang Tang Reserve, and immigrants from other parts of the Plateau are moving into protected areas. Increased human presence, whether temporary nomadic aggregations or in permanent settlements, can adversely affect Tibetan antelope habitat and be a detrimental disturbance factor.

Therefore, based on the best available information, we find that the Tibetan antelope is in danger of extinction within the foreseeable future throughout all or a significant portion of its range from the present or threatened

destruction, modification, or curtailment of its habitat or range.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The World Conservation Union (IUCN) lists the Tibetan antelope as endangered due to the sharp decrease in animal numbers and distribution as a result of commercial hunting for the shahtoosh underfur (IUCN 2003). There are no accurate estimates of Tibetan antelope numbers from the past, although the few early western explorers who ventured onto the Tibetan Plateau noted the presence of large herds in many areas (Schaller 1998). For example, Rawling (1905, cited in Schaller 1998) wrote, "Almost from my feet away to the north and east, as far as the eye could reach, were thousands upon thousands of doe antelope with their young. \* \* \* Everyone in camp turned out to see this beautiful sight, and tried, with varying results, to estimate the number of animals in view. This was found very difficult. \* \* \* as we could see in the extreme distance a continuous stream of fresh herds steadily approaching; there could not have been less than 15,000 or 20,000 visible at one time." Bonvalot (1892), Wellby (1898), Deasy (1901), and Hedin (1903, 1922) made similar observations (all references cited in Schaller 1998). Schaller (1999) has suggested that upwards of 1 million Tibetan antelope roamed the Tibetan Plateau as recently as 40–50 years ago. Historical population estimates of 500,000 to 1,000,000 appear to be reasonable based on the limited information available.

Although data on the current population dynamics of Tibetan antelope are fragmentary and preliminary (Schaller 1998), it is clear that the total population has declined drastically in the past 30 years and is continuing to decline. Schaller (1998) estimated that the total population in the mid-1990s may have been as low as 65,000–75,000 individuals. More recent estimates from China quote a population figure of 70,000, although the scientific basis for the estimate is not given (Xinhuanet 2002b). A recent survey of Tibetan antelope in Yeniugou, Qinghai Province, China (Harris et al. 1999), based on observations made on foot or horseback as well as interviews with local and provincial officials, indicated that the population of Tibetan antelope declined from over 2,000 animals in 1991 to 2 animals observed in 1997. The authors hypothesized that the decline may be due to increased poaching or the antelope moving to alternative areas, or

both. The authors concluded that an entire subpopulation on the Tibetan Plateau can disappear in the short term.

On the summer calving grounds north of Mount Muztagh Ulugh in Xinjiang Province, the population of Tibetan antelope declined from 13.6 individuals/km<sup>2</sup> to 5.9 individuals/km<sup>2</sup> between 1999 and 2001 (Bleisch et al. unpublished, Schaller 1998, Harris et al. 1999). The decline was attributed solely to poaching. If one assumes that the historical population of Tibetan antelope was 500,000 individuals (an apparently conservative estimate), then the most recent estimate of 70,000 represents a population decline of greater than 85 percent.

The principal cause of the Tibetan antelope population decline has been poaching on a massive scale for the species' fur (wool) (Bleisch et al. unpublished), known in trade as shahtoosh ("king of wool"), which is one of the finest animal fibers known (Ginsberg et al. 1999). Shahtoosh is processed into high-fashion scarves and shawls in the Indian State of Jammu and Kashmir. These items are greatly valued by certain people of wealth and fashion around the world. The international demand for Tibetan antelope fiber and shahtoosh products is the most serious threat to the continued existence of the Tibetan antelope. Although overall mortality rates are not known, mortality due to poaching was estimated to be as high as 20,000 individuals per year in China (SFA 1998). Poaching appears to have declined in some areas in recent years (Xinhuanet 2002a), most likely because there are not enough animals to warrant an organized poaching effort. But Chinese officials acknowledge that poaching is still far from being eradicated in China (Xinhuanet 2002c). Annual recruitment of young has been estimated at around 12 percent (Schaller 1998). If one assumes that the total population of Tibetan antelope is 70,000 individuals and that the population is currently declining at a rate of 1,000 to 3,500 individuals per year (admittedly a rough estimate, given available data), then the species could go extinct within the next 20 to 70 years. The species' role as the dominant native grazing herbivore of the Tibetan Plateau ecosystem has already been significantly diminished, and its influence on ecosystem structure and function would likely be substantially reduced or eliminated well before the species actually goes extinct.

Although the shahtoosh trade has existed for centuries, killing of Tibetan antelope on a widespread, commercial basis probably began only in the 1970s or 1980s, resulting from an increase in

international consumer demand and increased availability of vehicles on the Tibetan Plateau. Schaller and Gu (1994) noted that, with the increasing availability of vehicles beginning three decades ago, truck drivers, government officials, military personnel, and other outsiders had greater access to shoot wildlife. Most Tibetan antelope poaching takes place in the Arjin Shan, Chang Tang, and Kekexili Nature Reserves by a variety of people, including local herders, residents, military personnel, gold miners, truck drivers, and others (Schaller 1993; Schaller and Gu 1994). Organized, large-scale poaching rings have developed in some areas. Poachers always kill Tibetan antelope to collect their fiber. No cases of capture-and-release wool collection are known, nor are naturally shed fibers collected from shrubs and grass tufts, as is often claimed (primarily by people within the shahtoosh industry). Poachers shear the hides, and collect and clean the underfur of the antelope, or sell the hides to dealers who prepare the shahtoosh (Wright and Kumar 1997).

Schaller speculated that, during the 1980s and 1990s, tens of thousands of Tibetan antelope were killed for their wool (Ginsberg et al. 1999). One Tibetan antelope carcass yields about 125 to 150 grams (g) of fiber. In the winter of 1992, an estimated 2,000 kg of wool reached India, and consignments of 600 kg were seized (and released) in India during 1993 and 1994 (Bagla 1995, cited in Ginsberg et al. 1999). This amount alone represents 17,000 Tibetan antelope. In October 1998, 14 poachers in the Tibet Autonomous Region were convicted of collectively killing 500 Tibetan antelope and purchasing 212 hides, and were sentenced to 3 to 13 years imprisonment (Xinhua 1998, cited in Ginsberg et al. 1999). The largest enforcement action to date within China, involving several jurisdictions and dubbed the "Hoh Xil Number One Action" by Chinese authorities, resulted in the arrest of 66 poachers and the confiscation of 1,658 Tibetan antelope hides in April and May 1999 (Liu 1999, cited in Ginsberg et al. 1999). The WTI-IFAW (2001) report lists 77 known seizures of Tibetan antelope hides, raw shahtoosh, and finished shahtoosh scarves. Recent documented seizures have been of 39 kg of raw fiber in March 2001 along the Tibet-Nepal border (WTI-IFAW 2001) and 80 shahtoosh shawls in New Delhi in March 2002 (Wildlife Protection Society of India [WPSI] News 2002). In Dubai, 100 shawls were seized from Kashmiri traders (Bindra 2004). A consignment of 211 kg of raw shahtoosh

was seized by wildlife officials in New Delhi in early April 2003 (A. Kumar, WTI, *pers. comm.* with K. Johnson, Division of Scientific Authority, April 6, 2003). This quantity of raw wool represents the killing of almost 1,800 Tibetan antelope. In June 2005, Swiss customs confiscated 537 shahtoosh shawls, the largest seizure of shahtoosh in Europe (IFAW 2005). Tibetan antelope are also killed for their horns (used in traditional medicinal practices), hides, and meat (Ginsberg et al. 1999), although these uses are secondary to the use of fiber.

Illegal mining activity also opens another avenue for profiting from poaching (USEC 1996). Bleisch (1999) noted that illegal gold mining camps in the Arjin Shan Reserve in Xinjiang have served as bases for poachers and have provided them with essential logistical support and access. Without this support, poachers would have a difficult time operating in these remote regions. As a result, poaching has already had a profound impact on the Tibetan antelope population of the reserve (Bleisch 1999).

Several areas where calving females formerly congregated are now empty of Tibetan antelope during the calving season (Bleisch 1999). In 2002, researchers spent 2 weeks on foot locating an unknown calving ground in the western Chang Tang only to discover that its location was less than 2 days' overland drive from a new gold mine that had sprung up in the previous few months (Ridgeway 2003). They wrote, "That same dirt road [a 60-mile (96.6 kilometer) dirt road built by miners in the previous 3 months] gives us an easy way home, as we cart toward our waiting vehicle. But it could also give poachers easy access to the calving grounds. From the mine we estimate a four-wheel-drive vehicle could make it cross-country in 2 days \* \* \*. With the chiru's calving grounds suddenly vulnerable, we feel a new urgency to report our findings."

Governments may periodically enforce mining bans in sensitive areas, and have done so in Tibet, but in general it is difficult to control illegal miners over extensive areas of remote lands with poor road access. Tibet has reserves of many other valuable minerals, among them uranium, copper, and cesium, and mining of these minerals may also impact Tibetan antelope habitat and lead to poaching.

Therefore, based on the best available information, we find that the Tibetan antelope is in danger of extinction throughout all or a significant portion of its range from overutilization for

commercial, recreational, scientific, or educational purposes.

#### C. Disease or Predation

Schaller (1998) has documented Tibetan antelope mortality caused by disease and predators such as the wolf (*Canis lupus*), snow leopard (*Uncia uncia*), lynx (*Lynx lynx*), brown bear (*Ursus arctos*), and domestic dog (*Canis familiaris*). He suggested that wolf predation may at one time have been a substantial mortality factor for Tibetan antelope, particularly on the calving grounds. At the present time, neither disease nor predation is considered to significantly threaten or endanger the species in any portion of its range. However, one or both of these factors may become more significant as populations decline and become increasingly fragmented because of other mortality factors. Therefore, based on the best available information, we find that the Tibetan antelope does not appear to be in danger of extinction within the foreseeable future from disease or predation.

#### D. Inadequacy of Existing Regulatory Mechanisms

The Tibetan antelope was listed in Appendix II of CITES in 1975; it was transferred to Appendix I in 1979. All three countries that constitute the species' natural geographic range, China, Nepal, and India, are CITES Parties. The only reservation ever held on the species was taken by Switzerland in 1979 and withdrawn in October 1998.

Shahtoosh is smuggled out of China by truck or animal caravan, through Nepal or India, and into the State of Jammu and Kashmir in India. This is in violation of CITES as well as of domestic laws of the countries involved. The shahtoosh industry in the Srinagar region of Jammu and Kashmir is controlled by a wealthy, influential group of 12–20 families (Wright and Kumar 1997). There are about 100–120 family-run manufacturing operations that employ more than 20,000 people who prepare, weave, and finish the raw shahtoosh into scarves and shawls (WTI–IFAW 2001). The scarves are sold throughout India and smuggled abroad in violation of Indian law, CITES, and domestic legislation in many of the importing countries (Wright and Kumar 1997). Shahtoosh products have been made in Jammu and Kashmir for centuries, but the current high levels of poaching are a result of consumer demand in the West, including the United States. The CITES Secretariat prepared a document for the 13th Meeting of the Conference of the Parties in which the Parties were asked to

support new language in Resolution Conf. 11.8 (Rev. CoP12) “\* \* \* that the State of Jammu and Kashmir in India halts the processing of such wool and the manufacture of shahtoosh products (CITES Secretariat 2004).” However, the Parties rejected the proposed language.

The Tibetan antelope is protected at a national level by China, Nepal, and India. In China, the Tibetan antelope is a Class 1 protected species under the Law of the People's Republic of China on the Protection of Wildlife (1989), which prohibits all killing except by special permit from the central government. Although China has expended considerable effort and resources in an attempt to control poaching, it has been unable to do so (SFA 1998) because of the magnitude of the poaching, the extensive geographic areas involved, and the high value of shahtoosh, which gives poachers great incentive to continue their illegal activities. On several occasions, China has appealed to other governments and organizations to eliminate the demand for and production of shahtoosh products, most recently at the 1999 International Workshop on Conservation and Control of Trade in Tibetan Antelope held in Xining, China, in October 1999 and in a Resolution adopted at the 11th Meeting of the Conference of the Parties to CITES in April 2000 which was revised at the 13th Meeting of the Conference of the Parties to CITES in October 2004 (Resolution Conf. 11.8 [Rev. COP13], <http://www.cites.org/eng/res/11/11-08R13.shtml>). China re-iterated its commitment to Tibetan antelope conservation at the 12th Meeting of the Conference of the Parties to CITES in November 2002 (Decision 12.40, <http://www.cites.org/eng/dec/valid12/12-40.shtml>).

There has been increased coordination of anti-poaching activities in Qinghai, Xinjiang, and Tibet, including a workshop in Xinjiang, China, in 2002. Participants included national and local agencies from China and the Tibet Autonomous Region. The workshop resulted in a resolution calling for increased habitat protection, *in situ* conservation of the Tibetan antelope, and international collaboration to eliminate illegal trade. In addition, the CITES Management Authority of China and the CITES Secretariat convened the Workshop on Enforcement of Tibetan Antelope in Lhasa, Tibet Autonomous Region, in August 2003. The workshop covered international and national wildlife law enforcement, intelligence techniques, and collaboration with other international law enforcement agencies

as well as national agencies. Despite these efforts, John Sellar, Senior Enforcement Officer, CITES Secretariat, told the participants that international and national initiatives have done little to stop the poaching of the Tibetan antelope and the illegal trade in its parts (Sellar 2003).

In Nepal, the Tibetan antelope is listed as an endangered species under Schedule I of Nepal's National Parks and Wildlife Conservation Act (Wright and Kumar 1997). Smugglers use Nepal as a transit route from China to India (Government of Nepal 1999), and recent investigations by WWF Nepal Program and TRAFFIC India have documented the routes used. Although Nepal has made some effort to stop the illegal trade, including the confiscation of several shahtoosh shipments, it has been unable to eliminate or control the trade. This has, in part, resulted from the lack of CITES-implementing legislation at a national level (Government of Nepal 1999). In its national report to the International Workshop on Conservation and Control of Trade in Tibetan Antelope in October 1999, the Government of Nepal indicated that it had recently prepared CITES-implementing legislation, which was awaiting approval by the Government (Government of Nepal 1999). That legislation apparently had not yet been enacted as of the 53rd Meeting of the CITES Standing Committee (SC) in June 2005 (SC53 Doc 31, <http://www.cites.org/eng/com/SC/53/E53-31.pdf>).

In India, the Tibetan antelope is listed on Schedule I of the Wildlife Protection Act (1972), which prohibits hunting and trade in any part of the species (Wright and Kumar 1997). The northern Indian State of Jammu and Kashmir has a separate wildlife act, The Jammu and Kashmir Wild Life Protection Act (J&K Act), which is independent of national law. Prior to June 2002, the Tibetan antelope was listed in Schedule II of the J&K Act which permitted the manufacture of and trade in shahtoosh under certain conditions. Under Schedule II, shahtoosh dealers had to be licensed and were required to report to the government any import of Schedule II animal products (Ginsberg et al. 1999). The J&K Act was amended in June 2002 to elevate the species from Schedule II to Schedule I, which provides complete protection to the species.

Despite the fact that no shahtoosh dealers had ever been licensed (Government of India 1999), the production and sale of shahtoosh shawls and other products occurred under Schedule II and continue to occur

under Schedule I in Jammu and Kashmir. In response, the Wildlife Trust of India (WTI) has filed a case in the Supreme Court of India against the State of Jammu and Kashmir to force the implementation of the amended wildlife law. So culturally entrenched is shahtoosh shawl manufacturing in Jammu and Kashmir that a recent WTI-IFAW census of shahtoosh workers indicated that 14,293 individuals were directly involved in shahtoosh production (Gopinath et al. 2003). This number appears to be lower than expected and declining due to legal restrictions and alternative employment for pashmina production (cashmere from the domestic mountain goat *Capra hircus*). According to Dr. Ashok Kumar, Senior Advisor and Trustee, WTI, a study conducted by WTI in partnership with IFAW in December 2003 found shahtoosh shawls available illegally to tourists in New Delhi and other towns in India (A. Kumar, WTI, in litt. January 5, 2004). From his study of the shahtoosh trade since 1992, Dr. Kumar observed that methods of concealment and porous borders between Tibet, India, and Nepal have made enforcement of Tibetan antelope protection laws difficult.

Sale of shahtoosh shawls occurs elsewhere in India as well, although sale is prohibited by national law. Despite the fact that CITES and Indian Customs Law prohibit the commercial import and export of shahtoosh and shahtoosh products, raw shahtoosh fiber still enters India and finished products still leave. Indian authorities have made a number of seizures of raw fiber and finished products over the years (Wright and Kumar 1997; Government of India 1999), but because of the conflict with Jammu and Kashmir, they have been unable to end the production of shahtoosh products.

In the United States, the Appendix-I listing of the Tibetan antelope has not completely prevented the illegal import and sale of shahtoosh products. Besides CITES, the United States has an additional domestic measure that regulates the trade of this species. The Lacey Act (16 U.S.C. 3371 *et seq.*) makes it unlawful to import, export, transport, sell, receive, acquire or purchase mammals or their products that were taken, possessed, transported, or sold in violation of State, Federal, or foreign laws or regulations.

Although several investigations have revealed a market for shahtoosh products in the United States, the first successful prosecution was in 2001. On May 29, 2001, a Los Angeles-based clothier agreed to pay a \$175,000 civil settlement for importing and selling

shahtoosh shawls in violation of the Endangered Species Act (which is the U.S. CITES implementing legislation) and the Lacey Act (press release from the U.S. Attorney's Office, District of New Jersey, dated May 29, 2001).

CITES provisions of the Endangered Species Act prohibit engaging in trade contrary to CITES and the possession of any specimen traded contrary to CITES. Thus, once a shahtoosh shawl is successfully smuggled into the United States, enforcement officers must currently prove the unlawful import in order to seize that shawl. Listing the Tibetan antelope under the Act would prohibit the sale or offering for sale of shahtoosh products in interstate or foreign commerce as well as delivery, receipt, transport, or shipment in interstate or foreign commerce in the course of a commercial activity. This would give U.S. prosecutors additional means of fighting shahtoosh smuggling and the illegal market within the United States. In addition, penalties can be greater for species that are listed under both CITES and the Endangered Species Act.

Therefore, based on the best available information, we find that the Tibetan antelope is in danger of extinction throughout all or a significant portion of its range from inadequate existing regulatory mechanisms.

#### *E. Other Natural or Manmade Factors*

Tibetan antelope are known to have died from exposure and malnutrition associated with severe winter weather (Schaller 1998). A blizzard in Qinghai Province killed a disproportionate number of young and yearlings, and resulted in reproductive failure in the following year. Although, at the present time, inclement weather does not significantly threaten or endanger the species in any portion of its range, it may become more significant as populations decline and become increasingly fragmented because of other mortality factors such as poaching. Therefore, based on the best available information, we find that the Tibetan antelope does not appear to be in danger of extinction within the foreseeable future from other natural or manmade factors.

#### **Conclusion**

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the threats facing this species. This information indicates that the total population of Tibetan antelope has declined significantly over the past three decades. This decline has resulted primarily from overutilization for

commercial purposes and inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Because these threats place the species in danger of extinction throughout all or a significant portion of its range (in accordance with the definition of "endangered species" in section 3(6) of the Act), we have determined that the Tibetan antelope is endangered throughout its range, pursuant to the Act. This action will result in the classification of this species as endangered, throughout its entire range.

#### **Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of conservation status, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies and groups, and individuals. The protection required of Federal agencies and the prohibitions against take and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or upon the high seas, with respect to any species that is proposed to be listed or is listed as endangered or threatened and with respect to its proposed or designated critical habitat, if any is being designated. Because the Tibetan antelope is not native to the United States, no critical habitat is being designated with this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. As such, these prohibitions are applicable to the Tibetan antelope. These prohibitions, pursuant to 50 CFR 17.21, in part, make it illegal for any person subject to the

jurisdiction of the United States to "take" (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

#### National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Paperwork Reduction Act of 1995

The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control numbers 1018-0093 and 1018-0094. This final rule does not impose new reporting or recordkeeping requirements on State or local governments, individuals, businesses, or organizations. We cannot conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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**Author**

The primary author of this notice is Michael Kreger, Ph.D., Division of Scientific Authority, U.S. Fish and

Wildlife Service (see **ADDRESSES** section; telephone 703-358-1708).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

**PART 17—[AMENDED]**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* Antelope, Tibetan	* <i>Panthalops hodgsonii</i>	* China, India, Nepal	* Entire .....	* E	* .....		* NA
*	*	*	*	*	*		*

Dated: March 23, 2006.  
**Marshall P. Jones, Jr.**,  
*Deputy Director, Fish and Wildlife Service.*  
 [FR Doc. 06-3034 Filed 3-28-06; 8:45 am]  
**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 04011-2010-4114-02; I.D. 032406B]

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area**

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

**ACTION:** Temporary rule; landing limit.

**SUMMARY:** NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is removing the Georges Bank (GB) yellowtail flounder trip limit for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment

13 to the NE Multispecies Fishery Management Plan and is intended to prevent under-harvesting of the Total Allowable Catch (TAC) for GB yellowtail flounder while ensuring that the TAC will not be exceeded during the 2005 fishing year. This action is being taken to provide additional opportunities for vessels to fully harvest the GB yellowtail flounder TAC under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective March 24, 2006, through April 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mark Grant, Fishery Management Specialist, (978) 281-9145, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2005 fishing year (May 1, 2005 - April 30, 2006) is 4,260 mt. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. Based

upon Vessel Monitoring System (VMS) reports and other available information, the Regional Administrator has determined that the current rate of harvest will result in the under-harvest of the GB yellowtail flounder TAC during the 2005 fishing year. Based on this information, the Regional Administrator is removing the 15,000-lb (6,804.1-kg) trip limit for NE multispecies DAS vessels fishing in the U.S./Canada Management Area, effective March 24, 2006, through April 30, 2006. Accordingly, there is no limit on the amount of GB yellowtail flounder that can be harvested or landed for the remainder of the fishing year for vessels subject to these regulations.

**Classification**

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

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator (AA) finds good cause to waive prior notice and opportunity for public comment for this action, because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limits to prevent over-harvesting or under-harvesting the TAC allocation. Given that approximately 25 percent of the GB yellowtail flounder TAC remains unharvested and the 2005 fishing year ends on April 30, 2006, the time

necessary to provide for prior notice, opportunity for public comment, or delayed effectiveness would prevent the agency from ensuring that the 2005 TAC for GB yellowtail flounder will be fully harvested. If implementation of this action is delayed, the NE multispecies fishery could be prevented from fully harvesting the TAC for GB yellowtail flounder during the 2005 fishing year. Under-harvesting the GB yellowtail TAC would result in increased economic impacts to the industry and social impacts beyond those analyzed for Amendment 13, as the full potential revenue from the available GB yellowtail flounder TAC in the U.S./Canada Management Area would not be realized.

For the reasons specified above and because this action relieves a restriction,

the AA finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30-day delayed effectiveness period for this action. A delay in the effectiveness of the trip limit modification in this rule would prevent the agency from meeting its management obligation and ensuring the opportunity for the 2005 catch TAC for GB yellowtail flounder specified for the U.S./Canada Management Area to be fully harvested. Any such delay could lead to the negative impacts to the fishing industry described above.

The rate of harvest of the GB yellowtail flounder TAC in the U.S./Canada Management Area is updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to provide

additional opportunities to the NE multispecies industry to fully harvest the TAC for GB yellowtail flounder during the 2005 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: March 24, 2006.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 06-3038 Filed 3-24-06; 3:11 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 71, No. 60

Wednesday, March 29, 2006

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 54

[Docket Number LS-05-06]

RIN 0581-AC49

#### Changes in Fees for Voluntary Federal Meat Grading and Certification Services

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to increase the hourly fees charged for voluntary Federal meat grading and certification services performed by the Meat Grading and Certification (MGC) Branch. The hourly fees would be adjusted by this action to reflect the increased cost of providing service and to ensure that the MGC Branch operates on a financially self-supporting basis.

**DATES:** Comments must be received on or before May 30, 2006.

*Additional Information or Comments:* Interested persons are invited to submit written comments to Larry R. Meadows, Chief; USDA, AMS, LS, MGC Branch, STOP 0248, Room 2628-S, 1400 Independence Avenue, SW., Washington, DC 20250-0248; Telephone number (202) 720-1246. Comments may also be submitted electronically to [Larry.Meadows@usda.gov](mailto:Larry.Meadows@usda.gov); faxed to (202) 690-1062; or Internet: <http://www.regulations.gov>.

All comments should reference docket number LS-05-06 and note the date and page number of this issue of the **Federal Register**.

Comments received will be posted at <http://www.ams.usda.gov/lsg/mgc/rule.htm>, or may be inspected at the above address, between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except legal holidays.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing these services. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits, which account for 80 percent of the operating costs, with travel, training, and administrative costs making up the remainder. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule for the MGC Branch would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. The operating loss for fiscal year (FY) 2005 totaled \$1.8 million. Without a fee increase, the operating loss for FY 2006 is projected to be \$1.1 million. These combined losses will deplete MGC Branch's operating reserve and place the MGC Branch in an unstable financial position that will adversely affect its ability to provide meat grading and certification services.

This proposal is necessary to offset decreased revenue hours and increased program operating expenses incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs, while providing the same or a higher level of assurance, employ fewer personnel and, therefore, generate fewer revenue hours as compared to traditional certification services.

MGC Branch operating expenses have increased due to: (1) Cyber Security upgrades mandated by the Department and system technologies; (2) mandated salary increases for all Federal Government employees in 2004, 2005, and 2006; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs.

Since the last fee increase in 2003, the MGC Branch has made efforts to control operating costs by closing 3 field offices and reducing the number of support staff by 33 percent. The MGC Branch has also increased the use of computer information systems for data collection, retrieval, and dissemination; applicant billing; and disbursement of employee entitlements. This reduction in field offices and support personnel, and the increased use of automated systems to process data has enabled the MGC Branch to absorb a substantial portion of the operating costs and minimize the need for hourly fee increases in past years. However, these management efforts have not negated the need to maintain trust fund balances to assure operating expenses are met in the future.

Despite the cost reduction efforts, the MGC Branch incurred a \$1.8 million operating loss in FY 2005. Furthermore, AMS projects that without an hourly fee increase, the MGC Branch will lose approximately \$6.5 million from FY 2006 through FY 2009, and totally deplete program reserves to the point of deficit operations (i.e. FY 2006, \$1.1 million; FY 2007, \$1.2 million; FY 2008, \$1.8 million; and FY 2009, \$2.4 million).

In view of the increased costs and decreased revenues, AMS proposes to increase the hourly fees to cover the operating deficits. The base hourly fee for commitment applicants would increase from \$55 to \$61. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants would increase from \$64 to \$71. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain

number of service hours. The premium hourly fee would increase from \$70 to \$78. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee would increase from \$110 to \$122 and is charged to applicants for meat grading and certification services provided on legal holidays.

#### **Executive Order 12866**

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

#### **Regulatory Flexibility Act**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), AMS considered the economic impact of this proposed action on small entities and determined that it will not have a significant economic effect on a substantial number of small entities.

AMS, through its MGC Branch, provides voluntary Federal meat grading and certification services to 285 businesses, including 100 livestock slaughterers, 66 facilities that process federally donated products, 62 meat processors, 28 livestock producers and feeders, 9 brokers, 11 trade associations, and 9 State and Federal entities. Eighty seven percent of these businesses qualify as small entities; a company that employs less than 500 employees. Small entities generate approximately 33 percent of the MGC Branch's revenues and are under no obligation to use voluntary Federal meat grading and certification services provided under the authority of the AMA.

Federal meat grading and certification services facilitate the orderly marketing of meat and meat products and enable consumers to obtain the quality of meat they desire. Grading services consist of the evaluation of carcass beef, lamb, pork, veal, and calf in accordance with the appropriate official U.S. Standard. The MGC Branch grades approximately 20.0 billion pounds of meat each year. Certification services consist of the evaluation of meat and meat products for compliance with specification and contractual requirements. Certification services are regularly used by meat purchasers to ensure that the quality and yield of the products they purchase comply with the stated requirements. The MGC Branch certifies

approximately 22.4 billion pounds of meat and meat products each year.

This action would raise the hourly fees charged to users of Federal meat grading and certification services. AMS estimates that this action would provide the MGC Branch an additional \$210,210 in revenue per month in FY 2006. Since 245 small entities account for 33 percent of MGC Branch revenues, this action would result in an average increase of \$65 per week per applicant. This action would increase revenues by almost \$2.5 million per year and offset the projected losses of \$1.1 million in FY 2006 and \$1.2 million in FY 2007. Even with this action, the unit cost for MGC Branch service (revenue/total pounds graded and certified) would actually decrease from \$0.0006 to \$0.0005 per pound, due to increased projected grading and certification volumes.

This action is necessary to offset decreased revenue hours and increased program operating costs incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs employ fewer personnel, and, therefore, generate fewer revenue hours as compared to traditional certification services. The implementation of audit-based programs has decreased overall costs to smaller entities.

MGC Branch operating expenses have increased due to (1) Cyber Security upgrades mandated by the Department and system technologies; (2) congressionally mandated salary increases for all Federal Government employees in 2004, 2005, and 2006; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs.

Since 2003, the MGC Branch has made efforts to control operating costs by closing 3 field offices and reducing the number of support staff by 33 percent. At the same time, the MGC Branch has utilized automated information management systems for data collection, retrieval, and dissemination; applicant billing; and disbursement of employee entitlements. The reduction in field offices and support personnel and the increased use of automated systems has enabled the MGC Branch to absorb a substantial portion of the operating costs and delay hourly fee increases.

Despite these cost reduction efforts and previous hourly fee increases, the MGC Branch incurred a \$1.8 million

operating loss in FY 2005. Furthermore, AMS projects that without an hourly fee increase; the MGC Branch would lose approximately \$6.5 million from FY 2006 through FY 2009 and totally deplete program reserves to the point of deficit operations.

In view of these increased costs, AMS proposes to increase the hourly fees for Federal meat grading and certification services. The base hourly fee for commitment applicants would increase from \$55 to \$61. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants would increase from \$64 to \$71. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee would increase from \$70 to \$78. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee would increase from \$110 to \$122 and is charged to applicants for meat grading and certification services provided on legal holidays.

#### **Civil Justice Reform**

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect and would not pre-empt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### **Paperwork Reduction Act**

This action would not impose any additional reporting or recordkeeping requirements on users of Federal meat grading and certification services.

#### **List of Subjects in 7 CFR Part 54**

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 54 be amended as follows:

**PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)**

1. The authority citation for 7 CFR part 54 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

2. Section 54.27 is amended by:

A. Removing in paragraph (a), “\$64” and adding “\$71” in its place, removing “\$70” and adding “\$78” in its place, and removing “\$110” and adding “\$122” in its place.

B. Removing in paragraph (b), “\$55” and adding “\$61” in its place, removing “\$70” and adding “\$78” in its place, and removing “\$110” and adding “\$122” in its place.

Dated: March 23, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–4519 Filed 3–28–06; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Grain Inspection, Packers and Stockyards Administration**

**7 CFR Parts 800 and 810**

**RIN 0580–AA91**

**United States Standards for Sorghum**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Sorghum to amend the definitions of the classes Sorghum, White sorghum, and Tannin sorghum, and to amend the definition of nongrain sorghum. The proposal also recommends amendments to the grade limits for broken kernels and foreign material (BNFM), and the subfactor foreign material (FM). Additionally, GIPSA proposes to insert a total count limit for other material into the standards and will revise the method of certifying test weight (TW). GIPSA further proposes to change the inspection plan tolerances for BNFM and FM. These proposed changes will help to facilitate the marketing of sorghum.

**DATES:** Comments must be received on or before May 30, 2006.

**ADDRESSES:** We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250–3604.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All comments should make reference to the date and page number of this issue of the **Federal Register**.

**Read Comments:** All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:**

Patrick McCluskey, telephone (202) 720–4684 at GIPSA, USDA, Room 2429 North/South Building, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Fax Number (202) 720–1015.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

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

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act (USGSA) provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

**Regulatory Flexibility Act Certification**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly

burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA and delegated states at 54 export elevators (including four floating elevators). All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. Most users of the official inspection and weighing services, and these entities that perform these services, do not meet the regulations for small entities. Further, the regulations are applied equally to all entities. In addition to GIPSA, there are 58 official agencies that perform official services under the United States Grain Standards Act, and most of these entities do not meet the requirements for small entities. GIPSA is proposing to amend the sorghum standards to amend the definitions of the classes Sorghum, White sorghum, and Tannin sorghum, and to amend the definition of nongrain sorghum. The proposal also recommends amendments to the grade limits of BNFM, to the grade limits of FM, and the associated inspection plan tolerances. GIPSA further proposes to insert a total count limit for other material into the sorghum standards and will revise the method of certifying TW. These proposed changes will help to facilitate the marketing of sorghum.

The U.S. sorghum industry, including producers (approximately 40,000 (USDA–2002 Census of Agriculture)), handlers, processors, and merchandisers are the primary users of the U.S. Standards for Sorghum and utilize the official standards as a common trading language to market grain sorghum. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling,

weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 92 registrants who account for practically 100 percent of U.S. sorghum exports, which for fiscal year (FY) 2004 totaled approximately 2,926,726 metric tons (MT). While most of the 92 registrants are large businesses, we assume that some may be small.

### Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements are approved under the Office of Management and Budget (OMB) Number 0580-0013. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, no further OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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

### Background

Grain sorghum (*Sorghum bicolor* (L.) Moench, trivially: milo, sorghum) is a cereal crop of African origin, whose kernels are used in both human and animal food, as well as industrial products. In the sorghum standards, sorghum is defined as "Grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of sorghum (*Sorghum bicolor* (L.) Moench) excluding nongrain sorghum and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act." Grain sorghum usage as animal feed is seen primarily in the United States and Mexico, while sorghum use in human food is global: porridge, flatbread, and beer in Africa; Maotai (distilled spirits) in China/Taiwan; flatbread in the Asian sub-continent; wheat flour replacement for Celiac disease patients. Industrial uses of grain sorghum include ethanol production for fuel.

In the United States, grain sorghum production has decreased dramatically, dropping from over 18 million planted acres in 1983 to an estimated 7 million acres in 2005 (USDA-NASS estimate June 30, 2005). These acres have been largely replaced with corn and cotton. The majority of grain sorghum is produced in the southern Great Plains of the United States. Kansas and Texas collectively accounted for 69 percent

and 76 percent of production for the harvests of 2003 and 2004 respectively, while Nebraska accounted for an additional 8 percent of production in each year (USDA-NASS). For both the 2002/2003 and 2003/2004 marketing years, the leading importers of United States sorghum were Mexico, Japan, Israel, and the European Union.

The United States Standards for Sorghum were established December 1, 1924, and have been amended or revised numerous times since then, most recently in 1993. In August 1998, GIPSA conducted a review of the sorghum standards (63 FR 43641). No changes to the standards were proposed as a result of that action. On September 24, 2003, GIPSA was asked by the National Sorghum Producers (previously known as the National Grain Sorghum Producers) to initiate a review of the sorghum standards. Accordingly, on December 17, 2003, GIPSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (68 FR 70201) requesting views and comments on the sorghum standards.

GIPSA received 35 comments to the ANPR from sorghum market participants including producers, sorghum market development groups, and exporters. After the ANPR comment period ended, there were further discussions with the industry, including a recommendation to reduce the test weight minimum for U.S. No. 1 sorghum from 57 to 56 pounds per bushel. Considering the comments to the ANPR, and other available information, several specific issues emerged in connection with revising the sorghum standards. The issues are (1) sorghum class definitions, (2) nongrain sorghum definition, (3) structure and grade limits in BNF, FM, and Damaged Kernels Total (DKT), (4) definitions of heat damaged kernels and damaged kernels, (5) TW certification and (6) other material count limits.

Based on comments received and other available information, GIPSA has decided to propose amendments to the United States Standards for Sorghum to help facilitate the marketing of sorghum.

#### 1. Sorghum Class Definitions

Sorghum has four classes: Sorghum, Tannin sorghum, White sorghum, and Mixed sorghum. The definition of three of the classes, Sorghum, Tannin sorghum, and White sorghum, refer to tannin level in a qualitative manner (*i.e.*, as being either low or high in tannin content). Numerous commenters specifically cited the phrase "low in tannin content" in the class definition of Sorghum and White sorghum,

maintaining that references to tannin content do not reflect current science and understanding of sorghum genetics and impart a negative connotation with regard to sorghum quality, which hampers market development. These commenters stated that nearly all sorghum hybrids grown for grain do not contain tannins, stating that over the last approximately 30 years, the understanding of tannin genetics deepened such that sorghum breeders produced varieties essentially devoid of tannins. GIPSA was asked to define Sorghum and White sorghum based on the absence of tannin compounds.

Tannins are considered both nutritional and anti-nutritional, depending on the concentration and target organism. Some level of tannin ingestion can impede weight gain in animals, by making certain amino acids metabolically unavailable and inhibiting the activity of certain enzymes. Alternately, tannins have antioxidant properties, so may be of economic interest.

A manuscript published in "*Phytochemistry*" reported that 99 percent of U.S. sorghum hybrids are tannin-free. Tannins are phenolic compounds which derive from the presence of a pigmented testa layer (a.k.a. 'subcoat'), controlled by two genes known as B1 and B2. When both of these genes are dominant, the caryopsis (kernel) develops a pigmented testa. The testa, located between the alar cells and endocarp cells, derives from layers of cells in close proximity which have collapsed, forming one layer several cells thick. Because of sorghum hybrid improvement programs, the genes for a pigmented testa are recessive in almost all commercial grain sorghum hybrids, thus, a pigmented testa does not form.

GIPSA considers the term "absence of tannin compounds" to have a precise meaning, *i.e.*, containing zero tannin content. The industry claim of "essentially devoid of tannins" anticipates the possibility of a small amount of tannin, thus GIPSA does not consider "tannin free" acceptable for defining the classes of sorghum. However, GIPSA will propose to amend the definitions of Sorghum, Tannin sorghum, and White sorghum based on the absence or presence of a pigmented testa.

#### 2. Nongrain Sorghum Definition

Nongrain sorghum is defined as "Seeds of broomcorn, Johnson-grass, *Sorghum alnum* Parodi, sorghum-sudangrass hybrids, sorggrass, sudangrass, and sweet sorghum (*sorgo*)". The relevance of nongrain

sorghum is that it counts as foreign material. GIPSA received comments regarding the definition of nongrain sorghum, specifically asking GIPSA to remove certain sorghum species named as nongrain sorghum, specifically, sorgrass, sorghum-sudangrass hybrids, and sweet sorghum (*sorgo*). A commenter stated that sorgrass is nearly extinct in the United States, thus is no longer relevant to the sorghum production situation. GIPSA believes this has merit and proposes to remove sorgrass from the definition of nongrain sorghum. Although GIPSA is proposing to remove sorgrass from the definition of nongrain sorghum, it would function as foreign material if discovered in a sample.

The same commenter also stated that sweet sorghum was grown in such small quantity as to be non-problematic with regard to commingling with grain sorghum. In further discussions, sweet sorghum producers (who grow this crop for molasses production) expressed an opposite opinion. They recommended against removing sweet sorghum from the definition of nongrain sorghum, because they want it well understood that their crop is nongrain sorghum. As a result, GIPSA will not remove sweet sorghum from the definition of nongrain sorghum.

Sorghum-sudangrass hybrids (botanically, *Sorghum bicolor* (L.) Moench) are grown for forage, are very unlikely to be harvested for grain due to plant height, and may or may not produce kernels which appear (and function) like grain sorghum. Depending on the genetics, some kernels appear to meet the criteria for grain sorghum and should be graded as such, while others exhibit characteristics of forage type kernels (with respect to kernel morphology, tannin presence (hence, a pigmented testa) and glume adherence), thus should be counted as nongrain sorghum. If GIPSA removes sorghum-sudangrass hybrids from the definition of nongrain sorghum, all sorghum-sudangrass hybrids would be classified as grain sorghum, including those kernels having forage-type characteristics (and potentially containing a pigmented testa and/or some level of tannin). Kernels of sorghum-sudangrass hybrids which exhibit morphological traits consistent with grain sorghum should not be excluded from the definition of grain sorghum. Accordingly, GIPSA believes the definition of nongrain sorghum should be revised such that only kernels of sorghum-sudangrass hybrids with an appearance atypical of grain sorghum, meaning kernels which are morphologically consistent with those

from a forage-type plant, should be considered nongrain sorghum.

### 3. Structure and Grade Limits in Broken Kernels and Foreign Material, Foreign Material and Damaged Kernels Total

GIPSA received comments expressing opposing viewpoints, regarding DKT, BNF, and FM. Some comments favored loosening grade limits for BNF and dropping FM as a subfactor. Others favored tightening the grade limits for DKT and BNF, such that the aggregate of these factors would be equivalent to the aggregate of the DKT and Broken Corn and Foreign Material (BCFM) grade limits in the U.S. Standards for Corn.

FM was added as a subfactor of BNF in the most recent amendment of the sorghum standards (effective date June 1, 1993; 57 FR 58967), based on the Grain Quality Improvement Act of 1986 (Pub. L. 99-641, Title III; 7 U.S.C. 76) and a recommendation of the Grain Quality Workshop. Prior to 1993, FM could have been 100 percent of the BNF content. Inspection data for exports from 2002-2005 indicate an FM average of 1.1 percent, lower than the grade limit of 1.5 percent for U.S. No. 1 sorghum.

Analysis of official export inspection data for sorghum from 2002-2005 indicated an overall BNF average of 3.9 percent (lower than the BNF grade limit of 4.0 percent for U.S. No. 1 sorghum) thus averaging U.S. No. 1 sorghum, based on BNF. Official inspection data for export yellow corn during the same period indicated an overall BCFM average of 2.8 percent (over the BCFM grade limit of 2.0 percent U.S. No. 1 corn) thus averaging U.S. No. 2 Yellow Corn, based on BCFM. Sorghum received a higher average grade than corn during the period covered by the data, based on the factors BNF and BCFM.

Tightening the BNF grade limits to match the tighter BCFM grade limits for corn would result in grade deflation. Using the export inspection data cited above, more than ninety percent of the sorghum grading U.S. No. 2 or better under the current BNF grade limits, would receive a grade of U.S. No. 3 or 4, if the corn BCFM grade limits were utilized.

GIPSA examined export inspection data for the period 2001 through 2004 (the last three year period for which this data is available), to determine the rate at which sorghum failed to meet inspection loading plan requirements, based on the factor BNF. BNF exceeded inspection loading plan requirements for BNF at a 0.4 percent rate, whereas corn failed to meet

inspection loading plan requirements for BCFM at a 3.0 percent rate. Accordingly, the BNF grade limits in the sorghum standards are not overly restrictive. Moreover, the grade limits for BNF and FM can be tightened somewhat without causing grade deflation.

A review of the Agency's official grain inspection data has shown that the average BNF and FM values are within the U.S. No. 1 grade limits. GIPSA concludes that the grade limits for BNF and FM should be revised to better reflect the quality of sorghum moving through the marketplace, *i.e.*, tighter grade limits would better reflect sorghum quality in the market place.

In Table 1, GIPSA data show that sorghum moving through the U.S. marketing system on truck, rail and barge, and export, have average BNF and FM levels which are within the U.S. No. 1 grade limits. Table 2 shows the cumulative distribution of sorghum at grades 1, 2, 3, and 4 for different shipment modes, for the factors BNF and FM. Virtually all sorghum moving in the marketplace receives a grade of U.S. No. 2 or better regardless of where in the value chain the sorghum is inspected.

Based on a review of the comments, GIPSA data, and other available information, GIPSA is proposing to reduce the BNF and FM grade limits. GIPSA proposes to reduce the BNF grades limits for U.S. Nos. 1, 2, 3, and 4 from 4.0, 7.0, 10.0, and 13.0 percent to 3.0, 6.0, 8.0, and 10.0 percent, respectively. For FM, GIPSA proposes to reduce the grade limits for U.S. Nos. 1, 2, 3, and 4 from 1.5, 2.5, 3.5, and 4.5 percent to 1.0, 2.0, 3.0, and 4.0, respectively. Table 3 shows the effect of this change on the cumulative distribution of sorghum available at grades 1 through 4. There will be minimal impact throughout the marketing system for grades 2, 3 and 4. GIPSA projects that some sorghum currently grading U.S. No.1 will receive a grade of U.S. No.2 under the proposed BNF and FM grade limits. Because virtually all sorghum inspected will continue to receive a grade of U.S. No. 1 or 2, there will be minimal impact on the amount of sorghum available for trade at the common market standard, *i.e.*, U.S. No. 2 or better. GIPSA believes these changes will better reflect, and improve, the quality of sorghum moving through the marketplace.

The grade limit for DKT in sorghum is presently tighter at U.S. No. 1 than for corn (2.0 percent vs. 3.0 percent respectively) and equal at U.S. No. 2 (5.0 percent). For the period 2002 through 2005, the average of DKT in

export sorghum was 1.6 percent (compared to the U.S. No. 1 grade limit of 2.0 percent). Based on DKT, one hundred percent of the sorghum

inspected at export received a grade of U.S. No. 2 during the period. Accordingly, the DKT grade limits in the sorghum standards are not overly

restrictive, and GIPSA will not propose changes to the grade limits for DKT.

TABLE 1.—FACTOR AVERAGE (%) BY SHIPMENT TYPE

Shipment type	BNFM	FM
Truck <sup>1</sup> .....	3.3	1.2
Rail <sup>2</sup> .....	3.4	1.1
Barge <sup>3</sup> .....	3.9	1.5
ALL EXPORT <sup>4</sup> .....	3.9	1.1
No. 1 Grade Limit (%) .....	4.0	1.5

<sup>1</sup> National Quality Database, Truck Data (Officially Sampled), 10/02–8/05.

<sup>2</sup> National Quality Database InterMarket Program Rail Data, (Officially Sampled, Domestic/Export), 10/02–8/05.

<sup>3</sup> National Quality Database InterMarket Program Barge Data (Officially Sampled, Origin), 10/02–8/05.

<sup>4</sup> FGIS Export Grain Inspection System (Vessel Only), 10/02–8/05.

TABLE 2.—CUMULATIVE PERCENT AT GRADES, BY FACTOR AND SHIPMENT TYPE

U.S. grade	BNFM				FM			
	#1	#2	#3	#4	#1	#2	#3	#4
Shipment Type:								
Truck .....	73.6	94.2	98.3	99.6	77.2	88.6	92.9	96.2
Rail <sup>1</sup> .....	80.6	99.2	99.9	100.0	85.0	97.1	98.9	99.5
Barge <sup>2</sup> .....	66.9	95.0	99.1	100.0	68.3	89.2	95.1	98.2
ALL EXPORT <sup>3</sup> .....	61.7	100.0	100.0	100.0	79.3	99.9	100.0	100.0
Columbia River .....	63.3	100.0	100.0	100.0	93.2	100.0	100.0	100.0
Mississippi River .....	41.1	100.0	100.0	100.0	65.3	99.6	100.0	100.0
North Texas .....	71.9	100.0	100.0	100.0	90.7	100.0	100.0	100.0
South Texas .....	96.3	100.0	100.0	100.0	94.7	100.0	100.0	100.0
Puget Sound .....	76.3	100.0	100.0	100.0	79.0	100.0	100.0	100.0

<sup>1</sup> National Quality Database, Truck Data (Officially Sampled), 10/02–8/05.

<sup>2</sup> National Quality Database InterMarket Program Rail Data, (Officially Sampled, Domestic/Export), 10/02–8/05.

<sup>3</sup> National Quality Database InterMarket Program Barge Data (Officially Sampled, Origin), 10/02–8/05.

TABLE 3.—EFFECT OF CHANGING GRADE LIMITS ON CUMULATIVE DISTRIBUTION OF SORGHUM BY GRADE

FACTOR: BNFM	#1		#2		#3		#4	
	Current 4.0%	Proposed 3.0%	Current 7.0%	Proposed 6.0%	Current 10.0%	Proposed 8.0%	Current 13.0%	Proposed 10/0%
Shipment Type:								
Truck .....	73.6	56.9	94.2	89.6	98.3	95.9	99.6	98.3
Rail <sup>1</sup> .....	80.6	41.9	99.2	98.1	99.9	99.6	100.0	99.9
Barge <sup>2</sup> .....	66.9	31.3	95.0	91.3	99.1	97.2	100.0	99.1
LL EXPORT <sup>3</sup> .....	61.7	9.7	100.0	99.8	100.0	100.0	100.0	100.0
Columbia River .....	63.3	20.4	100.0	100.0	100.0	100.0	100.0	100.0
Mississippi River .....	41.1	4.5	100.0	99.5	100.0	100.0	100.0	100.0
North Texas .....	71.9	11.0	100.0	100.0	100.0	100.0	100.0	100.0
South Texas .....	96.3	13.9	100.0	100.0	100.0	100.0	100.0	100.0
Puget Sound .....	76.3	32.5	100.0	100.0	100.0	100.0	100.0	100.0
FACTOR: FM	#1		#2		#3		#4	
	Current 1.5%	Proposed 1.0%	Current 2.5%	Proposed 2.0%	Current 3.5%	Proposed 3.0%	Current 4.5%	Proposed 4.0%
Shipment Type:								
Truck .....	77.2	69.0	88.6	84.8	92.9	91.5	96.2	95.2
Rail <sup>1</sup> .....	85.0	62.6	97.1	93.4	98.9	98.0	99.5	99.3
Barge <sup>2</sup> .....	68.3	41.8	89.2	81.8	95.1	92.3	98.2	96.6
ALL EXPORT <sup>3</sup> .....	79.3	44.6	99.9	95.8	100.0	100.0	100.0	100.0
Columbia River .....	93.2	64.2	100.0	100.0	100.0	100.0	100.0	100.0
Mississippi River .....	65.3	38.8	99.6	91.5	100.0	100.0	100.0	100.0
North Texas .....	90.7	37.8	100.0	100.0	100.0	100.0	100.0	100.0
South Texas .....	94.7	78.1	100.0	97.2	100.0	100.0	100.0	100.0
Puget Sound .....	79.0	40.6	100.0	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> National Quality Database, Truck Data (Officially Sampled), 10/02–8/05.

<sup>2</sup> National Quality Database InterMarket Program Rail Data, (Officially Sampled, Domestic/Export), 10/02–8/05.

<sup>3</sup> National Quality Database InterMarket Program Barge Data (Officially Sampled, Origin), 10/02–8/05.

#### 4. Definition of Heat Damaged Kernels and Damaged Kernels

GIPSA received a comment recommending deleting the reference to 'other grains' from the definitions of damaged kernels and heat-damaged kernels to better reflect levels of damage in sorghum kernels. The definition of damaged kernels is: kernels, pieces of sorghum kernels, and other grains that are badly ground damaged, badly weather damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged. The definition of heat-damaged kernels is: kernels, pieces of sorghum kernels, and other grains that are materially discolored and damaged by heat.

Before promulgation of the sorghum standards, addition of damaged, or otherwise out-of-condition grains to sorghum, was not an uncommon practice. In order to limit how much damaged grain was added, 'other grains' was added to the definitions of damaged kernels and heat-damaged kernels in a 1934 amendment of the sorghum standards. 'Other grains' was also included in the grading factor 'Broken kernels, foreign material, and other grains' until 1993, when GIPSA amended the sorghum standards, changing that grading factor to 'Broken kernels and foreign material', and added the subfactor, 'Foreign material', with maximum limits under BNFm for each grade. Separating and identifying the individual components of 'Broken kernels, foreign material, and other grains' was required by the Grain Quality Improvement Act of 1986, which also prohibited the blending of "different kinds of grain except when such blending will result in grain being designated as Mixed grain \* \* \*".

Section 74(b)(3)(D) of the USGSA states " \* \* \* that official United States standards for grain shall \* \* \* provide the framework necessary for markets to establish grain quality improvement incentives." Official inspection data (previously cited) for DKT (which includes damaged other grains) shows the average DKT in export sorghum was 1.6 percent for the period 2002–2005 (within the U.S. No. 1 grade limit of 2.0 percent). This low value suggests that the system is working and further, that the grain handling industry is acting in accordance with the policy of the Congress. Removing 'other grains' from the definitions of damaged kernels and heat damaged kernels could provide disincentives to improving sorghum

quality. Accordingly, GIPSA will not propose to remove the reference to 'other grains' from the definitions of damaged kernels and heat-damaged kernels.

#### 5. Test Weight Certification

In further discussions within the industry, a request was made to lower the test weight grade limit for U.S. No. 1 sorghum from 57 to 56 pounds per bushel. National inspection data show the average TW for the period 2001 through 2004 was well above 57.0 lb/bu. Sorghum market developers have a goal of promoting the high quality of their commodity. GIPSA believes that lowering the TW grade limit would not be consistent with the goal of promoting high quality sorghum, because lower test weight values imply lower quality. Sorghum users have indicated that TW and moisture content are the primary quality factors upon which discounts are based. Therefore, given the importance of TW to users, and the fact that the average TW is usually higher than the current U.S. No. 1 grade limit, GIPSA will not propose to lower the test weight grade limit.

However, GIPSA believes it is appropriate to revise the certification for TW from whole and half pounds, with a fraction of a half pound disregarded, to certification in tenths of a pound, in order to bring TW reporting for sorghum in line with reporting requirements for other factors, such as foreign material and damaged kernels total, in the U.S. Standards for Sorghum. The U.S. Standards for Corn was amended in 1995 to make a similar change (60 FR 61194).

#### 6. Other Material Count Limits

GIPSA received a comment to the ANPR expressing concern over the lack of a maximum count limit on other materials allowed before sorghum would be considered U.S. Sample Grade, as well as the format in which maximum count limits of other material are presented in the standard. Although most of the grains do not have a total limit, wheat and soybeans do have maximum count limits of other materials. In sorghum, 30 pieces of other material are theoretically allowed before becoming U.S. Sample Grade, whereas in wheat and soybeans, totals of 4 and 10, respectively, are permitted before becoming U.S. Sample grade. Since sorghum is used as a food grain in much of the world, these factors should be consistent with other grains used for food. GIPSA proposes to include a total

(combined) maximum count limit of 10 for other material.

The format of the maximum count limits table is the most recent version GIPSA used in revisions of the standards for wheat, soybean and canola and is the format GIPSA will use on future revisions of the standards. Therefore, to maintain consistency with the format to be used in future revisions, GIPSA will not propose a change in the format of the table presenting maximum count limits of other material.

#### Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected with a statistically based inspection plan. Inspection tolerances, commonly referred to as Breakpoints, are used to determine acceptable quality. The proposed changes to the sorghum standards require revisions to some breakpoints. Therefore, GIPSA proposes to change the current grade limits and breakpoints for sorghum BNFm and FM which are listed in Table 15 of section 800.86(c)(2).

GIPSA proposes to change the BNFm breakpoints for U.S. Nos. 1, 2, 3, and 4 from 0.3, 0.4, 0.5, and 0.6 to 0.5, 0.6, 0.7, and 0.8, respectively. GIPSA proposes to change the FM breakpoints for U.S. Nos. 1, 2, 3, and 4 from 0.3, 0.4, 0.5, and 0.6 to 0.4, 0.5, 0.6, and 0.7, respectively.

#### Reference

Awika, J. M. and Rooney, L. W. 2004. "Phytochemistry". Vol. 65, pps. 1199–1221.

#### Proposed GIPSA Action

GIPSA is issuing this proposed rule to invite comments and suggestions from all interested persons on how GIPSA can further enhance and best facilitate the marketing of sorghum.

GIPSA proposes to revise § 800.86, Inspection of shiplot, unit train and lash barge grain in single lots, paragraph (c) (2) Table 15 by revising the breakpoints and associated grade limits for U.S. Nos. 1, 2, 3 and 4 BNFm and FM.

GIPSA proposes to revise § 810.102 *Definition of other terms* by revising subparagraph (d), TW per bushel. It is proposed that TW in sorghum be reported to the nearest tenth of a pound per bushel.

GIPSA proposes to revise § 810.1402 *Definition of other terms* by revising subparagraph (c) (1)–(3), to remove tannin content from the definitions of Sorghum, Tannin sorghum, and White sorghum, respectively.

GIPSA proposes to revise § 810.1402 *Definition of other terms* by revising

subparagraph (h) to remove sorgrass from the definition of nongrain sorghum, and to replace sorghum-sudangrass hybrids with "seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum".

GIPSA also proposes to revise § 810.1404 *Grade and grade requirements for sorghum* to reduce the grading limits for BNFM to 3.0, 6.0, 8.0, and 10.0 percent for U.S. Nos. 1, 2, 3, and 4, respectively. GIPSA further proposes to reduce the grading limits for FM to 1.0, 2.0, 3.0, and 4.0 percent for U.S. Nos. 1, 2, 3, and 4, respectively. GIPSA also proposes to revise § 810.1404; to add: "Total:" and the number 10 under 'Maximum count limits of'; and a footnote numbered 3.

Comments, including data, views, and arguments are solicited from interested persons. Pursuant to Section 4(b)(1) of the USGSA, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner.

**List of Subjects**

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set out in the preamble, 7 CFR parts 800 and 810 are proposed to be amended as follows:

**PART 800—GENERAL REGULATIONS**

1. The authority citation for part 800 continues to read as follows:

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. In § 800.86(c)(2), table 15 is revised to read as follows:

**§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.**

\* \* \* \* \*  
(c) \* \* \*  
(2) \* \* \*

TABLE 15.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—							
			Damaged kernels				Broken kernels and foreign material			
			Heat-damaged (percent)		Total (percent)		Total (percent)		Foreign material (percent)	
GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	
U.S. No. 1 .....	57.0	−0.4	0.2	0.1	2.0	1.1	3.0	0.5	1.0	0.4
U.S. No. 2 .....	55.0	−0.4	0.5	0.4	5.0	1.8	6.0	0.6	2.0	0.5
U.S. No. 3 <sup>1</sup> .....	53.0	−0.4	1.0	0.5	10.0	2.3	8.0	0.7	3.0	0.6
U.S. No. 4 .....	51.0	−0.4	3.0	0.8	15.0	2.8	10.0	0.8	4.0	0.7

<sup>1</sup> Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

\* \* \* \* \*

**PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN**

1. The authority citation for part 810 continues to read as follows:

**Authority:** Pub. L. 94–582, 90 Stat. 2867 as amended (7 U.S.C. 71 *et seq.*)

2. Section 810.102 is amended by revising paragraph (d) to read as follows:

**§ 810.1402 810.102 Definition of other terms.**

\* \* \* \* \*

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed,

triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound for corn, rye, sorghum, soybeans, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

\* \* \* \* \*

3. Section 810.1402 is amended by revising paragraphs (c)(1) through (c)(3) and (h) to read as follows:

**§ 810.1402 Definition of other terms.**

\* \* \* \* \*

(c) \* \* \*

(1) *Sorghum.* Sorghum which lacks a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, red, pink, orange or bronze.

(2) *Tannin sorghum.* Sorghum which has a pigmented testa (subcoat) and contains not more than 10 percent of kernels without a pigmented testa.

(3) *White sorghum.* Sorghum which lacks a pigmented testa (subcoat) and contains not less than 98.0 percent kernels with a white pericarp, and contains not more than 2.0 percent of sorghum of other classes. This class includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

\* \* \* \* \*

(h) *Nongrain sorghum.* Seeds of broomcorn, Johnson-grass, Sorghum alnum Parodi, sudangrass, and sweet sorghum (sorgo); and seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum.

\* \* \* \* \*

4. Section 810.1404 is revised to read as follows:

**§ 810.1404 Grades and grade requirements for sorghum.**

Grading factors	Grades U.S. Nos. <sup>1</sup>			
	1	2	3	4
Minimum pound limits of				
Test weight per bushel .....	57.0	55.0	53.0	51.0
Maximum percent limits of				
Damaged kernels:				
Heat (part of total) .....	0.2	0.5	1.0	3.0
Total .....	2.0	5.0	10.0	15.0
Broken kernels and foreign material:				
Foreign material (part of total) .....	1.0	2.0	3.0	4.0
Total .....	3.0	6.0	8.0	10.0
Maximum count limits of				
Other material:				
Animal filth .....	9	9	9	9
Castor beans .....	1	1	1	1
Crotalaria seeds .....	2	2	2	2
Glass .....	1	1	1	1
Stones <sup>2</sup> .....	7	7	7	7
Unknown foreign substance .....	3	3	3	3
Cockleburrs .....	7	7	7	7
Total <sup>3</sup> .....	10	10	10	10

U.S. Sample grade is sorghum that:

- (a) Does not meet the requirements for U.S. Nos. 1, 2, 3, 4; or  
 (b) Has a musty, sour, or commercially objectionable foreign odor (except smut odor); or  
 (c) Is badly weathered, heating, or distinctly low quality.

<sup>1</sup> Sorghum which is distinctly discolored shall not grade higher than U.S. No. 3.

<sup>2</sup> Aggregate weight of stones must also exceed 0.2 percent of the sample weight.

<sup>3</sup> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, unknown foreign substance or cockleburrs.

**James E. Link,**

Administrator, Grain Inspection, Packers and  
Stockyards Administration.

[FR Doc. 06-2968 Filed 3-28-06; 8:45 am]

BILLING CODE 3410-EN-P

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Parts 800 and 810

RIN 0580-AA90

#### United States Standards for Soybeans

**AGENCY:** Grain Inspection, Packers and  
Stockyards Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Soybeans to change the minimum test weight per bushel from a grade determining factor to an informational factor. Even though an informational factor, test weight per bushel will be reported on official certificates unless requested otherwise. GIPSA also proposes to change the

reporting requirements for test weight per bushel in soybeans from whole and half pounds with a fraction of a half pound disregarded to reporting to the nearest tenth of a pound. Additionally, GIPSA proposes to clarify the reporting requirements for test weight in canola. These changes would further help to ensure market-relevant standards and grades and to clarify reporting requirements.

**DATES:** Comments must be received on or before May 30, 2006.

**ADDRESSES:** We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.
- Fax: Send comments by facsimile transmission to: (202) 690-2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250-3604.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All comments should make reference to the date and page number of this issue of the **Federal Register**.

**Read Comments:** All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Marianne Plaus, telephone (202) 690-3460 at GIPSA, USDA, ROOM 2429, 1400 Independence Avenue, SW., Washington, DC, 20250-2429; Fax Number (202) 720-1015.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect.

The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 36 export elevators (including 4 floating elevators). All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. GIPSA is proposing to amend the soybean standards to change the minimum test weight per bushel from a grade determining factor to an informational factor. GIPSA also is proposing to change the reporting requirements for test weight per bushel in soybeans from whole and half pounds with a fraction of a half pound disregarded to reporting to the nearest tenth of a pound. Additionally, GIPSA is proposing to clarify the reporting requirements for test weight in canola. These proposed changes are needed to ensure market-relevant standards and to clarify reporting requirements. Further, the regulations and standards are applied equally to all entities. In addition to GIPSA, there are 58 official agencies that perform official services under the United States Grain Standards Act, and most of these entities do not meet the requirements for small entities.

The U.S. soybean industry, including producers (approximately 663,880), handlers (approximately 6,000 domestic elevators), traders (approximately 1,402 eligible soybean futures traders), processors (approximately 70 facilities), merchandisers, and exporters, are the primary users of the U.S. Standards for Soybean and utilize the official standards as a common trading language to market soybean. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f-1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 92 registrants who account for practically 95 percent of U.S. soybean exports, which for fiscal year (FY) 2004 totaled approximately 22,544,688 metric tons (MT). While most of the 92 registrants are large businesses, we assume that some may be small.

### Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements are approved under OMB Number 0580-0013. An insignificant change in burden will result from the soybean informational factor change. However, any burden measurement, as a result of this change, will remain within the previously approved information collection requirements. Accordingly, no further OMB clearance is required under the Paperwork Reduction Act.

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

### Background

The U.S. Standards for Grain serve as the starting point to define U.S. grain quality in the marketplace. The United States Standards for Soybeans (7 CFR 810.1601-810.1605) were established in 1940 under the authority of the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) and since establishment, minimum test weight per bushel has

been included as a mandatory grade determining factor. Test weight is the weight of a measured volume of grain (bulk density) and is expressed in pounds per Winchester bushel. In the current U.S. Standards for Soybeans (7 CFR 810.1604), the minimum allowable test weight per bushel is stated for each numerical grade. The grade table for soybeans (§ 810.1604) contains the minimum test weight limits for grades U.S. Nos. 1, 2, 3, and 4 as 56.0, 54.0, 52.0, and 49.0 respectively.

Over the past several years, GIPSA's Grain Inspection Advisory Committee has engaged in the discussion of test weight (TW), and in November 2003 passed the following resolution:

The Grain Inspection Advisory Committee supports GIPSA's efforts to assure the U.S. Standards for soybeans are meeting the needs of the U.S. soybean market. GIPSA should continue its efforts in this area by proposing to remove TW from the standards as a grade determining factor. Further GIPSA should propose changes to report soybean TW to the nearest tenth pound per bushel.

The specific issues for consideration in this proposed rule are: (1) Designation of test weight in soybeans as a non-grade determining informational factor; and (2) amending the definition to report test weight to the nearest tenth pound. While proposing to amend the standards, GIPSA will also clarify the regulations concerning the certification requirements for test weight in soybeans and canola.

### Designation of Minimum Test Weight Per Bushel

Since the establishment of the United States Standards for Soybeans in 1940, minimum TW has been included as a mandatory grade determining factor and has historically been perceived as a general indicator of overall soybean quality. Some perceive that a higher TW, or density, is indicative of a higher yield of oil and protein. Research indicates, however, that TW is not a good indicator of the oil and protein yield of processed soybeans (Ref. 1, 2). A University of Illinois study concludes that the correlation coefficients between TW and protein and oil content are as low as 0.077 and 0.016 respectively (Ref. 3). GIPSA's analysis of its own inspection data supports the researchers' findings. In recognition of protein and oil as the true determinants of value in soybean processing and the markets' need to identify these intrinsic properties, GIPSA incorporated tests for both soybean protein and oil as official criteria under the USGSA (54 FR 33702) in 1989.

As part of its evaluation of TW, GIPSA conducted a statistical review of

inspection data to determine the impact of removing TW as a grade determining factor on the certified grades. The review established that in over 400,000 soybean inspections, certified between January 1, 2001, and September 30, 2003, 99.5 percent of the official grades would have been unaffected by the removal of TW as a grading factor. In other words, the market should not anticipate grade inflation or deflation due to GIPSA's actions.

Although TW does not imply intrinsic quality, TW is of value as a measurement of stock and production, in stowage calculations, and in determining operational value. The USDA's Risk Management Agency and Farm Service Agency, as well as private auditors, use TW to verify stock and production. Soybean handlers use TW in stowage calculations to determine the appropriate container size for a specific quantity of soybeans. Some processors use TW to determine the operations value of soybean lots. For example, one processor explained that knowing the TW of a lot of soybeans allowed him to know the approximate amount of soybeans that would fit into a crusher and approximately how much flake would be produced.

Based on its findings, GIPSA proposes that the minimum TW per bushel be changed from a grade determining factor to a non-grade determining informational factor in the official U.S. Standards for Soybeans. Even though an informational factor, GIPSA will require the measurement and reporting of TW for each official soybean grade inspection. GIPSA's evaluation indicates that not all buyers of soybeans are interested in the TW information; consequently, GIPSA will also propose regulatory language to allow for an optional exemption in the certification reporting requirements.

#### Reporting and Certification of Minimum Test Weight Per Bushel

GIPSA proposes to revise § 810.102(d) of the United States Standards for Grain to report TW in soybeans to the nearest tenth of a pound. Presently, TW in soybeans is certified in whole and half pounds with fractions of a half pound disregarded. This change will bring the reporting requirements for TW into line with the reporting requirements for other factors in the Official Standards

for Soybeans, such as foreign material and moisture content.

#### Inspection Plan Tolerances

To reflect the proposed change of TW from a grade determining factor to a non-grade determining informational factor, GIPSA proposes to revise the tables pertaining to soybean grade limits in § 800.86 of the regulations. Shiplots, unit trains, and lash barge lots are inspected in accordance to a statistically based inspection plan (55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. GIPSA's proposal to change TW from a grade determining factor to an informational factor necessitates removing soybean TW breakpoints from the Grade Limits and Breakpoints for Soybeans table and replacing them in the Breakpoints for Soybean Special Grades and Factors table.

#### Certification

As GIPSA proposes changes to the soybean standards for TW, it allows GIPSA to clarify the TW certification reporting requirements for both soybeans and canola in § 800.162(c). With regard to soybeans, GIPSA proposes to clarify the reporting requirements for test weight as a non-grade determining factor and the optional exemption for TW determination. The exemption will allow the applicant for inspection to request that TW not be determined, and therefore not reported. With regard to canola, GIPSA proposes to clarify that TW in canola is only determined and reported upon request of an applicant.

#### Proposed GIPSA Action

GIPSA proposes to revise § 810.1604, Grades and grade requirements for soybeans. It is proposed that minimum TW per bushel be eliminated from the grade chart as a mandatory grade determining factor, but be retained in the standards as a non-grade determining informational factor.

GIPSA proposes to revise § 810.102, Definition of other terms, by revising subparagraph (d), TW per bushel. It is proposed that TW in soybeans be reported to the nearest tenth of a pound per bushel.

GIPSA also proposes to revise § 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots,

paragraph (c)(2) by reassigning TW from table 17 to table 18.

Finally, GIPSA proposes to incorporate clarification for the TW certification reporting requirements for both soybeans and canola in § 800.162(a) and § 800.162(c).

Comments, including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner.

#### References

- (1) Hill, L.D., "Changes in the Grain Standards Act," Grain Grades and Standards, 113-184.
- (2) West, V.J., "How Good Are Soybean Grades?," Illinois Farm Economics, No. 192, Extension Service in Agriculture and Home Economics, College of Agriculture, University of Illinois, May 1951, p. 1166.
- (3) Hill, L.D., "Improving Grades and Standards for Soybeans," p. 829.

#### List of Subjects

##### 7 CFR Part 800

Administrative practice and procedure, Grain.

##### 7 CFR Part 810

Export, Grain.

For reasons set out in the preamble, 7 CFR parts 800 and 810 are proposed to be amended as follows:

#### PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

**Authority:** Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. In § 800.86(c)(2), tables 17 and 18 are revised to read as follows:

#### § 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

TABLE 17.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SOYBEANS

Grade	Maximum limits of—									
	Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of other colors (percent)	
	Heat-damaged (percent)		Total (percent)							
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1 .....	0.2	0.2	2.0	0.8	1.0	0.2	10.0	1.6	1.0	0.7
U.S. No. 2 .....	0.5	0.3	3.0	0.9	2.0	0.3	20.0	2.2	2.0	1.0
U.S. No. 3 <sup>1</sup> .....	1.0	0.5	5.0	1.2	3.0	0.4	30.0	2.5	5.0	1.6
U.S. No. 4 <sup>2</sup> .....	3.0	0.9	8.0	1.5	5.0	0.5	40.0	2.7	10.0	2.3

<sup>1</sup> Soybeans which are purple mottles or stained shall be graded not higher than U.S. No. 3.

<sup>2</sup> Soybeans which are materially weathered shall be graded not higher than U.S. No. 4.

TABLE 18.—BREAKPOINTS FOR SOYBEAN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky .....	5 or more per 1,000 grams .....	2
Infested .....	Same as in § 810.107 .....	0
Soybeans of other colors .....	Not more than 10.0% .....	2.3
Moisture .....	As specified by contract or load order grade .....	0.3
Test Weight .....	As specified by contract or load order .....	-0.4

\* \* \* \* \*

3. In § 800.162, paragraph (a) is revised and paragraph (c) is added to read as follows:

**§ 800.162 Certification of grade; special requirements.**

(a) *General.* Except as provided in paragraph (c) of this section, each official certificate for grade shall show:

(1) The grade and factor information required by the Official U.S. Standards for Grain;

(2) The test weight of the grain, if applicable;

(3) The moisture content of the grain;

(4) The results for each official factor for which a determination was made;

(5) The results for each official factor that determined the grade when the grain is graded other than U.S. No. 1;

(6) Any other factor information considered necessary to describe the grain; and

(7) Any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

\* \* \* \* \*

(c) *Test weight for canola and soybeans.* Official canola inspection certificates shall show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel only upon request by the applicant. Official soybean inspection certificates shall show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel unless the applicant requests that test weight not be determined. Upon request, soybean test weight results will not be determined and/or reported on the official certificate.

\* \* \* \* \*

**PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN**

4. The authority citation for part 810 is revised to read as follows:

**Authority:** Pub. L. 94-582, 90 Stat. 2067 as amended (7 U.S.C. 71 *et seq.*).

5. In § 810.102, paragraph (d) is revised to read as follows:

**§ 810.102 Definition of other terms.**

\* \* \* \* \*

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound for corn, rye, soybeans, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

\* \* \* \* \*

6. Section 810.1604 is revised to read as follows:

**§ 810.1604 Grades and grade requirements for soybeans.**

Grading factors	Grades U.S. Nos.			
	1	2	3	4
	Maximum percent limits of:			
Damaged kernels:				
Heat (part of total) .....	0.2	0.5	1.0	3.0
Total .....	2.0	3.0	5.0	8.0
Foreign material .....	1.0	2.0	3.0	5.0
Splits .....	10.0	20.0	30.0	40.0

Grading factors	Grades U.S. Nos.			
	1	2	3	4
Soybeans of other colors <sup>1</sup> .....	1.0	2.0	5.0	10.0
Maximum count limits of:				
Other material:				
Animal filth .....	9	9	9	9
Caster beans .....	1	1	1	1
Crotalaria seeds .....	2	2	2	2
Glass .....	0	0	0	0
Stones <sup>2</sup> .....	3	3	3	3
Unknown foreign substance .....	3	3	3	3
Total <sup>3</sup> .....	10	10	10	10

U.S. Sample grade is Soybeans that:

- (a) Does not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
- (b) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
- (c) Are heating or of distinctly low quality.

<sup>1</sup> Disregard for Mixed soybeans.

<sup>2</sup> In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.

<sup>3</sup> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown substances. The weight of stones is not applicable for total other material.

**James E. Link,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 06-2967 Filed 3-28-06; 8:45 am]

BILLING CODE 3410-EN-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. NM340; Notice No. 25-06-01-SC]

**Special Conditions: Airbus Model A380-800 Airplane, Design Roll Maneuver**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Airbus A380-800 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. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for design roll maneuvers. 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 Airbus Model A380-800 airplane.

**DATES:** Comments must be received on or before May 15, 2006.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM340, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM340. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Holly Thorson, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-1357; facsimile (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting 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 proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice 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 the proposed special conditions in light of the comments we receive.

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

**Background**

Airbus applied for FAA certification/validation of the provisionally designated Model A3XX-100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial

application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR-100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE-A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380-800 had been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In a subsequent letter (AI/L 810.0223/98 issue 3, dated January 27, 2006), Airbus stated that its target date for type certification is October 2, 2006. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of December 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The FAA has reviewed the part 25 certification basis for the Model A380-800 airplane, and no changes are required based on the new application date.

The Model A380-800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

#### Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380-800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380-800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380-800 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 pursuant to section 611 of Public Law 93-574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of

the type certification basis in accordance with 14 CFR 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 the provisions of 14 CFR 21.101.

#### Discussion of Novel or Unusual Design Features

The A380 is equipped with an electronic flight control system. In this system, there is not a direct mechanical link between the airplane flight control surface and the pilot's cockpit control device as there is on more conventional airplanes. Instead, a flight control computer commands the airplane flight control surfaces, based on input received from the cockpit control device. The pilot input is modified by the flight control computer—based on the current airplane flight parameters before the command is given to the flight control surface. Therefore, there is not a direct mechanical relationship between the pilot command and the command given to the control surface.

The formulation of airplane design load conditions in 14 CFR part 25 is based on the assumption that the airplane is equipped with a control system in which there is a direct mechanical linkage between the pilot's cockpit control and the control surface. Thus for roll maneuvers, the regulation specifies a displacement for the aileron itself, and does not envision any modification of the pilot's control input. Since such a system will affect the airplane flight loads and thus the structural strength of the airplane, special conditions appropriate for this type of control system are needed.

In particular, the proposed special condition would adjust the design roll maneuver requirements specified in § 25.349(a), so that they take into account the effect of the A380's electronic flight control computer on the control surface deflection. The proposed special condition would require that the roll maneuver be performed by deflection of the cockpit roll control, as opposed to specifying a deflection of the aileron itself as the current regulation does. The deflection of the control surface would then be determined from the cockpit input, based on the computer's flight control laws and the current airplane flight parameters.

#### Applicability

As discussed above, these special conditions are applicable to the Airbus

A380-800 airplane. Should Airbus 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 under the provisions of § 21.101.

#### Conclusion

This action affects only certain novel or unusual design features of the Airbus A380-800 airplane. It is not a rule of general applicability.

#### 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 Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for the Airbus A380-800 airplane.

In lieu of compliance with 14 CFR 25.349(a), the following special condition is proposed:

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

a. Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

b. At  $V_A$ , sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained, until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

c. At  $V_C$ , the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph b. above.

d. At  $V_D$ , the cockpit roll control must be moved suddenly and maintained so

as to achieve a roll rate not less than one third of that obtained in paragraph b. above.

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

**Ali Bahrami,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

[FR Doc. E6-4509 Filed 3-28-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM342; Notice No. 25-06-03-SC]

#### Special Conditions: Airbus Model A380-800 Airplane, Extendable Length Escape System

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Airbus A380-800 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. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding extendable length escape slides. 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 Airbus Model A380-800 airplane.

**DATES:** Comments must be received on or before May 15, 2006.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM342, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM342. Comments may be inspected in

the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Holly Thorson, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-1357; facsimile (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting 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 proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice 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 the proposed special conditions in light of the comments we receive.

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

##### Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX-100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the

reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR-100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE-A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380-800 had been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In a subsequent letter (AI/L 810.0223/98 issue 3, dated January 27, 2006), Airbus stated that its target date for type certification is October 2, 2006. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of December 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The FAA has reviewed the part 25 certification basis for the Model A380-800 airplane, and no changes are required based on the new application date.

The Model A380-800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

##### Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380-800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380-800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380-800 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 pursuant to section 611 of Public Law 93-574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in

accordance with 14 CFR 21.17(a)(2), Amendment 21-69, effective September 16, 1991.

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 the provisions of 14 CFR 21.101.

#### Discussion of Novel or Unusual Design Features

The Airbus Model A380-800 airplane has 16 emergency exits and 16 escape slides to be used for evacuation of passengers in case of emergency. Of these, 14 are fixed-length escape slides, and two (at door M1) are extendable length escape slides. The extendable length escape slides have a 16-foot extension packed at the toe.

Typically, airplanes have fixed length escape slides. However, it was not possible to use fixed length escape slides for the A380 door M1 because of the extreme difference between normal sill height and high sill height associated with collapse of some of the landing gear in an emergency. Some combinations of landing gear collapse could cause the airplane to tip back on its tail.

On the door, there is an electronic sensor that evaluates the attitude of the airplane and determines whether the extension is needed. During normal operation, the extension remains packed at the toe end of the escape slide. When the extension is needed, the system sends a signal to a squib that allows the extension to be inflated during deployment. If the system detects that the slide extension has failed to deploy, a warning is activated that tells the flight attendants that the slide should not be used. The warning will also activate—if after initial deployment of the slide without the extension deploying—the attitude of the airplane changes to the extent that the extension should be deployed. The slide system design cannot accommodate deploying the extension after deployment of the main body of the slide.

The performance requirements for escape systems are contained in 14 CFR 25.810 and address several abnormal operating conditions as well as failure conditions and reliability. The requirements of § 25.810 remain applicable for the slide in the unextended mode, and for the most part, in the extended mode. The special conditions indicate where the requirements differ from the

requirements of § 25.810 for the slide in the extended mode.

The extension is intended only for use at high sill heights. A typical fixed-length slide operating at high sill height does not satisfy all of the performance requirements of § 25.810, but its variations in performance are understood and largely predictable. Certain performance criteria are valid regardless of sill height, whereas other aspects of performance can be expected to decline at higher sill heights. With an extendable slide, there is a step change in configuration and potentially a step change in performance.

Therefore, special conditions are needed to ensure acceptable performance in the extended mode. Section 25.810 specifies the basic performance requirements for escape slides including wind testing, repeatability testing, and testing at adverse sill heights. Section 25.1309(a) requires that systems perform under foreseeable operating conditions, such as extreme temperatures, and a demonstration that the system design is appropriate for its intended function. Standards for the equipment itself are contained in Technical Standard Order C69c and contribute to a satisfactory installation.

Existing 14 CFR part 25 regulations governing the certification of the A380 do not adequately address certification requirements of an extendable length escape slide. The FAA is proposing special conditions to ensure that an extendable length escape slide performs adequately in both the unextended and the extended configuration.

Technical Standard Order C69c addresses many detailed aspects of escape slide performance that are not specified in 14 CFR part 25 but are generally considered essential to assuring adequate escape slide performance. These special conditions supplement the requirements of 14 CFR part 25, for the slide in its extended mode. However, because of the novel nature of this design, the special conditions will require that the escape slide receive TSO authorization or satisfy an equivalent standard.

Wind tests are typically conducted only on fixed length slides at normal sill height. Since the regulations require that the 25 knot standard is met at the most critical wind angle, escape slides usually exceed 25 knots performance at other than the critical angle. The same is expected to be true of the slide in its extended mode, but some reduction in the required wind velocity is appropriate since the slide will be in an abnormal condition. Available data indicates that a value of 22 knots is

appropriate to cover the slide in its extended mode at normal sill height. This corresponds to roughly 75% of the wind energy required for the slide in its normal attitude and will ensure that the slide can function in its extended mode at least as well as a fixed length slide under similar abnormal conditions.

The special conditions also specify a rate for evacuation of passengers which is consistent with that of fixed length escape slides.

#### Applicability

As discussed above, these special conditions are applicable to the Airbus A380-800 airplane. Should Airbus 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 under the provisions of § 21.101.

#### Conclusion

This action affects only certain novel or unusual design features of the Airbus A380-800 airplane. It is not a rule of general applicability.

#### 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 Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380-800 airplane.

In addition to the provisions of 14 CFR part 25, the following special conditions apply:

1. The extendable escape slide must receive TSO C69c authorization or the equivalent.

2. In addition to the requirements of § 25.810(a)(1)(iii) for usability in conditions of landing gear collapse, the deployed escape slide in the extended mode must demonstrate an evacuation rate of 45 persons per minute per lane at the sill height corresponding to activation of the extension.

3. In lieu of the requirements of § 25.810(a)(1)(iv), the escape slide deployed in the extended mode must be capable of being used in 22 knot winds directed from the critical angle, with the airplane on all its landing gear.

4. Pitch sensor tolerances and accuracy must be taken into account when demonstrating compliance with

§ 25.1309(a) for the escape slide in both the extended and unextended modes.

5. Design of the "slide extension" warning must be such that the cabin crew is made aware of a non usable slide (*i.e.*, the main slide has deployed, and the door sill height is such that the extension should be deployed but cannot be deployed), even if this is due to the airplane attitude changing during the evacuation. The ability to provide such a warning must be available for ten minutes after the airplane is immobilized on the ground.

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

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-4511 Filed 3-28-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-24095; Directorate Identifier 2006-CE-21-AD]

RIN 2120-AA64

#### **Airworthiness Directives; DORNIER LUFTFAHRT GmbH Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all DORNIER LUFTFAHRT GmbH (DORNIER) Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes. This proposed AD would require you to repetitively inspect the wiring in the flight deck overhead panels (locations 5VE and 6VE) for chafing and damage and repair any chafed or damaged wires. Regardless of the results of each inspection, this proposed AD would require you to assure correct installation of the wiring in the flight deck overhead panels by reattaching or replacing the wire tie attachment holders and securing any loose wires to the wire tie attachment holders with plastic wire ties. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are proposing this AD to detect, correct, and prevent chafed or damaged wires in the

flight deck overhead panels, which could result in short-circuiting of related wiring. This condition could lead to electrical failure of affected systems and potential fire in the flight deck.

**DATES:** We must receive comments on this proposed AD by April 27, 2006.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Fax: (202) 493-2251.

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

For service information identified in this proposed AD, contact RUAG Services GmbH, P.O. Box 1253, D-82231 Wessling; telephone: (08153) 302506; fax: (08153) 304601.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2006-24095; Directorate Identifier 2006-CE-21-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 we receive concerning this proposed AD.

#### **Discussion**

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA that an unsafe condition may exist on all DORNIER Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes. The LBA reports that vibrations are causing the plastic wire tie attachment holder in the flight deck overhead panels to lose its adhesiveness and become detached.

When the wire tie attachment holder becomes detached, the wiring in the flight deck overhead panels is loose and may rub against the pins of the switches in the overhead panel causing chafing and damage to the wiring insulation.

This condition, if not corrected, could result in electrical failure of affected systems and potential fire in the flight deck.

#### **Relevant Service Information**

We have reviewed RUAG AOT Dornier 228, All Operators Telefax service information No. AOT-228-24-028, Date of Issue: November 9, 2005.

The service information specifies:

- Repetitively inspecting the wiring in the flight deck overhead panels (locations 5VE and 6VE) for chafing and damage;

- Repairing any chafed or damaged wire(s); and

- Assuring correct installation of the wiring in the flight deck overhead panels by reattaching or replacing the wire tie attachment holders and securing any loose wires to the wire tie attachment holders with plastic wire ties.

#### **Foreign Airworthiness Authority Information**

The LBA classified the service information as mandatory and issued German AD Number D-2005-438, Effective Date: December 14, 2005, to ensure the continued airworthiness of these airplanes in Germany.

These DORNIER Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

**FAA’s Determination and Requirements of the Proposed AD**

We are proposing this AD because we have examined the LBA’s findings, evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design that are certificated for operation in the United States.

This proposed AD would require you to repetitively inspect the wiring in the

flight deck overhead panels (locations 5VE and 6VE) for chafing and damage and repair any chafed or damaged wires. Regardless of the results of each inspection, this proposed AD would require you to assure correct installation of the wiring in the flight deck overhead panels by reattaching or replacing the wire tie attachment holders and securing any loose wires to the wire tie attachment holders with plastic wire ties.

**Costs of Compliance**

*How many airplanes would this proposed AD impact? We estimate that this proposed AD would affect 14 airplanes in the U.S. registry.*

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed inspection:*

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work hours × \$80 per hour = \$160 .....	Not applicable .....	\$160	\$160 × 14 = \$2,240

We estimate the following costs to do any necessary repairs that would be

required based on the results of the proposed inspection. We have no way of

determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
3 work hours × \$80 per hour = \$240 .....	\$100	\$240 + \$100 = \$340

**Note:** The cure time for the adhesive that is recommended in the service information is 48 hours at 25 degrees Celsius (77 degrees Fahrenheit) or 2 hours at 65 degrees Celsius (149 degrees Fahrenheit).

**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.

**Examining the AD Docket**

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at <http://dms.dot.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**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 FAA amends § 39.13 by adding the following new AD:

**DORNIER LUFTFAHRT GmbH:** Docket No. FAA-2006-24095; Directorate Identifier 2006-CE-21-AD.

**Comment Due Date**

(a) We must receive comments on this airworthiness directive (AD) action by April 27, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD affects Models 228-100, 228-101, 228-200, 228-201, 228-202, and 228-212 airplanes, all serial numbers, that are certificated in any category.

**Unsafe Condition**

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect, correct, and prevent chafed or damaged wires in the flight deck overhead panels, which could result in short-circuiting of related wiring. This condition could lead to electrical failure of affected systems and potential fire in the flight deck.

**Compliance**

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the wiring in the flight deck overhead panels (locations 5VE and 6VE) for chafing and damage.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 12 months.	Follow RUAG AOT Dornier 228, All Operators Telefax service information No. AOT-228-24-028, Date of Issue: November 9, 2005.
(2) If you find any chafed or damaged wires during any inspection required in paragraph (e)(1) of this AD, repair the affected wire(s) and assure correct installation of the wiring in the flight deck overhead panels by reattaching or replacing the wire tie attachment holders and securing any loose wires to the wire tie attachment holders with plastic wire ties.	Before further flight after each inspection required in paragraph (e)(1) of this AD. Continue to repetitively inspect as specified in paragraph (e)(1) of this AD.	Follow RUAG AOT Dornier 228, All Operators Telefax service information No. AOT-228-24-028, Date of Issue: November 9, 2005.
(3) If you do not find any chafed or damaged wires during any inspection required in paragraph (e)(1) of this AD, assure correct installation of the wiring in the flight deck overhead panels by reattaching or replacing the wire tie attachment holders and securing any loose wires to the wire tie attachment holders with plastic wire ties.	Before further flight after each inspection required in paragraph (e)(1) of this AD. Continue to repetitively inspect as specified in paragraph (e)(1) of this AD.	Follow RUAG AOT Dornier 228, All Operators Telefax service information No. AOT-228-24-028, Date of Issue: November 9, 2005.

#### Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

#### Related Information

(g) German AD Number D-2005-438, Effective Date: December 14, 2005, also addresses the subject of this AD. To get copies of the documents referenced in this AD, contact RUAG Services GmbH, P.O. Box 1253, D-82231 Wessling; telephone: (08153) 302506; fax: (08153) 304601. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2006-24095; Directorate Identifier 2006-CE-21-AD.

Issued in Kansas City, Missouri, on March 22, 2006.

#### William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-4556 Filed 3-28-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 161 and 165

[CGD01-04-133]

RIN 1625-AA11

#### Regulated Navigation Area; Buzzards Bay, MA; Navigable Waterways With the First Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** Subsequent to an Advance Notice of Proposed Rulemaking published in the October 26, 2004, edition of the **Federal Register**, the Coast Guard proposes to revise the regulations governing the Regulated Navigation Area (RNA) in First Coast Guard District waters to require that certain tank vessels and tug/barge combinations transiting Buzzards Bay, Massachusetts be accompanied by escort tugs and federally licensed pilots. The Coast Guard also proposes to establish a Vessel Movement Reporting System (VMRS) for Buzzards Bay and to require mandatory participation in the VMRS by vessels subject to the Vessel Bridge-to-Bridge VHF Radiotelephone regulations, including tug/barge combinations. Participation in the Buzzards Bay VMRS could be accomplished either automatically through a vessel's Automatic Identification System (AIS) or via VHF radiotelephone. The purpose of this proposed rulemaking is to reduce the likelihood of an incident that might result in a collision, allision, or grounding and the aftermath discharge

or release of oil or hazardous material into the navigable waters of the United States.

**DATES:** Comments and related material must reach the Coast Guard on or before June 27, 2006.

**ADDRESSES:** The Commanding Officer, U.S. Coast Guard Sector Southeastern New England maintains the public docket for this notice. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m. Monday through Friday, except federal holidays. You may submit comments and related material by:

(1) Mail or delivery to Commanding Officer, U.S. Coast Guard Sector Southeastern New England, 20 Risho Avenue, East Providence, RI 02914-1208.

(2) Fax to 401-435-2399.

(3) Electronically via e-mail at [EleBlanc@msoprov.uscg.mil](mailto:EleBlanc@msoprov.uscg.mil).

(4) The entire public docket may be viewed at the Coast Guard Sector Southeastern New England Web site at <http://www.uscg.mil/d1/units/msoprov/>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, Providence, RI, 401-435-2351.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to submit comments and related material pertaining specifically to the navigation safety and waterways management aspects of the proposed rule. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-04-133), and give the reason for each comment. You

may submit your comments and material by mail, hand delivery, fax, or electronic means to the project officer at the addresses or phone numbers listed under **FOR FURTHER INFORMATION CONTACT**, but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached U.S. Coast Guard Sector Southeastern New England, 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 Meetings

We do not intend to hold additional public meetings on this proposed rule. As part of the Advance Notice of Proposed Rulemaking announced in the October 26, 2004, edition of the **Federal Register**, (Vol. 69, No. 206, pages 62427 to 62430) two public meetings were held to obtain direct feedback from the public on November 16, 2004, at the New Bedford Whaling Museum, and on November 17, 2004, at the Massachusetts Maritime Academy. Comments received at those meetings, as well as written comments, are summarized below. You may submit a request for an additional public meeting to the address contained in **ADDRESSES** above, explaining why an additional public meeting would be beneficial. If we determine that an additional public meeting is necessary, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

This NPRM is subsequent to an Advance Notice of Proposed Rulemaking (ANPRM) published on October 26, 2004 in Volume 69, No. 206, pages 62427 to 62430 of the **Federal Register**, under the heading "Navigation and Waterways Management Improvements, Buzzards Bay, MA". Congress designated Buzzards Bay as an Estuary of National Significance in 1985, one of only five estuaries in the U.S. so designated. The Bay has some of Massachusetts' most productive shellfish beds. It interacts with three very different marine systems, the Atlantic Ocean to the south, Vineyard Sound to the east, and Cape Cod Bay to the north. In 2002, there were nearly 10,000 commercial vessel transits and over 1200 tank barge transits in Buzzards Bay. An estimated 80% of

those tank barges were single hull vessels. Note that the term "single hull" and other terms used in this proposed rule have the same meaning as those found in Title 33, Code of Federal Regulations (CFR), § 165.100(b).

Since 1969 there have been several incidents of tank barge groundings with oil spills in Buzzards Bay. These include the grounding of the tank barge Florida in 1969 with a spill of approximately 175,000 gallons of No. 2 fuel oil; the grounding of the tank barge Bouchard in 1977 with a spill of approximately 81,000 gallons of No. 2 fuel oil; the grounding of the tank barge ST-85 in 1986 with a spill of approximately 119,000 gallons of gasoline; the grounding of the tug Marie J. Turecamo and its asphalt-laden barge in 1999; the grounding of the tug Mary Turecamo and its barge Florida in 1999 carrying 4.7 million gallons of No. 6 fuel oil; and the grounding of the barge B-120 in April 2003 with a spill of No. 6 oil estimated to be of approximately 22,000 to 98,000 gallons.

Groundings, allisions, or collisions of tank barges or other laden vessels could lead to a discharge or release of oil or other hazardous materials, as demonstrated by the incidents noted above, with potentially adverse impacts to people, property, the coastal and maritime environment, and the local economy. The purpose of these proposed regulations for navigation safety and waterways management improvements in Buzzards Bay is to reduce the likelihood of another incident that might result in the discharge or release of oil or hazardous material, or other serious harm, on the navigable waters of the United States.

After a previous oil spill from the tank barge North Cape off of Point Judith, Rhode Island, in 1996, the Coast Guard chartered a Regional Risk Assessment Team (RRAT), comprised of government, commercial, and environmental entities, to examine navigation safety issues within New England waters. The RRAT recommended, and the Coast Guard implemented, a RNA that imposed certain requirements on single-hulled tank barges transiting New England waters, including Buzzards Bay. Regulations governing the RNA in First Coast Guard District waters are contained in 33 CFR § 165.100.

Subsequent to an oil spill in Buzzards Bay in April, 2003, noted above, the Coast Guard sponsored a Ports and Waterways Safety Assessment (PAWSA), which was conducted by a cross-section of key Buzzards Bay waterways users and stakeholders, resulting in numerous suggestions for

improving navigation safety in the Bay. The safety assessment process is a disciplined approach to identify major waterway safety hazards, estimate risk levels, evaluate potential mitigation measures, and set the stage for implementation of selected measures to reduce risk. The process involves convening a select group of waterway users/stakeholders and conducting a two-day structured workshop to meet these objectives. The assessment process represents a significant part of joint public-private sector planning for mitigating risk in waterways. When applied consistently and uniformly in a number of waterways, the process is expected to provide a basis for making best value decisions for risk mitigation investments, both on the local and national level. For further information on PAWSA visit: [http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA\\_home.htm](http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA_home.htm).

The PAWSA report suggested, in part, that the risk for oil or hazardous material discharge in Buzzards Bay is relatively high, and that one method of reducing that risk, among many that were suggested, might be to "establish requirements for escort tugs." (The PAWSA report is available in docket CGD01-04-133. See **ADDRESSES** above on procedures to access the docket.) The PAWSA also recommended that Recommended Routes be established to help assist vessel traffic and provide safer transit routes for commercial vessels.

Additionally, in a letter from several members of the U.S. Congressional delegation from Massachusetts, the Coast Guard was asked to consider measures similar to those recommended in the PAWSA, specifically: assist tugs, Recommended Routes, and an Automatic Identification System (AIS). This letter, along with the Coast Guard's response, is available in the docket. Automatic Identification System (AIS) is a data transmission system for ship-to-ship, ship-to-shore, and shore-to-ship communication adopted by the International Maritime Organization (IMO). AIS shipboard equipment consists of a transceiver that continually transmits and receives vessel navigational information (position, course, speed, etc.) over VHF-FM maritime frequencies. AIS units operating in proximity to each other automatically create a virtual network. Shore stations can also join these virtual networks, and they may receive shipboard AIS signals, perform network and frequency management and send additional broadcast or individual informational messages to AIS equipped vessels.

As of December 31, 2004, AIS is required on most commercial vessels either navigating abroad or within a Vessel Traffic Service area. (See 33 CFR § 164.46.) Under a separate regulatory initiative, the Coast Guard sought public comments on the notion of expanding AIS requirements beyond the regulations of 33 CFR § 164.46. Expansion of AIS requirements may apply to Buzzards Bay and/or tug/barge combinations. This initiative is still in progress. See **Federal Register** Vol. 68, No. 128 of July 1, 2003, pages 39369 to 39371 and docket [USCG 2003–14787] at <http://dms.dot.gov/>.

The National Oceanic and Atmospheric Administration (NOAA), at the request of the Coast Guard, has already overlaid Recommended Routes on navigational charts for Rhode Island Sound, Narragansett Bay, and Buzzards Bay. These recommended Routes are currently included on all new editions of charts 13205, 13218, 13221, and 13230. To allow maximum operating flexibility to meet differing conditions and situations, at this time the Coast Guard is not proposing to make the recommended vessel routes depicted on these charts mandatory.

Currently, an escort tug is required in Buzzards Bay only for single hull tank barges, unless the single hull tank barge is being towed by a primary towing vessel with twin-screw propulsion and with a separate system for power to each screw. Consequently, the vast majority of tug and barge combinations transiting Buzzards Bay (of which most barges are single hull) employ tugs with twin screws and twin engines, but with no additional positive control.

On October 26, 2004, the Coast Guard published an Advance Notice of Proposed Rule Making (ANPRM) that sought public comments regarding the necessity and type, if any, of additional navigation safety measures that might be implemented within Buzzards Bay (See **Federal Register**, Vol. 69, No. 206, pages 62427 to 62430). Approximately forty written comments were received. Additionally, two public meetings were held to obtain direct feedback from the public on November 16, 2004, at the New Bedford Whaling Museum, and on November 17, 2004, at the Massachusetts Maritime Academy. There were 76 and 47 speakers offering comments at each meeting, respectively. Written comments, and a roster of speakers from each meeting, are available for viewing in the docket at <http://www.uscg.mil/d1/units/msoprov/>.

Comments (both oral and written) generally fell within the following categories:

*Root Cause:* Comments noted that the root cause of most maritime incidents in Buzzards Bay could be attributed to human error rather than equipment failure, hazardous weather, or other factors.

The Coast Guard agrees that the root cause of many maritime incidents and casualties, including the B–120 oil spill in Buzzards Bay, may be attributed to human factors. Consequently, in this rulemaking the Coast Guard proposes certain measures such as mandatory pilotage by a federally licensed pilot, escort tugs, and a vessel monitoring system, to reduce the likelihood that human factors may cause an accident, and to mitigate the adverse impact of any casualties that may occur.

*Pilotage:* Comments noted that the proficiency standards for federally licensed pilots were inadequate and in need of revision, and that federally licensed pilots were generally not as experienced in tug/barge navigation as were the captains of the tugs themselves.

Currently, to obtain a Federal pilot's license (or endorsement) to operate a vessel in Buzzards Bay, a person must pass a comprehensive examination, which includes, but is not limited to, performing a chart sketch of the area, demonstrating proficiency in the use of navigational aids, and maneuvering and handling ships in high winds, tides, and currents. Further, a person must complete a specific number of round trips and demonstrate specialized knowledge of the waters for which the license (or endorsement) is issued.

The Coast Guard considers these proficiency standards to be sufficient for monitoring and guiding the movements of tug/barge combinations through Buzzards Bay.

*Crewing:* Comments noted that the crewing requirements for tugs towing barges were inadequate, and recommend increased crewing requirements.

The Coast Guard concurs with the view that current crewing requirements may be insufficient for the navigational demands associated with transiting Buzzards Bay, and so has proposed in this rule to require a federally licensed pilot in addition to the crew to advise the master and assist in the navigation of the vessel.

*Cost/Availability of Escort Tug:* Comments expressed concern regarding the cost of escort tugs and pilotage, and also the availability, or lack of, escort tugs within Buzzards Bay of sufficient capability to provide escort services.

Based on interviews with representatives from various components of the maritime industry,

the Coast Guard considers escort tug capacity to be sufficient to meet the projected demand for escort tugs. In our Regulatory Evaluation that accompanies this rulemaking and is available in the docket (CGD01–04–133), the Coast Guard projects that the demand for escort tugs will decrease over time as progressively fewer transits of Buzzards Bay are made with single hull tank barges. Also, in our Regulatory Evaluation we have documented anticipated costs associated with escort tugs and federally licensed pilots and found those costs, when compared to the benefits realized by the avoidance of vessel casualties and oil spills, to be reasonable.

*Definition of Escort Tug:* Comments noted that “escort tug” should be well-defined in any regulation, and also provided suggestions on what that definition should include.

“Escort tug” as used in this proposed rule has the same meaning as the description of escort tug already found in 33 CFR 165.100(d), *i.e.*, the escort tug must be of “sufficient capability to promptly push or tow the tank barge away from danger or grounding in the event of—

- (A) A propulsion failure;
- (B) A parted tow line;
- (C) A loss of tow;
- (D) A fire;
- (E) Grounding;
- (F) A loss of steering; or
- (G) Any other casualty that affects the navigation or seaworthiness of either vessel.”

*Aids to Navigation:* Comments expressed a need for improved aids to navigation within Buzzards Bay, including a wave height indicator at the Buzzards Bay tower, a weather buoy at the east end of the Cape Cod Canal, and auxiliary navigation channels adjacent to the Buzzards Bay recommended vessel route.

The Coast Guard has reviewed the aids to navigation system in Buzzards Bay and has re-positioned several buoys, and has plans to install some new lighted aids and ranges, particularly in Cleveland Ledge and Hog Island channels, in 2006 or 2007, pending funding. Additionally, the National Oceanic and Atmospheric Administration (NOAA) operates a wave height indicator at the Buzzards Bay tower.

*Increased Navigation Risks Due to Presence of Escort Tugs:* Comments noted that escort tugs themselves could increase danger due to additional vessels in the constrained channels of Buzzards Bay and the Cape Cod Canal.

Voluntary use of escort tugs in Buzzards Bay and the Cape Cod Canal

has long been practiced with no adverse impacts on the ability of other vessels to navigate safely. The amount of good water in lower Buzzards Bay is considered sufficient for vessels to navigate safely, even with the addition of escort tugs. Additionally, the U.S. Army Corps of Engineers' authority for (and control of) the Cape Cod Canal encompasses in their entirety the constrained waterways of Cleveland Ledge Channel, Hog Island Channel, and the canal itself (the canal land cut). On those few occasions (primarily in winter when home heating oil deliveries increase) where several tugs with tows and escort tug may converge, or approach converging, near one of these constrained waterways, the Corps would direct vessel traffic to minimize risk of collision. Lastly, this proposed rule includes establishment of a Vessel Movement Reporting System (VMRS) in Buzzards Bay that would provide for monitoring of all tug and tank vessel traffic in the Bay, and would provide an opportunity for the Coast Guard to issue advisories should traffic be congested to a point that adversely affects navigation safety. Consequently, because most tug and tank vessel operators that routinely navigate in Buzzards Bay are already familiar with the Corps' requirements and practices for transiting the Cape Cod Canal, and because VMRS would add an additional means to monitor vessel traffic, it is felt that tug and tank vessel operators should experience little or no difficulty accommodating an escort tug in accordance with this proposed rule.

*Increased Danger to Pilots:* Comments suggested there may be increased danger to a pilot required to embark either an escort tug or primary tug (*i.e.*, the tug towing the tank vessel) from a pilot boat, where no special accommodations to embark a pilot at sea are normally available on a tug.

The Coast Guard recognizes the danger inherent in pilots embarking escort tugs or primary tug while underway within Buzzards Bay. In this proposed rule we permit the federally licensed pilot to monitor the navigation of the tug/barge combination from the escort tug, assuming the federally licensed pilot would embark the escort tug pierside before departing for its escort duty. This practice has been in effect since at least March 10, 2004, when Bouchard Transportation Company agreed to accommodate federally licensed pilots in this manner.

*Recommendation for Draft*

*Restrictions:* Comments noted that an effective way to improve navigation safety and reduce the likelihood of a spill would be to reduce the allowable

draft of laden barges transiting Buzzards Bay.

Regulations in 33 CFR 157.455 currently address under-keel clearance requirements (*i.e.*, "draft restrictions") for single-hull tank vessels. Those regulations require, among other things, that owners/operators of single-hull tank barges provide written guidance to towing vessel masters regarding under-keel clearance, and include factors to consider such as controlling depth of water, deepest navigation draft, weather, and other environmental conditions. While under-keel clearance restrictions may expand the margin of error afforded tank vessels being towed through Buzzards Bay, the Bay remains a confined waterway and history has demonstrated that such regulations alone are insufficient to attain the level of navigation safety required for Buzzards Bay. For example, despite being subject to (and complying with) these under-keel clearance regulations, tank vessels continue to ground and spill oil in Buzzards Bay, notably the barge Florida in 1999 and the barge B-120 in 2003. Additionally, more severe under-keel clearance requirements would most likely reduce the amount of oil carried each transit and thus may have the unintended consequence of actually increasing the risk of vessel casualties and oil spills as more vessel traffic would be required to carry a similar amount of oil to meet demand for heating and electrical generation. Lastly, should draft restrictions result in additional voyages with smaller cargoes of oil, the cost of the delivery would rise and would almost assuredly be passed to consumers. Consequently, the Coast Guard considers under-keel regulations in addition to those already found in 33 CFR 157.455 to be unnecessary as they would not add significant value in terms of preventing an incident.

*Miscellaneous:* Some comments noted that current regulations were insufficient to prevent accidents and spills in Buzzards Bay; others commented that current regulations were sufficient, if only they were properly enforced. Other comments suggested that, as an alternative to escort tugs, rescue tugs be strategically stationed in Buzzards Bay, ready to respond at a moment's notice. Although the comments did not specifically recommend the nature or specific mission of a "rescue tug," generally a rescue tug is considered to be a dedicated tugboat equipped to respond and provide assistance to distressed vessels, primarily by towing. Rescue tugs typically have capabilities for pumping, fire fighting, and pollution response. Normally a rescue tug is

continuously manned and "on station", which means it is either at its berth or assigned location (e.g., a designated anchorage) ready for immediate dispatch, or underway presumably involved in a rescue. Evaluations of the potential benefit of rescue tugs in other waterways of the country (specifically, Puget Sound) have determined them to be a high-cost, low-benefit alternative as they have little or no capability to prevent collisions, allisions, or groundings, which is a primary goal of this proposed rule. (See "Regulatory Assessment, Use of Tugs to Protect Against Oil Spills, in the Puget Sound Area", Report Number 9522-022, November 15, 1999, available in the docket.)

The Coast Guard examined both our current regulations and our enforcement policies and determined that additional regulations, as proposed in this rule, were required to achieve our goal of preventing vessel casualties and spills within Buzzards Bay.

**Discussion of Proposed Rule**

The proposed amendments to the current First Coast Guard District RNA would require that all single-hull tank barges carrying 5000 or more barrels of oil or other hazardous material and being towed through Buzzards Bay, meet the following requirements:

1. Be accompanied by an escort tug between the west entrance to Buzzards Bay and the east end of the Cape Cod Canal.
2. Be accompanied by a federally licensed pilot, who may remain on the escort tug vessel, to monitor the navigation of the tug/barge, and to advise the master of the tug/barge accordingly.

Additionally, this rule proposes to establish a Vessel Movement Reporting System (VMRS) (33 CFR part 161, subpart B) within Buzzards Bay to monitor the movements of all vessels subject to Vessel Bridge-to-Bridge VHF Radiotelephone regulations (33 CFR part 26), either by AIS, and/or via voice reporting via VHF radiotelephone. Daily operations of the VMRS would be monitored and managed by the U.S. Army Corps of Engineers at its Cape Cod Canal control center on behalf of the Coast Guard. (The Corps has indicated its willingness and ability to perform this function.) The Coast Guard would retain authority to enforce this proposed rule and other regulations to ensure navigation safety. Should the VMRS proposed in this rule ultimately be established, the Coast Guard and the U.S. Army Corps of Engineers will enter into a Memorandum of Understanding to delineate the functions and

responsibilities of each agency in operating the VMRS. This MOU will be a public record and would be available in the final docket CGD01-04-133.

This proposed rule is needed for navigation safety reasons to protect people, property, waterways users, the environment, and the economy from the adverse affects of a spill of oil or other hazardous material. Vessels subject to this proposed rule would be required to have an escort tug and federally licensed pilot, and would also be required to participate in a Vessel Movement Reporting System.

This regulation is proposed under the authority of 33 U.S.C. 1321, in addition to the authority contained in 33 CFR 1.05-1(g)(4). Vessels or persons violating this section would be subject to the civil or criminal penalties set forth in 33 U.S.C. 1232.

### Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review", 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule is not significant under Executive Order 12866 and has not been reviewed by OMB.

During the period of analysis, 2006-2014, this rule is expected to cost approximately \$3.9 million net present value (7 percent discount rate). A copy of the regulatory evaluation, which further describes the expected costs and benefits of this proposed rule, is posted in the docket and is available to the public at <http://www.uscg.mil/d1/units/msoprov/>.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of tugs and/or single hull barges carrying 5000 or more barrels of

oil or other hazardous materials and intending to transit or anchor in Buzzards Bay, Massachusetts.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule requires escort tugs and federally licensed pilots only for single hull barges, which are being phased out of operation in accordance with the Oil Pollution Act of 1990 (OPA), specifically 46 U.S.C. 3703a, and will be prohibited from operating effective January 1, 2015. Additionally, the VMRS proposed in the rule making applies only to vessels subject to the bridge-to-bridge radiotelephone regulations in § 26.03 (and therefore already equipped with VHF radios), so no additional costs will be incurred to participate in the VMRS. Those vessels with a type-approved, properly installed, operational AIS would be relieved from the voice reporting requirements as proposed in this rule making.

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

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, Providence, RI, 401-435-2351. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The reports required by this rule are considered to be operational communications, transitory in nature, and, do not constitute a collection of information under the Paperwork Reduction Act.

### 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. The U.S. Supreme Court, in the cases of *United States v. Locke*, 529 U.S. 89 (2000) and *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978) has ruled that certain categories of regulation issued pursuant to the Ports and Waterways Safety Act of 1972, as amended, are reserved exclusively to the Coast Guard, and that state regulation in these areas is preempted.

On August 4, 2004, the Commonwealth of Massachusetts enacted Chapter 251 of the Acts of 2004, an Act Relative to Oil Spill Prevention and Response in Buzzard's Bay and other Harbors and Bays of the Commonwealth. It is the view of the Coast Guard that several provisions of the Massachusetts Act touch categories of regulation reserved to the Federal Government and are preempted per the rulings in *Locke* and *Ray*. The regulations proposed in this notice of proposed rule would likewise touch categories of regulation reserved to the Federal Government, thus becoming further indicia of preemption.

For example, section 11 of the Massachusetts Act purports to impose escort tug requirements on vessels operating in Buzzards Bay. The issue of escort tugs is already addressed in the regulations governing the First District RNA at 33 CFR 165.100 and further addressed in this notice. Section 11 also purports to make the recommended route depicted on the NOAA charts described earlier in this notice mandatory. The Coast Guard has decided not to make this route mandatory at this time. Section 17 of the Massachusetts Act purports to impose a state pilotage requirement on certain vessels engaged in the coastwise trade. It is the view of the Coast Guard that this provision is void by operation of law pursuant to 46 U.S.C. 8501. This notice of proposed rulemaking proposes pilotage by federally licensed pilots for single hull tank barges operating in Buzzards Bay.

Because of the preemption issues described above, the Coast Guard will conduct a Federalism analysis pursuant to E.O. 13132 for any rules promulgated as a result of this notice. Sections 4 and 6 of E.O. 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected state and local governments and their representative national organizations

the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Although it is the view of the Coast Guard that certain sections of the Massachusetts law are preempted for reasons independent of any potential rulemaking action here, in order to comply with the spirit of E.O. 13132, the Coast Guard has already begun consultations with the state government of the Commonwealth of Massachusetts. In addition, at the public meetings held in November 2004, the towns of Bourne, Marion, and Westport, Massachusetts also requested consultations, as did 10 other communities in the vicinity of Buzzards Bay through letters to the docket. Such consultations will continue throughout the rulemaking process and we invite comments from those who have expressed a desire to be consulted. We also invite other affected state and local governments and their representative national organizations to indicate their desire for participation and consultation in the rulemaking process by submitting comments to this notice.

#### **Unfunded Mandates Reform Act**

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

#### **Taking of Private Property**

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

#### **Civil Justice Reform**

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

eliminate ambiguity, and reduce burden.

#### **Protection of Children**

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

#### **Indian Tribal Governments**

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

#### **Energy Effects**

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

#### **Technical Standards**

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

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

#### **Environment**

As required under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), a preliminary “Environmental Analysis Checklist” was completed for this NPRM. The Checklist is available in the docket where indicated under **ADDRESSES**. The level of NEPA documentation for the Rule is recommended in the Checklist. Comments on this section will be considered before we make the final decision on whether or not the rule should be categorically excluded from further environmental review.

#### **List of Subjects**

##### *33 CFR Part 161*

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

##### *33 CFR Part 165*

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 161 and 165 as follows:

#### **PART 161—VESSEL TRAFFIC MANAGEMENT**

1. The authority citation for part 161 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 161.12, amend Table 161.12(c) by adding an entry for Buzzards Bay in alphabetical order to read as follows:

##### **§ 161.12 Vessel operating requirements.**

\* \* \* \* \*

TABLE 161.12(C).—VTS AND VMRS CENTERS, CALL SIGNS/MMSI, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Center MMSI <sup>1</sup>	Designated frequency (Channel designation)— purpose <sup>2</sup>	Monitoring area <sup>3 4</sup>
*	*	*
Buzzards Bay. Traffic MMSI# .....	156.600 MHz (Ch. 12) .....	The waters east and north of a line drawn from the southern tangent of Sakonnet Point, Rhode Island, in approximate position latitude 41°-27.2'N, longitude 70°-11.7'W, to the Buzzards Bay Entrance Light in approximate position latitude 41°-23.5'N, longitude 71°-02.0'W, and then to the southwestern tangent of Cuttyhunk Island, Massachusetts, at approximate position latitude 41°-24.6'N, longitude 70°-57.0'W, and including all of the Cape Cod Canal to its eastern entrance, except that the area of New Bedford Harbor within the confines (north of) the hurricane barrier, and the passages through the Elizabeth Islands, would not be considered to be "Buzzards Bay".
*	*	*

<sup>1</sup> Maritime Mobile Service Identifier (MMSI) is a unique nine-digit number assigned that identifies ship stations, ship earth stations, coast stations, coast earth stations, and group calls for use by a digital selective calling (DSC) radio, an INMARSAT ship earth station or AIS. AIS requirements are set forth in §§ 161.21 and 164.46 of this subchapter apply in those areas denoted with a MMSI number.

<sup>2</sup> In the event of a communication failure, difficulties or other safety factors, the Center may direct or permit a user to monitor and report on any other designated monitoring frequency or the bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13) or 156.375 MHz (Ch. 67), to the extent that doing so provides a level of safety beyond that provided by other means. The bridge-to-bridge navigational frequency, 156.650 MHz (Ch. 13), is used in certain monitoring areas where the level of reporting does not warrant a designated frequency.

<sup>3</sup> All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

<sup>4</sup> Some monitoring areas extend beyond navigable waters. Although not required, users are strongly encouraged to maintain a listening watch on the designated monitoring frequency in these areas. Otherwise, they are required to maintain watch as stated in 47 CFR 80.148.

**PART 165—WATERWAYS SAFETY;  
REGULATED NAVIGATION AREAS  
AND LIMITED ACCESS AREAS**

3. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

4. Amend § 165.100 by revising paragraphs (d)(1)(i) introductory text and (d)(1)(i)(G) and adding paragraph (d)(5) to read as follows:

**§ 165.100 Regulated Navigation Area:  
Navigable waters within the First Coast  
Guard District.**

\* \* \* \* \*

(d) *Regulations*—(1) *Positive control for barges.* (i) Except as provided in paragraph (d)(1)(iii) and paragraph (d)(5) of this section, each single-hull tank barge, unless being towed by a primary towing vessel with twin-screw propulsion and with a separate system for power to each screw, must be accompanied by an escort tug of sufficient capability to promptly push or tow the tank barge away from danger of grounding or collision in the event of—

\* \* \* \* \*

(G) Any other time a vessel may be operating in a Hazardous Vessel Operating Condition as defined in § 161.2 of this chapter.

\* \* \* \* \*

(5) *Special Buzzards Bay regulations.*  
(i) For the purposes of this section,

“Buzzards Bay” is the body of water east and north of a line drawn from the southern tangent of Sakonnet Point, Rhode Island, in approximate position latitude 41°–27.2' North, longitude 70°–11.7' West, to the Buzzards Bay Entrance Light in approximate position latitude 41°–23.5' North, longitude 71°–02.0' West, and then to the southwestern tangent of Cuttyhunk Island, Massachusetts, at approximate position latitude 41°–24.6' North, longitude 70°–57.0' West, and including all of the Cape Cod Canal to its eastern entrance, except that the area of New Bedford harbor within the confines (north of) the hurricane barrier, and the passages through the Elizabeth Islands, would not be considered to be “Buzzards Bay”.

(ii) *Additional positive control for barges.* Except as provided in paragraph (d)(1)(iii) of this section, each single-hull tank barge transiting Buzzards Bay and carrying 5000 or more barrels of oil or other hazardous material must, in addition to its primary tug, be accompanied by an escort tug of sufficient capability to promptly push or tow the tank barge away from danger of grounding or collision in the event of—

- (A) A propulsion failure;
- (B) A parted tow line;
- (C) A loss of tow;
- (D) A fire;
- (E) Grounding;
- (F) A loss of steering; or

(G) Any other time a vessel may be operating in a Hazardous Vessel Operating Condition as defined in § 161.2 of this Chapter.

(iii) *Federal pilotage.* Each single-hull tank barge transiting Buzzards Bay must be accompanied by a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard (“federally licensed pilot”). The federally licensed pilot may embark upon the primary tug, or may embark upon the escort tug. In either instance, the federally licensed pilot will monitor the navigation of the tug and tank barge and advise the master of the primary tug if/when the tank barge may be standing into danger.

(iv) *Vessel Movement Reporting System.* Effective (date), all vessels subject to the Vessel Bridge-to-Bridge Radiotelephone regulations, § 26.03, including tug/barge combinations, shall participate in the Buzzards Bay Vessel Movement Reporting System (VMRS). The purpose, intent, and applicability of VMRS Buzzards Bay are found in § 161.15 and § 161.16 of this chapter. The Buzzards Bay VMRS Vessel Movement Center (“Center”) is designated as the U.S. Army Corps of Engineers Cape Cod Canal Control, which can be reach via marine radio at VHF 156.600 MHz (VHF CH–12). All vessels will make reports via VHF CH–12, except those vessels with a properly operating Automatic Information System (AIS) that is broadcasting all required information in accordance with § 161.18 of this chapter need not do so. The International Maritime Organization (IMO) Standard Ship Reporting System, found in § 161.18,

will be used for the Buzzards Bay VMRS.

(A) A VMRS Buzzards Bay user shall:  
 (1) Not enter or get underway in the area without prior approval of the VMRS Center;

(2) Not enter VMRS Buzzards Bay if a Hazardous Vessel Operating Condition or circumstance per § 161.2 exists;

(3) If towing astern, do so with as short a hawser as safety and good seamanship permits;

(4) Not meet, cross, or overtake any other VMRS User in the area without prior approval of the VMRS center;

(5) Before meeting, crossing, or overtaking any other VMRS User in the area, communicate on the designated vessel bridge-to-bridge radiotelephone frequency, intended navigation movements, and any other information necessary in order to make safe passing arrangements. This requirement does not relieve a vessel of any duty prescribed by the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules.

(6) Make reports and provide other specific information required, and follow other VMRS participation guidelines, as contained in the Buzzards Bay VMRS Operating Manual and/or the Local Notice to Mariners, which will be published and available to the public at least 30 days prior to the effective implementation date of the Buzzards Bay VMRS.

\* \* \* \* \*

Dated: March 21, 2006.

**David P. Pecoske,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 06-3014 Filed 3-24-06; 4:14 pm]

BILLING CODE 4910-15-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2006-0281; FRL-8051-1]

**Revisions to the California State Implementation Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the existing Priority Reserve rule, Rule 1309.1, into the South Coast Air Quality Management District (District) portion of the California State Implementation Plan (SIP). Rule 1309.1 was approved into the SIP in 1996 to allow the District to provide emission reduction credits (ERCs) for specific priority sources, such as sources using innovative technology, conducting research operations or providing essential public services. The revision to Rule 1309.1 that we are proposing to approve merely adds specific types of electrical generating facilities to the list of sources entitled to use ERCs from the Priority Reserve. We are proposing to approve the revision to Rule 1309.1 and taking comment on the revision that adds specific types of electrical generating facilities to the sources eligible for ERCs from the Priority Reserve. We plan to follow this proposal with a final action.

**DATES:** Any comments must arrive by April 28, 2006.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0281, by one of the following methods: Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

1. E-mail: [rios.gerardo@epa.gov](mailto:rios.gerardo@epa.gov).
2. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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

your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, EPA Region IX, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

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

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**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date it was adopted by District and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD .....	1309.1	Priority Reserve .....	05/03/02	12/23/02

On December 30, 2002, the rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule?*

We approved the Priority Reserve rule, Rule 1309.1, into the SIP on December 4, 1996. 61 FR 64291 (December 4, 1996). The District adopted revisions to the SIP-approved version of Rule 1309.1 on April 20, 2001, November 9, 2001 and May 5, 2002 and CARB submitted those revisions to us on October 30, 2001, January 22, 2002 and December 23, 2002, respectively. While we can act on only the most recently submitted version of the rule, we have reviewed materials provided with previous submittals.

*C. What is the purpose of the submitted rule revision?*

The only purpose of revising Rule 1309.1 is to include specific types of electrical generating facilities (EGFs) to become eligible to use ERCs in accordance with the previously approved Priority Reserve rule. The revision adds section 1309.1(1)(4) to the list of priority sources allowed to use ERCs established by the District.

The revision to Rule 1309.1 requires qualified EGFs to meet the specific requirements prior to receiving access to ERCs held by the District as priority reserve offsets. Such sources must: Apply BARCT control to all sources at the facility for the pollutants for which ERC's are obtained from the priority reserve within 3 years of permit issuance; pay a non-refundable mitigation fee to the District for each pound of carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), and particulate matter (PM<sub>10</sub>) obtained from the priority reserve; submit a complete application during the specified time period; conduct a due diligence effort to secure available ERCs from other sources; operate the source at full capacity within 3 years; and enter into a long-term contract with the state of California to sell at least 50% of the power generated by the use of Priority Reserve credits. EPA's technical support document (TSD) has more information about this rule.

## II. EPA's Evaluation and Action

*A. How is EPA evaluating the rule?*

Our analysis of Rule 1309.1 in 1996 occurred during approval of a package of rules submitted to meet the CAA air quality planning requirements for nonattainment NSR as set out in part D

of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165. 61 FR 64291 (December 4, 1996) The revised version of Rule 1309.1 being evaluated in this action is a minor change that does not change fundamental approvability of Rule 1309.1. The revisions to Rule 1309.1 merely establish an additional source category, EGFs, as eligible to receive ERCs from the priority reserve provided certain criteria are met. The revisions also add some administrative provisions that EGFs must meet to obtain ERCs from the Districts Priority Reserve.

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

We believe that the revision to Rule 1309.1 to allow EGFs to qualify for ERCs from the Priority Reserve is consistent with the Act, EPA regulations and EPA policy.

*C. EPA Recommendations To Further Improve the Rule*

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the District modifies Rule 1309.1.

*D. Public Comment and Final Action*

Because EPA believes revision to the existing Priority Reserve rule, Rule 1309.1, fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal, specifically the proposal to allow the District to add EGFs to the priority sources for receiving ERCs from the Priority Reserve, for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate revised Rule 1309.1 into the federally enforceable SIP.

## III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies

that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: March 17, 2006.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
[FR Doc. 06-3028 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 90**

[WT Docket No. 06-49; FCC 06-24]

**Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) undertakes a reexamination of the Commission's regulations governing the licensing and use of frequencies in the 904-909.75 and 919.75-928 MHz portions of the 902-928 MHz band that are used for the provision of multilateration Location and Monitoring Service (M-LMS band). The reexamination of the M-LMS band is being conducted in order to consider whether M-LMS can be afforded a greater opportunity to provide services while ensuring continued access for other licensed and unlicensed uses that share this band. The Commission believes it is in the public interest to evaluate whether it is possible to revise the rules in a way that would promote more efficient and effective use of this spectrum.

**DATES:** Comments due on or before May 30, 2006. Reply comments are due on or before June 30, 2006.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 06-49, by any of the following methods:

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

- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- E-mail: [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

- Hand Delivery/Courier: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- Accessible Formats: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) for filing comments either by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs> including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Michael Rowan, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6315, Washington, DC 20554. Phone: (202) 418-1883.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 06-49 released March 7, 2006. The complete text of the *NPRM* is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-09A257, Washington, DC 20554. The *NPRM* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-09B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number, FCC 06-24. The *NPRM* is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS): [http://hraunfoss.fcc.gov/edocs\\_public/SilverStream/Pages/edocs.html](http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html).

*Initial Paperwork Reduction Act of 1995 Analysis:* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002,

Public Law 107-198, see 44 U.S.C. 3506(c)(4).

**I. Introduction**

1. This rulemaking proceeding considers possible measures that could introduce greater flexibility for licensees in the multilateration Location and Monitoring Service (M-LMS) for the purpose of enabling greater responsiveness to changing market conditions, and more efficient and effective use of the M-LMS Band. M-LMS licensees provide service in the 904-909.75 and 919.75-928 MHz portions of the 902-928 MHz band. Multilateration systems track and locate objects over a wide geographic area (e.g., tracking a bus fleet) by measuring the difference in time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located. This 14 megahertz of spectrum has been shared by a variety of part 15 devices and, since 1995, has been licensed for specified uses by M-LMS defined in part 90 of the Commission's rules. While the *NPRM* focuses on part 15 and M-LMS operations in the 904-909.75 and 919.75-928 MHz frequency ranges, the Commission acknowledges the many other important uses of these frequencies, including amateur use, and invites such interested parties to comment on the issues raised in the *NPRM*.

2. Although the proceeding originates partly in response to a 2002 Petition for Rulemaking, the Commission initiates this proceeding to evaluate the ability of the part 90 M-LMS rules to afford licensed service providers greater flexibility to respond to changing market conditions. On April 10, 2002, the Wireless Telecommunications Bureau (Bureau) issued a public notice seeking comment on the Petition under RM No. 10403. The Bureau subsequently extended the comment cycle on the Petition. Given the length of time that has passed since the Bureau issued its Public Notice, the Commission is terminating RM No. 10403 and invites interested parties to submit new and/or updated comments and reply comments in WT Docket No. 06-49.

3. While the Commission considers the advantages and disadvantages of rule changes that could facilitate higher-valued licensed uses of the spectrum in the M-LMS Band, the Commission is mindful that this band is shared by a mixture of licensed services (both federal and non-federal), amateur radio operators, and numerous unlicensed devices authorized under part 15 of the

Commission's rules. The Commission makes clear at the outset of this proceeding that the Commission does not seek to alter the rules that govern the relationship among the various federal and non-federal licensed services in this band. Moreover, the Commission recognizes the importance of maintaining the existing accessibility of the band for unlicensed devices, which has led to a proliferation of important public, private, and consumer applications, and for amateur operators. Under 47 CFR 90.361 of the Commission's rules, the Commission has established a "safe harbor" rule providing that part 15 and amateur operations that comply with certain technical parameters will not be considered to be causing harmful interference to M-LMS systems. The safe harbor rule defines technical parameters involving antenna location, gain, and height as well as transmitter power. Given the public interest benefits associated with these uses, the Commission tentatively concludes to retain this safe harbor.

4. The Commission's goal in the proceeding is to consider whether greater opportunity can be afforded M-LMS licensees to provide services while ensuring continued access for other licensed and unlicensed uses that share this band. This spectrum has desirable propagation characteristics for mobile and other applications offered by both licensed service providers and certain unlicensed users. The Commission therefore believes it is in the public interest to evaluate whether it is possible to revise the rules in a way that would promote more efficient and effective use of this spectrum. The Commission also views this as an opportunity to consider the spectrum access needs of multiple users and to evaluate any proposals that may improve access and use of the band by both M-LMS and part 15 operations.

## II. Background

5. In 1995, the Commission issued a *Report and Order*, 60 FR 15248-02, March 23, 1995, which established the Location and Monitoring Service (LMS) as a new radio service to be licensed in the 902-928 MHz spectrum band. This band is shared by a variety of users under a hierarchy of spectrum usage rights. Specifically, this band is allocated on a primary basis to federal radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment. Federal fixed and mobile services are allocated on a secondary basis to federal radiolocation systems and ISM equipment. LMS licensees are allocated on a secondary basis to federal

users and ISM devices and may not cause interference to and must tolerate interference from these users and devices. Amateur radio operations are allocated on a secondary basis to LMS. Finally, unlicensed devices are authorized under part 15 to use the 902-928 MHz band, but such devices are not afforded interference protection rights and may not cause harmful interference to LMS licensees, amateur operations, or other licensed systems. These unlicensed part 15 devices, which number in the millions, use this spectrum for a variety of purposes, including remote meter reading, utility load management, cordless telephones, wireless local area networks, and other diverse applications.

6. To facilitate sharing of the band by multiple licensed services as well as unlicensed devices, the Commission placed certain limitations on M-LMS operations, including restrictions on the types of services that could be provided, in part to make for less-intensive location-based applications. The Commission anticipated that these M-LMS service restrictions would spur the provision of new vehicle and other location services while also limiting the potential disruption to existing part 15 operations and other users from unrestricted M-LMS system operations. Specifically, the part 90 rules circumscribe the scope of permissible M-LMS service offerings such that licensees may only use non-voice radio techniques to determine the location and status of mobile radio units and may transmit status and instructional messages, either voice or non-voice, only so long as they relate to the location or monitoring functions of the system. In addition, M-LMS licensees are prohibited from using real-time interconnection with the public switched telephone network (PSTN), except for emergency communications sent to or received from a system dispatch point or public safety answering points. The Commission reasoned that these restrictions would ensure that LMS systems are utilized primarily for location service and not as a general messaging or interconnected voice or data service.

7. Apart from restrictions designed to limit the scope and intensity of M-LMS services, and thereby maintain the coexistence of the many varied users of the band, other part 90 provisions also seek to facilitate spectrum sharing by regulating potential interference between M-LMS operations and part 15 devices. Thus, while unlicensed devices must generally avoid harmful interference to licensed services, the Commission adopted a safe harbor rule

for unlicensed devices and amateur operations operating in the band. This rule provides that amateur and part 15 operations conforming to specified technical standards are insulated from claims that such devices cause harmful interference to M-LMS systems. Also, to facilitate coexistence of licensed and unlicensed uses, and in recognition of extensive existing part 15 use of the band, the Commission adopted a rule, 47 CFR 90.361, which requires M-LMS licensees to demonstrate through field tests that their systems do not cause unacceptable levels of interference to part 15 devices. The Commission, however, did not adopt a uniform testing method given the varied technologies, and anticipated that M-LMS licensees and unlicensed users of part 15 devices would collaborate to establish consensus on testing guidelines.

8. Although M-LMS services have not developed as anticipated in the M-LMS Band, users of unlicensed part 15 devices continue to find the 902-928 MHz environment well suited for important applications that benefit consumers. Since adoption of the LMS rules, there has been continued growth in the use of unlicensed devices in this spectrum. Consumers and businesses benefit greatly from their ability to use unlicensed devices in the 902-928 MHz band, and such devices continue to operate effectively despite the assignment of higher-priority spectrum usage rights to M-LMS and other licensed uses of the band.

## III. Discussion

9. Since 1995, the Commission has sought to provide for, and encourage, the coexistence of both licensed and unlicensed uses in the M-LMS Band. While the unlicensed use of this band has successfully provided consumers with numerous spectrum-based products, the licensed plan for this band has not similarly led to the development of new services. In the *NPRM*, the Commission seeks comment on whether the Commission can take steps to provide M-LMS licensees additional flexibility to respond to changing market conditions while protecting other licensed applications and federal applications and minimizing interference to unlicensed users.

10. The Commission seeks comment on the feasibility of modifying the part 90 LMS rules in ways that would provide greater flexibility to M-LMS licensees while maintaining continued access for unlicensed devices and other users in this band. The current M-LMS rules place significant restrictions on M-LMS operations that were designed

in large measure to limit interference among the variety of users within this band. The Commission inquires whether these restrictions might unnecessarily restrict the use of the band and impede more efficient use of spectrum. The Commission notes that these restrictions were in place at the time the licensees decided to acquire the M-LMS spectrum at auction. A consequence of these restrictions, however, has been that M-LMS licensees may be unnecessarily prevented from providing other services, even as technical advances and market demands change what may be feasible within the interference parameters established for this band. The Commission seeks comment on whether the existing restrictions may be impeding the development of more services of greater value to the public, as well as comment on the feasibility of changing certain rules to provide licensees additional flexibility.

#### *A. Restrictions on Permissible Communications and Interconnection*

11. The Commission seeks comment on whether restricting M-LMS use to vehicle location and other location-based services continues to serve the public interest. Recent actions by the Commission have advanced the broader development of location-based services in other bands. Shortly after adoption of the M-LMS rules, the Commission adopted its initial E-911 rules, requiring all commercial mobile radio service (CMRS) carriers to meet standards for identifying the location of emergency callers and passing this information to the relevant public safety entities. In addition, there are several non-LMS service providers that offer location service to consumers and businesses. Under these circumstances, the Commission seeks comment on whether there is any public interest benefit associated with continuing to limit M-LMS service flexibility to promote vehicle and other location-based services in the nation's transportation infrastructure? Alternatively, should the Commission maintain these restrictions to preserve M-LMS as essentially a location-based service, but provide licensees with some additional flexibility to offer their location-based services by, e.g., eliminating spectrum aggregation constraints, testing conditions, or limits on non-vehicular offerings?

12. Commenters should consider whether it is possible to replace some or all of the M-LMS service restrictions with more flexible rules that would allow licensees to provide additional services, provided they would not cause

any significant increase in interference to other users in the band. Specifically, the Commission seeks comment on the extent to which stricter power limits or other technical restrictions, could limit the potential for interference between more flexible licensed use and existing unlicensed use of the M-LMS Band. Should M-LMS licensees be permitted to provide any type of service, whether or not it is location-based, provided they comply with such limits? Would such an approach be more effective than existing use restrictions in promoting flexibility for M-LMS licensees, protecting other licensed and federal users, and minimizing interference to part 15 users? In addition, should the Commission eliminate limits on real time interconnection limiting such applications to emergency communications only?

13. Assuming it is technically feasible to afford flexibility without major consequences to part 15 devices, are there reasons why the Commission should not extend to M-LMS additional flexibility to meet market demands? To what extent do existing restrictions impair (or not impair) the ability of M-LMS licensees to provide services that may be desired by the public? The Commission directs commenters to consider whether the interference environment in the M-LMS Band has changed since adoption of the M-LMS rules in 1995 and whether there are new technologies (such as innovations in frequency agility) that obviate the need for the M-LMS service or interconnection restrictions.

14. Alternatively, if commenters believe that it would not be in the public interest to completely eliminate the restrictions on the types of services that may be offered, the Commission asks them to comment on the degree to which the Commission could or should relax the restrictions on permissible communications and type of interconnection. Should the Commission permit any type of location or location-based service? Or, should the Commission continue to limit M-LMS to vehicle location as a primary service and non-vehicular location only on an ancillary basis? Should the Commission afford M-LMS licensees the additional flexibility to provide new non-location based services, but not permit unrestricted real time interconnection? Could limits on real time interconnection be modified, if not eliminated, such that licensees could provide additional PSTN-oriented services while not increasing the potential for interference to users of part 15 devices in the band? If parties believe that any alteration of the status quo

would create an unacceptable increase in the risk of interference, they should support their position with specific analysis demonstrating the degree to which other alternatives (presented here or by other parties) would impact their operations.

15. The Commission notes that the part 2 Table of Allocations for the 902-928 MHz Band does not contain a general non-federal allocation, but a footnote to the table specifically references LMS. Note US218 to the U.S. Table of Allocations provides that the 902-928 MHz band is available for LMS provided that LMS systems do not cause harmful interference to federal stations, and that they tolerate interference from ISM devices and federal stations in the band. In this context, the Commission seeks comment on whether affording M-LMS licensees additional flexibility would require it to clarify or redefine the range of permissible communications by M-LMS licensees in the Table of Allocations. The Commission stresses that if this is required, the Commission does not propose to change the fundamental relationship between ISM and federal users, on the one hand, and M-LMS licensees on the other. Rather, the Commission only considers modification of Commission rules to promote additional flexibility for M-LMS while maintaining its allocation on a secondary basis to ISM devices and federal operations.

16. The Commission also seeks comment regarding whether provisions of other rule parts should govern the provision of M-LMS services. For example, if the Commission decides to provide licensees the flexibility to provide a variety of services (e.g., fixed, mobile, etc.) under more than one regulatory status (i.e., common carrier, non-common carrier, private internal), should a M-LMS licensee then be subject to other regulatory requirements? The Commission seeks comment on any provisions in existing, part 90 M-LMS rules that may require specific recognition or adjustment to comport with the potential definition of an expanded scope of permitted M-LMS services. In addition, the Commission seeks comment on part 1 and any other wireless radio services rules that should be modified or updated to reflect a service-neutral approach to permissible M-LMS communications.

#### *B. Power and Other Technical Limitations*

17. The Commission seeks comment on whether, by adopting stricter power limits for M-LMS licensees, the Commission can better serve the goal of

providing these licensees more flexibility while minimizing interference to these unlicensed devices. The Commission also solicits comment on any other technical approaches that could be used independently, or with a reduced M-LMS power limit, including possible technical approaches that are similar to the Commission's frequency hopping and digital modulation rules set forth in 47 CFR 15.247.

18. The Commission believes any proposal to provide more flexibility to M-LMS licensees in terms of permissible services requires consideration of other rule revisions that may be necessary to minimize the potential for interference to part 15 devices in the M-LMS Band. The Commission seeks comment on whether revising existing power limits applicable to M-LMS licensees would achieve this goal. One factor in the potential for interference from M-LMS to part 15 operations results from the difference in power between the potentially competing uses. Currently, M-LMS licensees are permitted a maximum of 30 Watts effective radiated power (ERP), which equals 49.2 Watts equivalent isotropically radiated power (EIRP). Part 15 devices (utilizing spread-spectrum or wide digital emissions) may operate with parameters that result in a maximum permitted EIRP of 4 Watts in the 902-928 MHz band. Because existing M-LMS licensees may operate with 12.3 times as much power as part 15 devices, more flexible M-LMS operations could result in a significant increase in interference to nearby part 15 devices. Thus, reducing the maximum permitted M-LMS transmitter power across some minimum bandwidth could reduce the potential area around an individual M-LMS station where interference to part 15 devices is most likely.

19. The Commission therefore seeks comment on the consequences of reducing the maximum permitted transmitter power in the three primary M-LMS band segments: 904.000-909.750 MHz, 919.750-921.750 MHz, and 921.750-927.250 MHz. The Commission seeks specific comment on whether reducing the maximum permitted transmitter power of M-LMS in these segments, from the current limit of 30 Watts ERP to a new lower limit of 6.1 Watts ERP (which equals 10 Watts EIRP), would result in an environment where M-LMS stations operate on far more comparable power levels with part 15 devices, provided an appropriate minimum bandwidth or methodology is specified on how power would be measured for new flexible M-LMS operations. In this regard, the

Commission notes the possibility of imposing a power spectral density requirement. In commenting on reduced M-LMS power limits, commenters should raise and discuss minimum bandwidths or other appropriate methodologies underlying the degree of power differentials. Under such a rule change, M-LMS licensees would be allowed to operate their stations with only 2.5 times as much power as part 15 device users, rather than the 12.3 times now permitted under Commission rules. The Commission seeks comment on whether this would sufficiently minimize the potential for interference to part 15 users, if the M-LMS service-based restrictions were modified or eliminated. Would reducing the maximum power from 30 Watts ERP to 6.1 Watts ERP be sufficient by itself to mitigate the potential for interference? Is such a limitation more or less restrictive than the status quo, especially since M-LMS licensees may be permitted under current rules to provide packet-based, voice and other services that bypass the PSTN? If a commenting party believes that lowering the transmitter power limit to 6.1 Watts ERP is insufficient to address potential interference, or too great for M-LMS licensees to provide economically viable services to the public, it should specifically state what an appropriate power limit would be.

20. Each of the three M-LMS block licenses has an associated 0.25 megahertz channel (located in the 927.25 to 928 MHz portion of the band), which is subject to a current 300 Watts ERP (which equals 492 Watts EIRP) power limit per transmitter. The Commission seeks comment on reducing these limits to a maximum 10 Watts ERP power limit for each channel to mitigate the potential for unreasonable interference to existing part 15 devices. The Commission also seeks comment on whether more flexible M-LMS operations could be provided at a power level higher than 10 Watts ERP on these channels without impairing the viability of unlicensed operations. In addition, the Commission seeks comment on whether the current field strength limit of 47 dBuV/m at the M-LMS licensee's EA boundary would continue to be reasonable, if the Commission adopts changes to the technical rules as contemplated herein.

21. The Commission also seeks comment on other technical approaches that could be used independently or with these reduced M-LMS power limits. For example, the Commission seeks comment on whether to adopt technical rules for M-LMS operations that are similar to the frequency hopping and digital modulation rules

set forth in section 15.247 of the Commission's regulations. Section 15.247 generally permits a higher than normal transmitting power for part 15 devices that use frequency hopping or digital emissions which cause the transmitted energy to be spread out across the band rather than concentrated in a relatively narrow bandwidth. Spread spectrum emissions mitigate potential interference, particularly to narrowband operations in the same spectrum, because not only do they cause less interference by inducing less energy into the receivers of such operations, but also because spread spectrum receivers have a much greater immunity to interfering signals. Commenters should address whether the Commission could allow the greater M-LMS service flexibility if stations were required to use spread spectrum or broadband digital emissions.

22. If the Commission were to adopt rules similar to those set forth in section 15.247 and apply them to M-LMS, these licensees (with their 10.9 dB greater power than part 15 operations) could possibly use the same equipment (only with more power), be interoperable with part 15-based services, and have common subscribers. The Commission seeks comment on the advantages or disadvantages of permitting M-LMS stations to provide the same types of services using the same technologies that part 15 devices already are permitted to use in the M-LMS Band. To the extent that a subset or all of the spectrum in this band could be used to accelerate the deployment of broadband through new technical provisions, the Commission seeks comment generally whether the public interest would be served.

23. Under such an adaptation to the M-LMS rules, the Commission seeks comment on whether the spectral power density limit of section 15.247, adjusted for the power levels for M-LMS stations (*i.e.*, a 10 Watt EIRP limit for M-LMS stations, which represents a 4 dB increase over the existing 4 Watt EIRP limit for part 15 devices), would satisfactorily eliminate unreasonable interference to part 15 operations. Specifically, would a spectral power density limit of 12 dBm per 3 kHz be technically reasonable and appropriate? The Commission also seeks comment on a minimum bandwidth for digital modulation (including direct sequence spread spectrum). Would the 6 dB emission bandwidth of 500 kHz used in section 15.247 also be technically reasonable and appropriate for M-LMS and permit part 15 devices to continue to use the M-LMS Band without unreasonable interference? Section

15.247 of the Commission's rules, 47 CFR 15.247, also includes provisions regarding occupancy time, and separate power limits based on the number of hopping channels used for frequency hopping spread spectrum devices. If the Commission were to adopt spread spectrum rules for M-LMS that are similar to those in section 15.247 should M-LMS licensees be permitted to use frequency hopping spread spectrum modulation? If so, what power and other technical limits would be appropriate and enable users of part 15 devices to continue to operate in the band without unreasonable interference?

24. In order to ensure that existing part 15 devices do not suffer any significant increase in interference from a flexible M-LMS service, the Commission asks parties to come forward with any other technical solutions that they would support in this context. The Commission notes ideas such as limiting the number of simultaneous M-LMS spread spectrum users to reduce the potential for interference to unlicensed users of the M-LMS Band, as well as limiting the duty cycle of non-spread spectrum emissions to reduce the potential for interference to unlicensed users. Would such limits protect primary band users (e.g., ISM devices and federal radiolocation service) while limiting adverse effects on users/services allocated on a secondary basis? The Commission invites comment on these and any other proposals. Besides power-related limits and measures, the Commission will consider any other proposals that would provide more flexibility to M-LMS than current rules. The Commission also seeks comment on whether allowing these stations to operate using such technologies at higher power levels than permitted generally under section 15.247 would raise any questions related to human exposure to electromagnetic radiation and whether they therefore should be subject to sections 2.1091 and 2.1093 of the Commission rules, 47 CFR 2.1091, 2.1093.

#### C. M-LMS Spectrum Aggregation Limit

25. The Commission's part 90 M-LMS rules provide that within an EA, a licensee may aggregate M-LMS spectrum in Blocks B (2.25 megahertz) and C (5.75 megahertz), for a total of 8 megahertz, but spectrum Block A (6 megahertz) may not be aggregated with these other blocks. The Commission notes that when adopting this aggregation restriction in 1995, the Commission reasoned that the restriction would foster multiple M-LMS location service providers and

technologies. Today, numerous types of location services exist using a variety of bands and technologies. The Commission therefore seeks comment on whether the original rationale for restricting aggregation of M-LMS licenses remains valid in the current communications marketplace.

26. The Commission also seeks comment on whether eliminating the M-LMS aggregation limits has the potential to reduce interference to other users of the M-LMS Band and facilitate the provision of new M-LMS services. For example, would eliminating this restriction increase the potential for unlicensed use and reduce the potential for interference by giving M-LMS licensees greater flexibility to choose among a greater pool of available frequencies? Or would permitting one provider to control all 14 megahertz of M-LMS spectrum in an EA make access for unlicensed devices in the 902-928 MHz band more difficult? For example, would it be more difficult for unlicensed users to frequency-hop, especially if PSTN interconnection by the M-LMS licensee were permitted? Finally, in considering whether to allow M-LMS aggregation, to what degree should the continued availability to part 15 operations of the 12 megahertz of non-multilateration LMS spectrum be a factor in the Commission's analysis?

#### D. Part 90 Safe Harbor for Secondary Operations

27. As stated at the outset of the NPRM, the Commission tentatively concludes that the section 90.361 safe harbor provision should be retained. The Commission believes this rule effectively delineates rights and responsibilities such that the efficient sharing of the band can occur with limited potential for interference. The safe harbor provides a bright line for all parties, licensed and unlicensed, operating in this band. The Commission believes that defining the scope of unlicensed operations legally protected from claims of harmful interference by M-LMS licensees has served the public interest. In originally adopting this standard, the Commission explained that the safe harbor rule was the result of an extensive rulemaking record and careful consideration of all parties' interests. The Commission does not believe that there have been sufficient changes in the 902-928 MHz interference environment, or the Commission's policy objectives regarding use of the band by unlicensed part 15 devices and amateur radio licensees, to support a repeal of the safe harbor.

28. Moreover, to provide M-LMS licensees with the flexibility of use, the Commission does not believe it is necessary to eliminate a provision that adds certainty for the multitude of users of part 15 devices in this band. The Commission is cognizant of the competitive impact that elimination, or substantial modification, of the safe harbor standard could have on the large number of manufacturers and users of existing part 15 devices in the M-LMS Band. Elimination of the safe harbor provision could come at great cost to part 15 manufacturers and systems that have made investments in developing and deploying equipment within the safe harbor provision.

29. Thus, the Commission proposes to retain the section 90.361 safe harbor provision as an effective standard that precisely defines part 15 and amateur radio operators' rights relative to M-LMS licensees. The Commission seeks comment on this tentative conclusion. Parties who oppose this tentative conclusion should provide arguments that identify specific, alternative mechanisms that would provide the existing level of access for part 15 and amateur operations in this band, and they should provide specific economic and technological evidence supporting their proposals and views. In addition, parties supporting any modifications to the safe harbor that would be based on proximity to M-LMS sites or other factors should offer proposed rules and specifically explain how such provisions would ensure the same degree of access for part 15 devices that exists today.

#### E. M-LMS Testing Condition

30. Section 90.353(d) of the Commission's rules, 47 CFR 90.353(d), requires M-LMS licensees to "demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR 15 devices." The Commission seeks comment on modifying or eliminating this part 90 regulation.

31. Given the Commission's proposals discussed above to consider revisions to the M-LMS rules designed to facilitate shared use of the band, as well as the Commission's tentative conclusion to retain the part 15 safe harbor, the Commission seeks comment on whether the interference-testing requirement is necessary. Can reliance on well-defined technical limits, instead of the testing requirement, facilitate the introduction of new services by M-LMS licensees without jeopardizing the ability of users of part 15 devices to continue to operate in the M-LMS Band? To what extent can technologies such as dynamic

frequency selection, spread spectrum, and others be adequate to avoid interference instead of field tests? Given these considerations, what would be the impact to part 15 operations of repealing the testing requirement? If the Commission decided to repeal the testing requirement, are there other technical limits (other than those described above) that the Commission should consider to mitigate interference concerns?

32. The Commission also seeks comment on the costs and benefits of developing a more specific rule in place of the part 15 interference-testing requirement. The testing requirement requires M-LMS licensees to consider existing systems of part 15 devices when designing and constructing their systems to minimize interference. Is this burden warranted given that users of part 15 devices do not have priority over M-LMS operations, and there is no database identifying the actual unlicensed users and operators? What effect would a modified and more specific testing condition have on the development and deployment of more flexible M-LMS equipment and services? Parties who favor retention of the testing requirement should explain why it remains necessary, and how it could be defined so that M-LMS licensees could readily assess whether they would cause unacceptable levels of interference to part 15 devices.

#### F. Other Issues and Measures

33. The Commission seeks comment generally on any further proposals that could allow greater flexibility while avoiding any significant increase in interference to part 15 operations. The Commission notes that the technical limitations are specifically intended to reduce the potential for interference in the band. Nonetheless, the potential remains, and conflicts among competing uses could result, because no one technical rule can guard against all interference, whether or not it is classified as legally harmful.

34. Thus, the Commission seeks comment on how to maintain, and clarify or augment if necessary, the ability of M-LMS licensees and operators of part 15 devices to coexist in the M-LMS Band. Given the Commission's belief that the best course is to facilitate objective measurement of currently subjective assessments as to what may be "harmful," the Commission seeks comment generally on any other proposals that would be appropriate to reach an appropriate balance between multiple users. Would prior notification or other coordination measures be beneficial and appropriate

to reach a balancing of interests? What about industry-run solutions or additional safe harbors? For example, should the Commission adopt a reciprocal safe harbor for M-LMS whereby M-LMS licensees would have some assurances against objections from operators of part 15 devices, yet included in the safe harbor could be certain conditions that M-LMS licensees would have to meet to ensure that they considered existing part 15 devices before deploying new services?

35. In addressing the possible rule changes in the *NPRM*, the Commission asks parties to comment on the degree to which the part 15 devices of interest here are operating in the 14 megahertz of spectrum in the M-LMS Band compared to operations in other portions of the band. The Commission intended to assign the 12 megahertz of non-multilateration spectrum to portions of the band where amateur, federal, and part 15 use of the band is the greatest. Accordingly, the Commission requests information (e.g., including data points and relevant percentages of use where available) from interested parties using or manufacturing part 15 devices for operation in the M-LMS Band. For example, what percentage of a party's part 15 devices used to read meters, support WISP operations, etc. are designed or programmed to operate on the 904-909.75 and 919.75-928 MHz portions of the 902-928 MHz band? If such data is available, it would also be helpful if parties, including those parties using authorized frequency-hopping devices, could provide information regarding the intensity, duration, etc. of actual operations on the 904-909.75 and 919.75-928 MHz as compared to other portions of the 902-928 MHz band.

#### IV. Procedural Matters

##### A. Regulatory Flexibility

36. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *NPRM*. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *NPRM*, and must have a separate and distinct heading designating them as responses to the IRFA.

##### B. Paperwork Reduction Act of 1995

37. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It does not, therefore, contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 44 U.S.C. 3506(c)(4).

##### C. Ex Parte Presentations

38. The rulemaking the *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

#### V. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the *NPRM*, WT Docket No. 06-49. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on page one of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

##### A. Need for, and Objective of, the Proposed Rules

40. This rulemaking proceeding considers possible measures that could introduce greater flexibility for licensees in the multilateration Location and Monitoring Service (M-LMS) for the purpose of enabling greater responsiveness to changing market conditions, more efficient and effective use of the M-LMS Band, and more robust secondary markets in radio spectrum usage rights. M-LMS licensees

provide service in the 904–909.75 and 919.75–928 MHz portions of the 902–928 MHz band. This 14 megahertz of spectrum has been shared by a variety of part 15 devices and, since 1995, has been licensed for specified uses by M–LMS defined in part 90 of the Commission’s rules. Multilateration systems track and locate objects over a wide geographic area (e.g., tracking a bus fleet) by measuring the difference in time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located.

41. In the decade since M–LMS was established there has been very limited development of M–LMS under the existing rules. Specifically, when the Commission adopted its LMS rules in 1995, it expected that both M–LMS and non-multilateration LMS systems would play an integral role in the development and implementation of advanced radio transportation-related services. However, only two M–LMS licensees, Teletrac and Ituran, operate M–LMS systems, and these exist in only a small number of markets. Given these present circumstances, the Commission initiates this proceeding to determine whether new approaches could produce more efficient and effective use of the 904–909.75 and 919.75–928 MHz spectrum band by LMS licensees.

42. Through the NPRM, the Commission seeks to determine whether current M–LMS rules are limiting licensees from providing services that are desired in the market and that could be profitably deployed without causing harmful interference to other users. Specifically, the part 90 rules circumscribe the scope of permissible M–LMS service offerings such that licensees may only use non-voice radio techniques to determine the location and status of mobile radio units and may transmit status and instructional messages, either voice or non-voice, only so long as they relate to the location or monitoring functions of the system. In addition, M–LMS licensees are prohibited from using real-time interconnection with the public switched telephone network (PSTN), except for emergency communications sent to or received from a system dispatch point or public safety answering points.

43. The Commission seeks comment on whether it can promote more efficient use of the M–LMS Band by modifying or eliminating M–LMS restrictions on types of communication and interconnection, while avoiding any significant increase in interference to unlicensed users. The Commission also

seeks comment on whether interference that might result from expanded service M–LMS offerings could be mitigated by adopting stricter power limits for M–LMS licensees, introducing frequency hopping, or altering digital modulation rules.

44. In addition, the Commission seeks comment on whether eliminating the M–LMS aggregation limits has the potential to reduce interference to other users of the M–LMS Band and facilitate the provision of new M–LMS services. The Commission also seeks comment on its tentative conclusion that it should retain the part 90 safe harbor provision. Furthermore, the Commission seeks comment on whether reliance on well-defined technical limits, instead of the testing requirement, can facilitate the introduction of new services by M–LMS licensees without jeopardizing the ability of users of part 15 devices to continue to operate in the M–LMS Band.

45. The Commission makes clear at the outset of this proceeding that it does not seek to alter the rules that govern the relationship among the various federal and non-federal licensed services in this band. It also recognizes the importance of maintaining the existing accessibility of the band for unlicensed devices and for amateur operators. The Commission’s goal in this proceeding is to consider whether greater opportunity can be afforded M–LMS licensees to provide services while ensuring continued access for other licensed and unlicensed uses that share this band. In the following paragraphs, the Commission discusses the potential impact on small entities of proposals made in the NPRM to accomplish this goal.

#### *B. Legal Basis*

46. The potential actions about which comment is sought in the NPRM would be authorized pursuant to the authority contained in sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 303(r).

#### *C. Description and Estimate of the Number of Small Entities Subject to the Rules*

47. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning

as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

48. The NPRM could result in rule changes that, if adopted, would create new opportunities and obligations for M–LMS licensees as well as operators and manufacturers of part 15 devices for unlicensed uses on the fourteen megahertz of spectrum that is shared with M–LMS in the 902–928 MHz band.

49. Multilateration Location and Monitoring Service (M–LMS). For purposes of auctioning LMS licenses, the Commission has defined a “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million. A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million. These definitions have been approved by the SBA. The Commission auctioned M–LMS licenses in 1999 (Auction 21) and 2001 (Auction 39). As a result of the two auctions, six entities currently hold a total of 452 M–LMS licenses. Each one of these entities qualified as either a small business or a very small business.

50. *Part 15 Device Operators.* The SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” (CWT), which consists of firms having 1,500 or fewer employees. According to the latest Census Bureau data for this category, there are a total of 1,378 firms that have 999 or fewer employees. The Census does not provide data for the number of firms with 1,500 or fewer employees, but does indicate that nineteen firms have 1,000 or more employees. Consequently, even if all nineteen of these firms are part 15 device operators and have more than 1,500 employees, the Commission estimates that the majority of businesses in the CWT category are small businesses that may be affected by rules and policies that could be adopted in this rulemaking.

51. *Part 15 Device Manufacturers.* The SBA has developed small business size standards for two pertinent Economic Census categories, “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing” (RTB) and “Other Communications Equipment Manufacturing,” (OCE) (NAICS code 334290), both of which consist of all such companies having 750 or fewer

employees. According to the latest Census Bureau data, there are a total of 1,041 establishments in the RTB category. Of this total, 1,010 establishments have 499 or fewer employees, thirteen establishments have between 500 and 999 employees, and eighteen establishments have 1000 or more employees. Consequently, even if all thirteen establishments with between 500 to 999 employees have more than 750 employees, the Commission estimates that the majority of businesses in the RTB category are small businesses that may be affected by the rules and policies that could be adopted in this rulemaking. Concerning the OCE category, the latest Census Data show that there are a total of 503 establishments. Of this total, 493 establishments have 499 or fewer employees, seven establishments have between 500 and 999 employees, and three establishments have from 500 to 2,499 employees. Consequently, even if all seven establishments with 500–999 employees have more than 750 employees, the Commission estimates that the majority of businesses in the OCE category are small businesses that may be affected by rules and policies that could be adopted in this rulemaking.

#### 52. *Amateur Radio Operators.*

Amateur radio operators are not small businesses or small entities as defined by the RFA and the Commission's rules.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

53. The Commission seeks comment on reducing or eliminating certain recordkeeping obligations for M–LMS operators. Section 90.353(d)–(g) of the Commission's rules, 47 CFR 90.353(d)–(g), requires that M–LMS licensees operating in the 902–928 MHz band “maintain whatever records are necessary” and make such records “available to the Commission upon request” that demonstrate compliance with specified operating parameters designed to limit interference with part 15 devices. In particular, section 90.353(d) of the Commission's rules, 47 CFR 90.353(d), requires M–LMS licensees to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR 15 devices. The Commission seeks comment on whether such testing and associated recordkeeping and reporting requirements are necessary if well-defined technical limits are put in place and the part 15 safe harbor provision is retained. The Commission does not seek comment on specific reporting or

recordkeeping requirements, but, it seeks comment on whether M–LMS licensees should adhere to stricter power limits as a condition for relaxing the restrictions on the scope of services that M–LMS providers are permitted to offer.

#### *E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

54. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

55. The Commission invites comment on a number of alternatives to the current LMS rules that could modify or eliminate certain restrictions on the M–LMS service in order to provide M–LMS licensees greater flexibility to respond to changing market conditions. The Commission addresses alternative approaches to flexibility. These alternatives have been grouped according to five aspects of the current M–LMS service rules that affect flexible use for M–LMS licensees: (1) Restrictions on the scope of permissible communications and interconnection; (2) power and other technical limitations; (3) the M–LMS spectrum aggregation limit; (4) the part 90 safe harbor for operations under parts 15 and 97; and (5) the M–LMS testing requirement and associated recordkeeping obligations.

56. With respect to the limits on the scope of M–LMS services, the Commission seeks comment on whether there are any public interest benefits associated with relaxing or eliminating M–LMS restrictions on permissible communications (e.g., vehicle location as primary operation) and interconnection. The Commission seeks comment on alternatives ranging from partial to complete replacement of M–LMS service restrictions that prevent the provision of additional services. In particular, the Commission seeks comment on the benefit that each alternative could provide to M–LMS licensees (all of which qualify as small

businesses), and how each alternative might impact small businesses that use or manufacture part 15 devices.

57. The Commission seeks comment on alternative approaches to satisfying an expanded range of M–LMS service offerings while avoiding any significant increases in interference. For example, the Commission seeks comment on whether any such interference could be mitigated by reducing the allowable power levels at which M–LMS services could be offered. Another alternative to increase M–LMS licensee flexibility while reducing the likelihood of accompanying interference might be a relaxation or elimination of the M–LMS aggregation limit. The Commission seeks comment on the likely effect of this alternative on M–LMS licensees (all of which qualify as small businesses), and any impact to small businesses that use or manufacture part 15 devices.

58. Regarding the part 90 safe harbor provision, within which authorized operations under parts 15 and 97 of the Commission's rules will not be considered to be causing interference to an M–LMS operator, the Commission seeks comment on its tentative decision to retain this provision. The Commission states in the NPRM that it tentatively concludes that the safe harbor fosters efficient sharing of the band with limited interference, and it asks all parties that disagree to provide arguments that identify specific, alternative mechanisms that would provide the existing level of certainty in this band, and to provide specific economic and technological evidence supporting their proposals.

59. Another alternative approach to increasing flexibility for M–LMS licensees is to eliminate the testing and recordkeeping obligations associated with demonstrating that there is no unacceptable interference to part 15 devices. While these obligations previously have been deemed essential, the Commission seeks comment on whether they would be necessary if the testing rules were replaced by well-defined technical limits while retaining the safe harbor provision.

60. In addition to specific alternative approaches for expanding flexibility to M–LMS licensees while avoiding any significant increases in interference to part 15 devices, the Commission seeks comment on any additional approaches to accomplishing these dual goals. These include any other techniques and approaches that would better optimize the goals of this proceeding.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

61. None.

**VI. Ordering Clauses**

62. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 303(r), the notice of proposed rulemaking is hereby adopted.

63. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-2926 Filed 3-28-06; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 223**

[Docket No. 060313064-6064-01;  
I.D.031006D]

RIN 0648-AU43

**Listing Endangered and Threatened Species and Designating Critical Habitat: 12-Month Finding on Petition to List Puget Sound Steelhead as an Endangered or Threatened Species under the Endangered Species Act**

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

**ACTION:** Proposed rule; petition finding.

**SUMMARY:** We (NMFS) have completed an updated Endangered Species Act (ESA) status review of steelhead (*Oncorhynchus mykiss*) populations in the Puget Sound area (Washington). We initiated this review in response to a petition received from Mr. Sam Wright on September 13, 2004, to list Puget Sound steelhead as a threatened or endangered species. We have determined that naturally spawned winter- and summer-run steelhead populations and two hatchery steelhead stocks, below natural and manmade impassable barriers, in the river basins

of the Strait of Juan de Fuca, Puget Sound, and Hood Canal (Washington) constitute a Distinct Population Segment (DPS) and hence a "species" for listing consideration under the ESA. After reviewing the best available scientific and commercial information, evaluating threats facing the species, and taking into account those efforts being made to protect the species, we conclude that the Puget Sound steelhead DPS is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we are proposing that the Puget Sound steelhead DPS be listed under the ESA as a threatened species. We will announce the timing and location of a public hearing to be held in the Puget Sound area, and propose 4(d) protective regulations and critical habitat for the Puget Sound steelhead DPS in subsequent **Federal Register** notices. We are soliciting public comment on this proposed listing determination, as well as any other information relevant to the designation of critical habitat and the promulgation of 4(d) protective regulations for the Puget Sound steelhead DPS.

**DATES:** Information and comments on the proposed action must be received by June 27, 2006.

**ADDRESSES:** You may submit comments and information by any of the following methods. Please identify submittals as pertaining to the "Puget Sound Steelhead Proposed Listing"

- E-mail:

*PS.Steelhead.nwr@noaa.gov*. Include "Puget Sound Steelhead Proposed Listing" in the subject line of the message.

- Internet: Comments may also be submitted electronically through the Federal e-Rulemaking portal at: <http://www.regulations.gov>.

- Mail: Submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

- Hand Delivery/Courier: NMFS, Protected Resources 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

- Fax: 503-230-5441

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice contact Dr. Scott Rumsey, NMFS, Northwest Region, (503) 872-2791, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 13, 2004, we received a petition from Mr. Sam Wright of Olympia, Washington, to list Puget Sound steelhead as an endangered or threatened species under the ESA, and to designate critical habitat. On April 5, 2005, we issued our finding that the petition presents substantial information indicating that the petitioned action may be warranted (70 FR 17223), and we announced that we would initiate an updated review of the species' status. This **Federal Register** notice summarizes the information gathered and the analyses conducted as part of this review, and announces our finding regarding the ESA listing status of steelhead in Puget Sound.

For a more detailed summary of the specific information presented in the petition, the reader is referred to the **Federal Register** notice which describes our analysis of the petition (70 FR 17223; April 5, 2005). Most significantly, the petitioner provided 10 years of new harvest, spawning escapement, and total-run-size data for nine natural-origin Puget Sound steelhead stocks. The petitioner concluded that the new information describes significant short- and long-term declining trends in nearly all river systems where data are available, despite significant reductions by the State of Washington in recreational and tribal harvest rates on wild steelhead. The petitioner argued that the populations of Puget Sound steelhead are at such low levels of abundance that risks posed by catastrophic events, environmental and demographic variability, and depensation confer a high level of extinction risk for the foreseeable future. The petitioner also underscored concerns regarding the widespread propagation of domesticated and non-indigenous stocks of hatchery steelhead, a lack of adequate monitoring of steelhead stocks, and habitat loss and degradation in the Puget Sound area.

*Policies for Delineating Species under the ESA*

Section 3 of the ESA defines "species" as including "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The term "distinct population segment" is not recognized in the scientific literature. In 1991 we issued a policy for delineating distinct population segments (DPSs) of Pacific salmon (56 FR 58612; November 20, 1991). Under this policy a group of Pacific salmonid populations is considered an

“evolutionarily significant unit” (ESU) if it is substantially reproductively isolated from other conspecific populations, and it represents an important component in the evolutionary legacy of the biological species. Further, an ESU is considered to be a “DPS” (and thus a “species”) under the ESA. On February 7, 1996, we and FWS adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722). The DPS Policy adopts criteria similar to, but somewhat different from, those in the ESU Policy for determining when a group of vertebrates constitutes a DPS: the group must be discrete from other populations; and it must be significant to its taxon. A group of organisms is discrete if it is “markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, and behavioral factors.” Significance is measured with respect to the taxon (species or subspecies). Although the ESU Policy did not by its terms apply to steelhead, the DPS Policy states that NMFS will continue to implement the ESU Policy with respect to “Pacific salmonids” (which include *O. mykiss*). FWS, however, does not use our ESU policy in any of its ESA listing decisions. In a previous instance of shared jurisdiction over a species (Atlantic salmon), we and FWS used the DPS policy in our determination to list the Gulf of Maine DPS of Atlantic salmon as endangered (65 FR 69459; November 17, 2000).

In the recently published findings of our updated status review of listed West Coast steelhead ESUs (71 FR 834; January 5, 2006), we departed from our previous practice of applying the ESU policy to delineate species of *O. mykiss*, and instead applied the joint DPS policy. Given our shared jurisdiction with FWS over *O. mykiss*, and consistent with our approach for Atlantic salmon, we believe that application of the joint DPS policy is logical, reasonable, and appropriate for delineating species of *O. mykiss* under our jurisdiction. In applying the joint DPS policy, we concluded that the resident and anadromous life forms of identified population groups of *O. mykiss* are “discrete,” and we delineated 10 steelhead-only DPSs of *O. mykiss*. In this notice we similarly apply the joint DPS policy in defining the group of steelhead populations in the Puget Sound area that qualifies for listing consideration under the ESA. The reader is referred to previously published **Federal Register** notices for further discussion of the delineation of *O. mykiss* DPSs under the joint DPS

policy (70 FR 67131, November 4, 2005; 71 FR 834, January 5, 2006).

#### *Listing Determinations under the ESA*

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range (sections 3(6) and 3(20), respectively). The statute requires us to determine whether any species is endangered or threatened because of any of the following five factors: (1) the present or threatened destruction, modification or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A) (E)). We are to make this determination based solely on the best available scientific information after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species. The focus of our evaluation of the ESA section 4(a)(1) factors is to evaluate whether and to what extent a given factor represents a threat to the future survival of the species. The focus of our consideration of protective efforts is to evaluate whether and to what extent they address the identified threats and so ameliorate a species’ risk of extinction. The steps we follow in implementing this statutory scheme are to: (1) delineate the species under consideration; (2) review the status of the species; (3) consider the ESA section 4(a)(1) factors to identify threats facing the species; (4) assess whether certain protective efforts mitigate these threats; and (5) predict the species’ future persistence.

As noted above, as part of our listing determinations we must consider efforts being made to protect a species, and whether these efforts ameliorate the threats facing the species and reduce risks to its survival. Some protective efforts may be fully implemented, and empirical information may be available demonstrating their level of effectiveness in conserving the species. Other protective efforts are new, not yet implemented, or have not demonstrated effectiveness. We evaluate such unproven efforts using the criteria outlined in the Policy for Evaluating Conservation Efforts (“PECE”; 68 FR 15100; March 28, 2003) to determine their certainties of implementation and effectiveness.

#### *Life History of West Coast Steelhead*

Steelhead is the name commonly applied to the anadromous form of the biological species *O. mykiss*. The present distribution of steelhead extends from Kamchatka in Asia, east to Alaska, and extending south along the Pacific coast to the U.S. Mexico border (Busby *et al.*, 1996; 67 FR 21586, May 1, 2002). *O. mykiss* exhibit perhaps the most complex suite of life-history traits of any species of Pacific salmonid. *O. mykiss* can be anadromous (“steelhead”), or freshwater residents (“rainbow or redband trout”), and under some circumstances yield offspring of the opposite life-history form. Those that are anadromous can spend up to 7 years in freshwater prior to smoltification (the physiological and behavioral changes required for the transition to salt water), and then spend up to 3 years in salt water prior to first spawning. *O. mykiss* are also iteroparous (meaning individuals may spawn more than once), whereas the Pacific salmon species are principally semelparous (meaning individuals generally spawn once and die). Within the range of West Coast steelhead, spawning migrations occur throughout the year, with seasonal peaks of activity. In a given river basin there may be one or more peaks in migration activity; since these “runs” are usually named for the season in which the peak occurs, some rivers may have runs known as winter, spring, summer, or fall steelhead.

Steelhead can be divided into two basic reproductive ecotypes, based on the state of sexual maturity at the time of river entry and duration of spawning migration (Burgner *et al.*, 1992). The summer or “stream-maturing” type enters fresh water in a sexually immature condition between May and October, and requires several months to mature and spawn. The winter or “ocean-maturing” type enters fresh water between November and April with well-developed gonads and spawns shortly thereafter. In basins with both summer and winter steelhead runs, the summer run generally occurs where habitat is not fully utilized by the winter run, or where an ephemeral hydrologic barrier separates them, such as a seasonal velocity barrier at a waterfall. Summer steelhead usually spawn farther upstream than winter steelhead (Withler, 1966; Roelofs, 1983; Behnke, 1992).

#### *Previous ESA Status Review*

In 1996, we conducted a comprehensive status review of coastal and inland steelhead stocks in

California, Oregon, Washington, and Idaho (Busby *et al.*, 1996). We convened a Biological Review Team (BRT) (an expert panel of scientists from NMFS' Northwest and Southwest Fisheries Science Centers, FWS, the U.S. Geological Survey, and the U.S. Forest Service) to: (1) identify ESUs of West Coast steelhead; and (2) evaluate the risk of extinction for the identified ESUs. As part of this review we identified a Puget Sound ESU of coastal steelhead occupying river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal (Washington), as far west as the Elwha River, and as far north as the Nooksack River and Dakota Creek (inclusive), and the United States/Canada border. The Puget Sound ESU is primarily composed of winter steelhead stocks, but also includes several small stocks of summer steelhead occupying limited habitat. The BRT also included the resident life-history form in the Puget Sound ESU. Genetic studies generally show that, in the same geographic area, the resident and anadromous life forms of *O. mykiss* are more similar to each other than either is to the same form from a different geographic area. In particular, the BRT cited a scientific study indicating that rainbow trout and steelhead are not reproductively isolated in two river basins within the Puget Sound ESU (Leider *et al.*, 1995).

In the 1996 status review the BRT concluded that the Puget Sound steelhead ESU was not in danger of extinction or likely to become endangered in the foreseeable future throughout all or a significant portion of its range. However, the BRT did express concern that 17 of 21 stocks in the ESU for which there were adequate data exhibited overall declining trends. Positive trends in abundance for the two largest steelhead runs in the ESU (the Skagit and Snohomish Rivers) mitigated the immediacy of extinction risk, although there was significant concern regarding the sustainability of other steelhead runs in the ESU (most notably the Deer Creek summer and Lake Washington winter steelhead populations, and populations in the Hood Canal area). Given the lack of strong trends in abundance for the major populations and the apparent limited contribution of hatchery fish to natural production, the BRT concluded that most winter steelhead stocks in the Puget Sound ESU appeared to be naturally self-sustaining.

The BRT noted concern about the potential threat to the genetic integrity of Puget Sound steelhead posed by past and present hatchery practices in the Puget Sound area. Hatchery production

in this ESU is widespread, and it is managed to support harvest. Most of the hatchery fish propagated in the Puget Sound region are winter-run steelhead derived from a single stock (the Chambers Creek hatchery stock) that is indigenous to the ESU but generally is not native to the local river basins where it is propagated. The summer steelhead hatchery programs in the Puget Sound area are derived from an out-of-ESU stock (the Skamania summer steelhead stock from the Columbia River). The Skamania hatchery stock has generally been introduced in river systems where summer steelhead did not naturally exist, although it has been introduced in some Puget Sound river basins having native summer steelhead populations (e.g., the Stillaguamish and Snohomish Rivers). The Washington Department of Fish and Wildlife (WDFW) employs a hatchery management strategy of promoting isolation between hatchery and natural stocks by releasing smolts early and selecting for early spawn timing in winter steelhead hatchery programs. This separation in run timing is intended to: allow for high rates of selective harvest on returning hatchery fish, while limiting harvest mortality on wild stocks; and minimize competition (as smolts and adults) and opportunities for interbreeding between naturally spawning hatchery fish and wild fish. However, the BRT noted that separation of run timing is seldom complete. High harvest rates targeting early-returning hatchery fish have likely resulted in high mortality levels for early-run natural fish and reduced the natural diversity in spawn timing. Naturally spawning hatchery fish comprise a substantial proportion of the spawning escapement in many of the rivers in the ESU, possibly competing with, and posing genetic risks to, the local steelhead populations. Additionally, the BRT discussed evidence for hatchery introgression in some natural Puget Sound winter steelhead populations (Phelps *et al.*, 1994).

Informed by the BRT's findings (Busby *et al.*, 1996), we concluded that the Puget Sound steelhead ESU did not warrant listing under the ESA (61 FR 41541; August 9, 1996), but expressed concern regarding the sustainability of summer steelhead populations and potentially adverse impacts from hatchery practices in Puget Sound.

#### Updated Status Review of Puget Sound Steelhead

To ensure that our review was based on the best available and most recent scientific information, we solicited information during a 60-day public

comment period regarding the ESU structure and extinction risk of, and efforts being made to protect, the species (70 FR 17223; April 5, 2005). In July 2005 we convened a BRT to review the available information regarding the ESU structure and extinction risk of *O. mykiss* in the Puget Sound area. Specifically, the BRT addressed: (1) whether the geographic boundaries of the previously identified Puget Sound ESU warrant redelineation or refinement; (2) the relationship to the defined ESU of hatchery programs propagating *O. mykiss* within the Puget Sound area; (3) the relationship to the defined ESU of resident rainbow trout above and below impassable barriers; and (4) the level of extinction risk of the ESU throughout all or a significant portion of its range, including the consideration of the contribution of within-ESU hatchery programs and resident populations to the viability of the ESU. The data reviewed, analyses conducted, and findings by the BRT are summarized in a July 26, 2005, memorandum "Status Review Update for Puget Sound Steelhead" (NMFS, 2005).

On June 28, 2005, NMFS finalized a new policy for the consideration of hatchery-origin fish in ESA listing determinations ("Hatchery Listing Policy;" 70 FR 37204). Under the Hatchery Listing Policy, hatchery stocks are considered part of an ESU if they exhibit a level of genetic divergence relative to the local natural population(s) that is no more than what occurs within the ESU (70 FR at 37215; June 28, 2005). We recognize that there are a number of ways to compute and compare genetic divergence and that it is not possible to sample all fish within the ESU to precisely determine the range of genetic diversity within an ESU. In evaluating hatchery stocks associated with Puget Sound steelhead, the BRT included as part of the ESU those hatchery stocks that are no more than moderately diverged from local, native populations in the watershed(s) in which they are released. This approach is consistent with our recent status review updates for 27 West Coast ESUs (see 71 FR 835, January 5, 2006; 70 FR 37160, June 28, 2005; NMFS, 2003; NMFS, 2004). In factoring artificial propagation into the extinction risk assessment for the ESU, the BRT evaluated potential risks to the naturally-spawned components of the ESU posed by Puget Sound area hatchery programs determined not to be part of the ESU; as well as the specific benefits and risks for each of the hatchery programs included in the ESU.

As noted above, we have adopted the approach of applying the joint DPS policy in delineating species of West Coast *O. mykiss* for listing consideration under the ESA (see 71 FR, 834; January 5, 2006). Although the BRT applied the ESU policy in delineating the species of Puget Sound steelhead for ESA listing consideration, their findings directly inform the delineation of the geographic boundaries for an *O. mykiss* DPS (summarized below).

### Review of “Species” Delineation

The BRT concluded that the best available scientific information did not warrant a reconsideration of the previously described geographic boundaries for the Puget Sound *O. mykiss* ESU (Busby *et al.*, 1996). The BRT’s findings delineating a Puget Sound ESU of *O. mykiss* directly inform our species delineation under the joint DPS policy. Based on established phylogenetic groupings, available population genetic data, differences in migration and spawn timing, patterns in the duration of freshwater and marine residence, and the geographic separation of populations, the BRT concluded that steelhead in Puget Sound are substantially reproductively isolated from other such groupings of West Coast *O. mykiss* (Busby *et al.*, 1996). These observations regarding reproductive isolation similarly satisfy the discreteness criterion under the joint DPS policy, as Puget Sound steelhead are markedly separated from other such population groups of *O. mykiss* as a consequence of physical, physiological, ecological or behavioral factors.

The BRT also concluded that the Puget Sound steelhead represent an important component in the evolutionary legacy of the *O. mykiss* species based on its unique life-history, genetic, and ecological characteristics, as well as the unique glacial and fjord-like characteristics of the ecoregion it occupies (Busby *et al.*, 1996). These traits that establish the evolutionary importance of the Puget Sound steelhead ESU also satisfy the “significance” criterion of the DPS Policy. The proposed Puget Sound steelhead DPS, if lost, would represent: the loss of unusual or unique habitats and ecosystems occupied by the species; a significant gap in the species’ range; and a significant loss to the ecological, life-history, and genetic diversity of the taxon.

Based on the BRT’s findings summarized above, and our considerations under the joint DPS policy, we conclude that Puget Sound steelhead warrant delineation as a DPS. Consistent with previous findings under

the ESU policy, the geographic boundaries of the Puget Sound steelhead DPS continue to include winter- and summer-run steelhead runs in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive).

### DPS Membership of Resident *O. mykiss*

The BRT concluded that where resident and anadromous *O. mykiss* co-occur there is likely to be interbreeding between the two life-history forms. Applying the ESU policy, the BRT concluded that resident and anadromous *O. mykiss* below long-standing impassable barriers are not substantially reproductively isolated, and warrant reconsideration as part of the same Puget Sound *O. mykiss* ESU. This conclusion was based on empirical studies showing that resident and anadromous *O. mykiss* are typically very similar genetically when they co-occur with no physical barriers to migration or interbreeding (Chilcote, 1976; Currens *et al.*, 1987; Leider *et al.*, 1995; Busby *et al.*, 1996; Pearsons *et al.*, 1998). It is also well established that resident forms of *O. mykiss* can occasionally produce anadromous migrants, and vice versa (Shapovalov and Taft, 1954; Burgner *et al.*, 1992; Mullan *et al.*, 1992; Zimmerman and Reeves, 2000; Kostow, 2003; Arden, 2003; Blouin, 2003; Pearsons *et al.*, 2003; Marshal and Foley, 2004; Narum *et al.*, 2004; Seamons *et al.*, 2004). Additionally, there was information specific to the Puget Sound area describing the interbreeding of the two life-history forms, as well as the production of outmigrating smolts by resident *O. mykiss* (Marshall *et al.*, 2004; McMillan, 2005).

The discreteness criterion of the DPS Policy, however, does not rely on reproductive isolation but on the marked separation of population groups as a consequence of biological factors. Despite the apparent reproductive exchange between resident and anadromous *O. mykiss*, the two life forms remain markedly separated physically, physiologically, ecologically, and behaviorally. Steelhead differ from resident rainbow trout physically in adult size and fecundity, physiologically by undergoing smoltification, ecologically in their preferred prey and principal predators, and behaviorally in their migratory strategy. We recognize that there may be some overlap between co-occurring steelhead and rainbow trout in physical, ecological, behavioral and

physiological traits; however, this apparent overlap does not prevent the two life forms from satisfying the discreteness criterion under the DPS policy. While *O. mykiss* display a continuum of life-history and morphological traits, at the end of that continuum, steelhead are markedly separate in their extreme marine migration (leading to, or resulting from, marked separation in physical, physiological, and ecological factors). As we stated in adopting the DPS policy, “the standard adopted [for discreteness] does not require absolute separation of a DPS from other members of its species, because this can rarely be demonstrated in nature for any population of organisms. . . . [T]he standard adopted allows for some limited interchange among population segments considered to be discrete, so that loss of an interstitial population could well have consequences for gene flow and demographic stability of a species as a whole” (61 FR 4722; February 7, 1996). Given the marked separation between the anadromous and resident life-history forms in physical, physiological, ecological, and behavioral factors, we conclude that the anadromous steelhead populations are discrete from the resident rainbow trout populations within the DPS under consideration (see previous determination of West Coast steelhead DPSs for further elaboration of the discreteness between the anadromous and resident life-history forms, 71 FR, 834; January 5, 2006).

### DPS Membership of Hatchery-origin Steelhead

Prior to the meeting of the BRT, a Steelhead Hatchery Assessment Group (SHAG) convened to review the relationships of hatchery steelhead stocks to natural populations of Puget Sound steelhead. The SHAG reviewed the stock histories for 25 hatchery programs, and identified those stocks that are no more than moderately diverged from local, native populations in the watershed(s) in which they are released. The SHAG based these assessments on the available information describing the hatchery stock life-history characteristics, genetics, stock transfers, and hatchery practices. (For a more detailed treatment of the information reviewed by SHAG, the reader is referred to Appendix C of the BRT’s report, NMFS, 2005).

Informed by the SHAG review, the BRT identified two hatchery stocks that are part of the Puget Sound steelhead DPS: the Green River natural and Hamma Hamma winter-run steelhead stocks. Although the SHAG identified

the Lake Washington winter-run steelhead stock as having been closely related to the local natural population, the BRT concluded that the stock no longer exists since the program has not been in operation since 1993, and therefore the stock is not included as part of the Puget Sound steelhead DPS.

The remaining 23 hatchery stocks reviewed, the Chambers Creek winter-run and Skamania summer-run steelhead hatchery stocks and their derivatives, were determined to be more than moderately diverged from the local native populations and are not included in the DPS. The Chambers Creek hatchery stock has been altered from the original donor natural stock over time through purposeful selection for early run timing and maturation, resulting in an advancement of the natural spawn timing from April to December-January. The Chambers Creek hatchery stock has been transferred from its native watershed and propagated widely throughout the Puget Sound and the Pacific Northwest. Many of the 16 hatchery stocks derived from the Chambers Creek stock and propagated in other Puget Sound watersheds have subsequently incorporated local native winter-run steelhead into their respective broodstocks. Genetic analyses by Phelps *et al.* (1997) indicate that there is a high degree of similarity among these hatchery populations and the founding Chambers Creek stock, and little detectible genetic introgression in the local natural populations from the many years of Chambers Creek hatchery winter-run steelhead introductions. This result suggests a large degree of reproductive divergence from the local natural populations in the DPS from the Chambers Creek stock and its derivatives. The Skamania Hatchery summer-run steelhead stock was founded from outside the range of the Puget Sound DPS, with fish collected in the Washougal and Klickitat Rivers in the Columbia River Basin. The Skamania Hatchery, and the four other Puget Sound summer-run hatchery programs derived from it, are genetically distinct from the Puget Sound steelhead populations, possessing 58 chromosomes in contrast to the 60 chromosomes commonly found in Puget Sound steelhead (Busby *et al.*, 1996; Phelps *et al.*, 1997).

#### *Determination of "Species"*

Based on the foregoing information, we conclude that the Puget Sound steelhead DPS constitutes a "species" under the ESA and includes: all naturally spawned winter-run and summer-run steelhead populations, below natural and man-made

impassable barriers, in streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and Hamma Hamma winter-run hatchery steelhead stocks.

#### **Assessment of Extinction Risk**

The BRT assessed the risk of extinction for Puget Sound steelhead at two levels first, at the individual population level, then at the overall ESU level. Individual populations were assessed according to the four "Viable Salmonid Populations" criteria (VSP; McElhany *et al.*, 2000): abundance, productivity, spatial structure (including connectivity), and diversity. These four parameters are universal indicators of species' viability, and individually and collectively function as reasonable predictors of extinction risk. The collective viability of individual populations was then evaluated in the context of the entire ESU by the inclusion of larger-scale considerations such as the total number of viable populations, the geographic distribution and connectivity of populations, and the vulnerability of populations or certain genetic and life-history attributes to regional catastrophic events. The BRT included in its assessment of population- and ESU-level viability an evaluation of the likely contributions of resident and hatchery-origin fish included in the ESU. The BRT's assessment of ESU-level extinction risk was expressed in terms that correspond to the statutory definitions of endangered and threatened species in the ESA: in danger of extinction throughout all or a significant portion of its range; likely to become endangered within the foreseeable future throughout all or a significant portion of its range; or neither. The BRT's ESU-level extinction risk assessment reflects the BRT's professional scientific judgment, guided by the analysis of the VSP factors, as well as by expectations about the likely interactions among the individual VSP factors. The BRT's assessment, however, did not include an evaluation of efforts being made to protect the species, as required under section 4(b)(1)(A) of the ESA. Therefore, the BRT's findings should not be interpreted as recommendations regarding ESA listing.

#### *Consideration of Resident O. mykiss*

The BRT fully considered the best available scientific and commercial information on resident populations in assessing the extinction risk of the Puget

Sound *O. mykiss* ESU. However, little or no data are available on the abundance, productivity, spatial structure, or diversity of the component resident populations, nor on their contribution to the viability of the entire ESU. As a result, the majority of the information available with which to assess the level of extinction risk for this ESU pertained to the anadromous component. In general, the BRT considered the resident component of *O. mykiss* populations in the Puget Sound ESU to be relatively minor based on field surveys of juvenile fish in freshwater. The majority of the BRT felt that resident *O. mykiss* below barriers to migration may reduce risks to ESU abundance by providing short-term buffers against demographic stochasticity in many of the ESU's populations, although there was insufficient information to characterize the effectiveness of such buffers. The BRT concluded that resident populations in the Puget Sound ESU are unlikely to significantly reduce the risk of extinction of anadromous populations over the long term. This conclusion is also supported by recent reports by the Independent Science Advisory Board (ISAB) and NMFS' Recovery Science Review Panel (RSRP) which recently concluded that anadromous *O. mykiss* contribute "substantially and irreplaceably to any measure of *O. mykiss* productivity and viability" (RSRP, 2004), and that the "the presence of both resident and anadromous life-history forms is critical for conserving the diversity of steelhead/rainbow trout populations and, therefore, the overall viability of ESUs" (ISAB, 2005-2). The RSRP and ISAB underscored that "resident populations by themselves should not be relied upon to maintain long-term viability of an [*O. mykiss*] ESU" (RSRP, 2004), and that the "likelihood of long-term persistence would be substantially compromised by the loss of anadromy in *O. mykiss* ESUs" (ISAB, 2005-2). Based on the minor contribution of resident *O. mykiss* to the viability of the Puget Sound *O. mykiss* ESU, we conclude that the BRT's extinction risk assessment directly informs our evaluation of extinction risk for the Puget Sound steelhead-only DPS under consideration.

#### *Consideration of Hatchery-Origin Steelhead*

The BRT explicitly considered both the potential positive and negative effects of hatchery production on the viability of the Puget Sound *O. mykiss* ESU. The BRT felt that the two within-ESU hatchery programs (the Hamma Hamma River and Green River natural

winter-run steelhead hatchery programs), have the potential to benefit natural steelhead populations in their respective rivers, but that both programs are relatively recent and have not collected sufficient data to demonstrate any contributions with any certainty. The BRT did note that the Hamma Hamma program does appear to have successfully increased the number of natural spawners in the population (although the relative increase in natural spawners is large, the absolute increase in natural spawners is modest), but the success of the program cannot be fully evaluated until the naturally produced offspring of the hatchery-origin fish return and reproduce.

Given the widespread and high levels of production of hatchery fish not included in the Puget Sound ESU, the BRT concluded that the overall negative effect of artificial propagation in the Puget Sound area likely outweighs any potential positive effects. Informed by the above considerations regarding hatchery-origin steelhead, the BRT's analysis of ESU viability (summarized below) focused on the available information concerning the status of naturally spawning steelhead populations in the ESU. As previously noted, we conclude that the BRT's extinction risk assessment directly informs our evaluation of extinction risk for the Puget Sound steelhead-only DPS under consideration.

#### *Summary of Puget Sound Steelhead Viability Analysis*

**Abundance** – Steelhead in the Puget Sound DPS are most abundant in northern Puget Sound, with winter-run steelhead in the Skagit and Snohomish rivers supporting the two largest populations. The Skagit and Snohomish river winter-run populations have been approximately three to five times larger than the other populations in the DPS, with average annual spawning of approximately 5,000 and 3,000 total adult spawners, respectively. Populations in Hood Canal and along the Strait of Juan de Fuca are generally small, averaging fewer than 100 spawners annually. The geometric means of most populations have declined in the last 5 years, and are below the long-term means. However, winter-run populations in the Samish River (northern Puget Sound) and the Hamma Hamma River (Hood Canal) appear to be growing rapidly with recent increases in the abundance of natural spawners. The recent abundance in the Hamma Hamma River likely reflects supplementation from the (within-DPS) Hamma Hamma hatchery program. The recent abundance

estimates in the Samish River may include an uncertain number of hatchery fish originating from the (out-of-DPS) Whatcom Creek hatchery, and their naturally spawned progeny. WDFW reports that from 1992 to 2002 there has been a general downgrade in the abundance of Puget Sound steelhead populations, with declines in the proportion of “healthy” populations, and an increase in the proportion of “depressed” and “unknown status” populations (SaSI, 1992, 2002). No abundance data series exists for most of the 16 summer-run steelhead populations in the DPS, although all appear to be small, averaging fewer than 200 spawners annually. The BRT expressed concern that populations at such low levels of abundance may be near or below a “quasi-extinction” threshold, below which population dynamics become inherently unpredictable. The BRT concluded that the risk to the viability of Puget Sound steelhead due to declining abundance is high.

**ESU Productivity** – Nearly all steelhead populations in the DPS exhibited diminished productivity as indicated by below-replacement population growth rates, and declining short- and long-term trends in natural escapement and total run size. Declining productivity was particularly evident in southern Puget Sound steelhead populations, but was also exhibited by some populations in northern Puget Sound, Hood Canal, and the Strait of Juan de Fuca. At the time of the 1996 status review (Busby *et al.*, 1996), the Skagit and Snohomish river populations appeared to be relative strongholds of productivity, demonstrating strongly positive and statistically significant population trends and growth rates. The recent trends, however, in escapement, total run size, recruitment, and population growth rate for these two populations are downward or below replacement, although not all analyses were statistically significant. Positive population trends were observed in the Samish and Hamma Hamma river winter-run populations (as noted above, the increasing trend for the Hamma Hamma River population likely reflects a recently established supplementation hatchery program, rather than an increase in naturally produced steelhead). Relevant productivity data are unavailable for all but one of the summer-run populations in the DPS. The Tolt River summer-run population, for which data are available, is showing evidence for increasing productivity. The BRT expressed concern that the observed population declines in the

DPS have occurred despite widespread reductions by WDFW in the direct harvest of natural steelhead since the 1990s. The BRT also expressed concern that WDFW uses a March 15 date to delineate between naturally spawning hatchery-origin fish and native winter-run fish. The BRT felt that such an approach could bias productivity estimates as it does not provide a consistently accurate estimate of the proportion of hatchery-origin fish or their contribution to natural production. Information was not available to evaluate trends in marine survival for any of the populations in the DPS. The BRT concluded that the risk to the viability of Puget Sound steelhead due to declining productivity is high.

**Spatial Structure/Connectivity** – The BRT noted that the distribution of steelhead has been affected by a number of dams in several Puget Sound river basins that block accessibility to habitat and connectivity among populations. Additionally, the BRT noted that urban development has degraded or eliminated wetland and riparian habitats, resulting in changes to river hydrology and the loss of side-channel areas, thereby reducing the spawning and rearing distribution of Puget Sound steelhead populations. Declines in natural abundance observed in nearly all of the DPS's populations, coupled with large numbers of man-made impassable barriers, have sharply reduced opportunities for migration and connectivity among steelhead populations in different watersheds. The BRT expressed concern regarding the sharp reduction in natural escapement for the centrally located Lake Washington watershed, and noted that the observation of weakening abundance trends for populations in neighboring river basins may reflect degraded connectivity among populations. The BRT concluded that the viability of Puget Sound steelhead is at moderate risk due to the reduced spatial complexity of, and connectivity among, populations.

**Diversity** – The BRT noted concern regarding the apparent reduction of the summer-run steelhead populations in Puget Sound. Summer-run populations are concentrated in northern Puget Sound, with only two other populations distributed throughout the rest of the DPS. One of these latter summer-run populations (the Elwha River summer-run population) is thought to have been extirpated in the early 1900s and replaced by out-of-DPS Skamania stock summer-run hatchery steelhead. Several BRT members noted that anecdotal historical accounts discuss significant early runs of wild steelhead, but

expressed concern that these early wild spawners have apparently disappeared from several river systems. Despite evidence of increasing productivity in the largest summer-run population in the ESU (the Tolt River population), it exhibits a negative trend in total run size and a flat trend in escapement. The other summer-run populations appear to be at very low levels of abundance. Additionally, the substantial production of out-of-DPS Skamania stock summer-run hatchery fish in watersheds with native summer-run populations (e.g., in the Stillaguamish River and South Fork Skykomish populations) poses genetic risks to the summer-run component of the DPS. The BRT expressed concern that the Chambers Creek and Skamania stock hatchery programs and their derivatives may have adverse effects on the DPS's diversity through genetic introgression and outbreeding depression. Some members of the BRT felt that adverse impacts from these out-of-DPS hatchery programs may be contributing to the declines in natural steelhead productivity, but acknowledged that the magnitude of any such impact could not be ascertained. Although these hatchery programs have selected for differences in average spawning time, any interbreeding between native and hatchery fish that may occur will likely have adverse consequences for the reproductive fitness of the local natural populations. The BRT noted that even very low levels of hatchery introgression can have a significant impact on genetic diversity after several generations. The BRT recognized the substantial reductions in the harvest of wild steelhead that were implemented in the mid 1990s, but noted that the previous harvest management may have removed a substantial proportion of the native summer-run and early winter-run steelhead spawn timing from many of the populations in the DPS. Present-day high harvest rates for marked hatchery-origin fish, although preventing out-of-DPS hatchery fish from spawning naturally, may continue to reduce the diversity of natural spawn timing through the incidental mortality of early-returning natural steelhead. The BRT concluded that the viability of Puget Sound steelhead is at moderate risk due to the reduced life-history diversity of populations and the potential threats posed by artificial propagation and harvest in the Puget Sound.

*Overall DPS Viability* – Informed by the assessment of demographic risks for each of the four VSP criteria (summarized above), an overwhelming

majority of the BRT concluded that Puget Sound steelhead are likely to become endangered within the foreseeable future throughout all or a significant portion of their range. The BRT's conclusion fully considered the best available information concerning the contribution of resident and hatchery-origin *O. mykiss* to the overall viability of the steelhead in the Puget Sound DPS. As noted above, the BRT's assessment did not include an evaluation of efforts being made to protect the species and therefore does not represent a recommendation for ESA listing status. The following sections summarize the likely factors for the decline of Puget Sound steelhead, as well as the protective efforts being made to protect steelhead and other salmonids in the Puget Sound area.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) state that the Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence. We have previously detailed the impacts of various factors contributing to the decline of West Coast steelhead in our previous listing determinations (e.g., 62 FR 43937, August 18, 1997; 57 FR 14517, March 25, 1999) and supporting documentation (e.g.; NMFS, 1997, "Factors Contributing to the Decline of Chinook Salmon An Addendum to the 1996 West Coast Steelhead Factors for Decline Report;" NMFS, 1996, "Factors for Decline A Supplement to the Notice of Determination for West Coast Steelhead Under the Endangered Species Act"). These **Federal Register** notices and technical reports conclude that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of West Coast steelhead stocks. The following discussion briefly summarizes findings regarding the principal factors for decline in general terms, and notes factors of specific relevance to the Puget Sound DPS. The reader is referred to the above **Federal Register** notices, technical reports, and the BRT's findings (NMFS, 2005) for a more

detailed treatment of the relevant factors for decline for this ESU.

#### 1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

West Coast steelhead have experienced declines in abundance over the past several decades as a result of loss, damage, or change to their natural environment. Water diversions for agriculture, flood control, domestic, and hydropower purposes have greatly reduced or eliminated historically accessible habitat and degraded remaining habitat. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. The destruction or modification of estuarine areas has resulted in the loss of important rearing and migration habitats. Losses of habitat complexity and habitat fragmentation have also contributed to observed declines. Sedimentation and degraded water quality from extensive and intensive land use activities (e.g., timber harvests, road building, livestock grazing, and urbanization) are recognized as primary causes of habitat degradation throughout the range of West Coast steelhead.

Habitat utilization by steelhead in the Puget Sound area has been dramatically affected by large dams and other man-made barriers in a number of river basins: the Nooksack, Skagit, White, Nisqually, Skokomish, and Elwha river basins. Several of these dams have eliminated access to historical habitats, while others are located above historically impassable natural barriers. In addition to limiting habitat accessibility, dams (whether located above or below historically impassable barriers) affect habitat quality through changes in river hydrology, altered temperature profile, reduced downstream gravel recruitment, and the reduced recruitment of large woody debris. In some rivers, such as the Elwha River, increased water temperatures have decreased disease resistance in salmonids.

Many upper tributaries in the Puget Sound region have been affected by poor forestry practices, while many of the lower reaches of rivers and their tributaries have been altered by agriculture and urban development. Urbanization has caused direct loss of riparian vegetation and soils, significantly altered hydrologic and erosional rates and processes (e.g., by creating impermeable surfaces such as roads, buildings, parking lots, sidewalks etc.), and polluted waterways with stormwater and point-source discharges. The loss of wetland and riparian habitat

has dramatically changed the hydrology of many streams, with increases in flood frequency and peak flow during storm events and decreases in groundwater driven summer flows (Moscrip and Montgomery, 1997; Booth *et al.*, 2002; May *et al.*, 2003). Flood events result in gravel scour, bank erosion, and sediment deposition. Land development for agricultural purposes has also altered the historical land cover, and as much of this development has occurred in river floodplains, there has been a direct impact on river flow levels and morphology. River braiding and sinuosity have been reduced through the construction of dikes, hardening of banks with riprap, and channelization of the mainstem. Constriction of river flows, particularly during high flow events, increases the likelihood of gravel scour and the dislocation of rearing juveniles. The loss of side-channel habitats has also reduced important areas for spawning, juvenile rearing, and overwintering habitats. Estuarine areas have been dredged and filled, resulting in the loss of important juvenile rearing areas. In addition to being a factor that contributed to the present decline of Puget Sound steelhead populations, the continued destruction and modification of steelhead habitat is the principal factor limiting the viability of the Puget Sound steelhead DPS into the foreseeable future.

## 2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Steelhead runs have supported, and continue to support, important tribal and recreational fisheries throughout their range, contributing millions of dollars to numerous local economies, as well as providing important cultural and subsistence needs for Native Americans. Overfishing in the early days of European settlement led to the depletion of many stocks of salmonids, prior to extensive modifications and degradation of natural habitats. However, following the degradation of many west coast aquatic and riparian ecosystems, exploitation rates were higher than many populations could sustain. Therefore, harvest may have contributed to the further decline of some populations.

Extensive artificial propagation has historically supported high levels of steelhead harvest in the Puget Sound area. The majority of harvest occurred in recreational fisheries, but tribal fisheries directed at steelhead are also important. Prior to the promulgation of regulations by WDFW in the mid 1990s protecting all wild steelhead from recreational fishery harvest, Puget Sound steelhead

fisheries likely contributed to the present decline in abundance of natural steelhead populations. It is also likely that harvest directed at early returning hatchery-origin fish adversely affected natural population life-history diversity through the selective removal of commingled native summer-run and early-winter run steelhead adults. Present-day fisheries are implemented to harvest marked hatchery-origin fish only, and are managed in time to target early run hatchery-origin fish and minimize the incidental harvest of early-returning natural steelhead. Existing steelhead recreational fisheries in Puget Sound, while appropriately minimizing potential adverse impacts on natural steelhead populations, may still result in a continued mortality of early-returning natural steelhead through poaching and hook-and-release mortalities. Although overutilization for recreational purposes was a factor that contributed to the present decline of Puget Sound steelhead populations, we do not believe that overutilization is a factor limiting the viability of the Puget Sound steelhead DPS into the foreseeable future.

## 3. Disease or Predation

Introductions of non-native species (e.g., largemouth bass) and habitat modifications that benefit the survival or feeding effectiveness of native or introduced predators have resulted in increased predation risks to natural steelhead populations in many Pacific Northwest rivers and lakes. Predation by marine mammals (principally harbor seals and sea lions) is also of concern in areas where steelhead populations are already diminished due to other factors, or where man-made structures concentrate fish and make them susceptible to predation by marine mammals (e.g., the Ballard Locks at Lake Washington). Although fishes form the principal food sources of many marine mammals, salmonids appear to be a minor component of their overall diet, given the seasonal availability of anadromous fishes (Scheffer and Sperry, 1931; Jameson and Kenyon, 1977; Graybill, 1981; Brown and Mate, 1983; Roffe and Mate, 1984; Hanson, 1993). However, predation by marine mammals may significantly decrease salmonid abundance in some local populations when other prey species are absent and where physical and behavioral conditions lead to the concentration of salmonid adults and juveniles (Cooper and Johnson, 1992). Predation by seabirds can also substantially reduce the abundance of juvenile salmon and steelhead populations in some locations.

Although predation may be a concern for some local populations at low abundance, we do not believe that it is a factor limiting the viability of the Puget Sound steelhead DPS into the foreseeable future.

Fish disease and epizootics can also be a limiting factor to adult and juvenile steelhead survival. Salmonids are exposed to numerous naturally occurring bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environment. Included are fish pathogens causing diseases such as bacterial kidney disease, ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis, enteric redmouth disease, black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, that are known to affect West Coast salmonids (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Foott *et al.*, 1994; Gould and Wedemeyer, undated). In general, very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases. However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992). Hatchery-origin fish may have an increased risk of carrying fish disease pathogens because of relatively high rearing densities that increase stress levels and can lead to a greater manifestation and transmission of diseases within the hatchery population. Under natural, low density conditions, most pathogens do not lead to a disease outbreak in wild populations. When disease outbreaks do occur, they are often triggered by stressful hatchery rearing conditions, or by an adverse change in the natural environment. Consequently, it is possible that the release of hatchery fish may lead to the infection and increased mortality of natural-origin populations, particularly if habitat conditions such as low water flows and high temperatures exacerbate the susceptibility of natural- and hatchery-origin populations to infectious diseases. Although hatchery populations may be considered to be reservoirs for disease pathogens because of their elevated rearing densities and increased stress levels, there is little evidence to suggest that diseases are routinely transmitted from hatchery-origin to natural-origin fish (Steward and Bjornn, 1990). We do not believe that disease is a factor limiting the viability of the Puget Sound steelhead DPS into the foreseeable future.

#### 4. *The Inadequacy of Existing Regulatory Mechanisms*

A variety of Federal, state, tribal, and local laws, regulations, treaties and measures affect the abundance and survival of West Coast steelhead, and the quality of their habitat. We reviewed existing regulatory mechanisms as part of our recent updated listing determinations for West Coast salmon and steelhead (69 FR 33102, June 14, 2004; 70 FR 834, January 5, 2006). We noted several Federal, state, and local regulatory programs that have been successfully implemented to substantially reduce historical risks to West Coast steelhead DPSs (for example, the elimination of hatchery rainbow trout stocking in anadromous waters, and the conversion of many in-river recreational fisheries to mark-selective fisheries or catch-and-release only). The reader is referred to the previous proposed rule (69 FR 33102; June 14, 2004) for a regional and state-by-state summary of these regulatory mechanisms, including those in the Puget Sound area. In particular, changes in regulations governing steelhead fisheries have significantly reduced the risks for many West Coast steelhead DPSs, including the Puget Sound DPS under consideration. Hatchery managers have implemented measures to reduce the potential negative interactions between hatchery-origin and natural-origin steelhead in the Puget Sound area. However, it is unclear whether some of these measures have been effective in minimizing the adverse consequences of artificial propagation on natural populations (e.g., the selection for early run timing in the Chambers Creek steelhead hatchery stock has reduced the frequency of interactions between hatchery-origin and natural fish, but it may have increased the severity of any interactions that do occur). The Hatchery Science Review Group (HSRG) recently detailed recommendations intended to further minimize the potentially harmful effects of artificial propagation on natural populations of Puget Sound salmonids (HSRG, 2004). At present, however, the regulatory and funding mechanisms are not in place to fully implement the HSRG's recommendations (HSRG, 2005; also see further discussion in the "Efforts Being Made to Protect West Coast Salmon and Steelhead" section, below). In addition, although there have been efforts to improve habitat conditions across the range of the Puget Sound steelhead DPS, land-use regulations across its range do not adequately address continued threats from habitat degradation and

modification. We conclude that the inadequacy of existing regulatory mechanisms (e.g., governing potentially harmful hatchery practices and certain land-use activities) is a factor limiting the viability of the Puget Sound steelhead DPS into the foreseeable future.

#### 5. *Other Natural or Manmade Factors Affecting Its Continued Existence*

Variability in ocean and freshwater conditions can have profound impacts on the productivity of salmon and steelhead populations. Natural climatic conditions have at different times exacerbated or mitigated the problems associated with degraded and altered riverine and estuarine habitats. In the last decade, evidence has shown: (1) recurring, decadal-scale patterns of ocean-atmosphere climate variability in the North Pacific Ocean (Zang *et al.*, 1997; Mantua *et al.*, 1997); and (2) correlations between these oceanic productivity "regimes" and salmon population abundance in the Pacific Northwest and Alaska (Hare *et al.*, 1999; Mueter *et al.*, 2002). One indicator of the ocean-atmosphere variation for the North Pacific is the Pacific Decadal Oscillation index (PDO). Negative PDO values are associated with relatively cool ocean temperatures (and generally high salmon productivity) off the Pacific Northwest, and positive values are associated with warmer, less productive conditions. These favorable ocean conditions may also be correlated with favorable conditions for salmonid survival in the freshwater environment (e.g., above-average rainfalls resulting in improved flow regimes for smolt outmigration). Increases in many salmon populations in recent years may be largely a result of more favorable ocean conditions. PDO values were mostly positive during the two decades preceding 1998, and this regime was generally characterized by less productive ocean conditions and declining salmonid abundances. Between July 1998 and July 2002, the PDO exhibited mostly negative values, associated with higher ocean productivity and increasing returns for many West Coast salmonid populations. From August 2002 to present, the PDO has exhibited mostly positive values. It is not clear what impact, if any, these most recent conditions will have on West Coast salmonid populations in general, and the Puget Sound steelhead DPS in particular. Ocean-climate change and variability is a factor contributing considerable uncertainty to the viability of the Puget Sound steelhead DPS into the foreseeable future.

Extensive hatchery programs have been implemented throughout the range of West Coast steelhead. While these programs may have succeeded in providing fishing opportunities and increasing the total number of naturally spawning fish, the programs have also likely increased risks to natural populations as a result of food resource competition, increased predation, reduced genetic diversity and reproductive fitness through interbreeding, and masking of trends in natural populations through the straying of hatchery-origin fish onto spawning grounds. More recently, hatchery programs using local native salmon populations as broodstock have been initiated that are specifically designed to conserve depressed Pacific salmonid populations. State natural resource agencies have adopted or are developing policies designed to ensure that the use of artificial propagation is conducted in a manner consistent with the conservation and recovery of natural, indigenous populations. The role of artificial propagation in the conservation and recovery of salmonid populations continues to be the subject of vigorous and well funded scientific research.

State and Federal hatcheries have attempted to propagate steelhead in Puget Sound since 1900. Early hatchery techniques reared steelhead for only a few days or weeks prior to release, experienced limited success, and likely reduced natural steelhead runs through the collection of fish for broodstock (Crawford, 1979). With the development of extended rearing programs for hatchery steelhead (Putzke and Meigs, 1940), and the resultant increase in adult steelhead returns, artificial propagation of steelhead in Puget Sound became more widespread. Hatchery steelhead in Puget Sound are propagated in nearly all of the major river systems, spawn naturally throughout the Puget Sound region, and are derived largely from a single highly domesticated winter-run stock (the Chambers Creek stock) or from a summer-run stock originally developed in the Columbia River basin (the Skamania Hatchery stock). Genetic analyses indicate that in some naturally spawning populations in larger river basins there is little if any detectable influence from years of Chambers Creek hatchery winter-run steelhead introductions, a result that suggests reproductive isolation of, and poor spawning success by hatchery-origin fish (Phelps *et al.*, 1997). There is, however, some evidence for introgression by hatchery releases into

native winter-run steelhead populations in the Strait of Juan de Fuca (NMFS, 2005). Efforts to limit spawning interactions between hatchery and wild fish through the use of early returning hatchery stocks may have reduced the probability of interbreeding through the temporal separation of average run timing and the spatial separation of spawning areas. However, because of substantial genetic differences between the non-indigenous hatchery stocks and the native natural steelhead populations, the fitness consequences to the native natural population of any hatchery-wild crosses that may occur would be highly detrimental. The HSRG, in its recent recommendations for the form of Puget Sound steelhead hatchery programs, concluded that “the widespread stocking and outplanting of steelhead smolts poses unacceptable ecological and genetic risks to naturally spawning populations, particularly in small streams that receive such outplants or to which hatchery-origin fish stray” (HSRG, 2004). Several BRT members similarly expressed concern that the extensive propagation of the Chambers Creek and Skamania hatchery steelhead stocks may be contributing to the observed declines in Puget Sound steelhead populations, although the BRT acknowledged that there is insufficient information to quantify the level of reproductive exchange between hatchery- and natural-origin steelhead. Potentially harmful hatchery practices may pose ecological and genetic risks to natural populations and may represent a factor limiting the viability of the Puget Sound steelhead DPS into the foreseeable future.

#### **Efforts Being Made to Protect West Coast Salmon and *O. mykiss***

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species. Therefore, in making listing determinations, we first assess species extinction risk and identify factors that have led to the species’ decline. Then we assess existing efforts being made to protect the species to determine if those measures ameliorate the risks faced by the species.

In judging the efficacy of existing protective efforts, we rely on the joint NMFS-FWS “Policy for Evaluation of Conservation Efforts When Making Listing Decisions” (“PECE;” 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation

plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determining whether a species warrants listing as threatened or endangered. Evaluations of the certainty an effort will be implemented include whether: the necessary resources (e.g., funding and staffing) are available; the requisite agreements have been formalized such that the necessary authority and regulatory mechanisms are in place; there is a schedule for completion and evaluation of the stated objectives; and (for voluntary efforts) the necessary incentives are in place to ensure adequate participation. The evaluation of the certainty of an effort’s effectiveness is made on the basis of whether the effort or plan: establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species’ viability at the time of the listing determination.

The PECE also notes several important caveats. Satisfaction of the above mentioned criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately affect the risk assessment. The policy stresses that just as listing determinations must be based on the viability of the species at the time of review, so they must be based on the state of protective efforts at the time of the listing determination. The PECE does not provide explicit guidance on how protective efforts affecting only a portion of a species’ range may affect a listing determination, other than to say that such efforts will be evaluated in the context of other efforts being made and the species’ overall viability. There are circumstances where threats are so imminent, widespread, and/or complex that it may be impossible for any agreement or plan to include sufficient efforts to result in a determination that listing is not warranted.

#### *Summary of Protective Efforts*

As noted above, the consideration of protective efforts under PECE is concerned with evaluating formalized

conservation efforts that have yet to be fully implemented or show effectiveness. We recognize that there are many long established efforts that are providing vital contributions to conserving and recovering Puget Sound salmonid stocks. Such efforts include: Federal actions approved by NMFS and FWS under section 7(a)(2) of the ESA affecting currently listed species; actions approved by NMFS under the section 4(d) protective regulations for salmonid ESUs currently listed as threatened; Federal forest management under the Northwest Forest Plan in the Olympic, Mt. Baker-Snoqualmie, and Gifford Pinchot National Forests; and improved harvest management by WDFW and the Puget Sound area tribes to conserve wild populations of Puget Sound steelhead. Although not directly quantifiable, the protective benefits of these well established measures are manifested in the present demographic performance of Puget Sound steelhead populations. Although not explicitly considered by the BRT, we believe that such efforts are reflected in the BRT’s assessment of limiting factors and extinction risk for the DPS.

Additionally, in the Puget Sound area there are numerous small-scale protective efforts aimed at conserving salmonid species that are currently listed under the ESA. It is unlikely that such efforts individually or collectively comprehensively address the complex suite of limiting factors and broad spatial scales necessary to substantially mitigate the BRT’s assessment of extinction risk for the Puget Sound steelhead DPS. Below we confine our summary of protective efforts to recent developments in conservation and recovery efforts for the Puget Sound area, and significant large-scale or comprehensive efforts with the potential to address the complex and widespread factors likely limiting the Puget Sound steelhead DPS.

The Shared Strategy for Puget Sound (Shared Strategy) is a collaborative effort among local citizens, local governments, non-governmental organizations, tribal governments, Washington State, technical experts, NMFS, and FWS to protect and restore Puget Sound Chinook salmon, Hood Canal summer chum salmon, and bull trout populations in the Puget Sound region. Shared Strategy, in collaboration with NMFS’ Technical Recovery Team, has made significant progress in: identifying demographically independent Chinook salmon populations; identifying recovery targets and ranges for Chinook salmon populations in each watershed; identifying the actions needed at the

watershed level to achieve these targets; and developing recovery plans, specific actions, and resource commitments for the successful implementation of Puget Sound recovery efforts. Recently, the Shared Strategy released a draft recovery plan addressing the threatened Puget Sound Chinook ESU and threatened bull trout (available on the Internet at: <http://www.sharedsalmonstrategy.org/plan/index.htm>). The draft Shared Strategy plan represents a synoptic and comprehensive effort to identify watershed-specific limiting factors, conservation objectives, necessary restoration and conservation measures, required resources, and adaptive management protocols. We have reviewed the draft plan in the context of recovery planning for the threatened Puget Sound Chinook ESU, and we believe that the watershed-scale plans, if implemented, including certain measures identified by NMFS, collectively represent a robust program for achieving the recovery of Puget Sound chinook. At present, however, the necessary funding to implement the draft Shared Strategy plan has not been secured. Without assurances that the necessary funding resources are and will be available, the draft Shared Strategy plan does not satisfy the "certainty of implementation" criterion under PECE. Although we believe that, if implemented, the draft Shared Strategy plan will be effective in conserving the Puget Sound Chinook ESU, there is considerable uncertainty whether the identified conservation measures will be effective in substantially addressing the factors limiting Puget Sound steelhead populations. The draft Shared Strategy plan focuses on the recovery needs of Chinook populations, and does not necessarily contemplate the limiting factors and needed conservation measures specific to the *O. mykiss* species. At present there is insufficient information to evaluate whether the draft Shared Strategy plan adequately accounts for differences in life-history and habitat-use characteristics among populations of Puget Sound Chinook and steelhead.

The HSRG is an independent scientific panel established and funded by Congress to evaluate artificial propagation practices in Puget Sound and coastal Washington, and to provide guidance to regional policymakers and technical staff in implementing hatchery reforms. In 2004 the HSRG released its recommendations for the reform of Puget Sound and coastal Washington salmonid hatcheries, including Puget

Sound steelhead hatchery programs. The HSRG's recommendations for Puget Sound steelhead hatcheries include: (1) establishing "wild steelhead management zones" in each of the recognized ecoregions of Puget Sound, in which streams would not be planted with hatchery fish and instead would be managed for native stocks; (2) discontinuing some current programs as necessary to implement such wild steelhead management zones; (3) convening of a workshop by WDFW to further develop methods of implementing segregated steelhead hatchery programs (such as the programs derived from the Chambers Creek and Skamania Hatchery stocks) while minimizing interactions with native naturally spawning steelhead populations; (4) instituting monitoring and evaluation by WDFW as a basic component of conducting segregated hatchery programs; (5) developing locally adapted broodstock in areas where hatchery steelhead programs may be developed or reformed; (6) sizing hatchery programs intended to provide harvest opportunities in a manner that minimizes impacts on wild populations; (7) developing the capability of collecting unharvested returning hatchery-origin adult steelhead to minimize spawning interactions with natural populations; and (8) discontinuing hatchery programs where unharvested hatchery-origin adults cannot be collected at their return (HSRG, 2004). WDFW is in the process of developing a new statewide steelhead management plan that will consider the HSRG's recommendations. At present, however, the regulatory and funding mechanisms are not in place to implement the HSRG's recommendations (HSRG, 2005a), and the specific reforms that WDFW intends to implement are unknown. Additionally, further research and data collection will be necessary prior to the implementation of certain HSRG recommendations. For example, the HSRG cautions that, because of the low abundance and productivity of wild steelhead populations in Puget Sound, developing locally adapted broodstock is not currently a viable alternative for most populations (HSRG, 2005b). If WDFW completes its new steelhead management plan prior to the publication of the final rule (i.e., within 1 year from the date of publication of this notice), we anticipate considering it in developing our final listing determination.

The conservation of approximately 1.1 million acres of forest lands in the Puget Sound region is covered by five

Habitat Conservation Plans (HCPs), which we have determined are compliant with section 10(a)(2)(B) of the ESA and that include steelhead as HCP-covered species. The HCPs are West Fork Timber, Plum Creek Timber (Central Cascades), Port Blakely Tree Farms, WA Department of Natural Resources, and Green Diamond (formerly called Simpson Timber - Shelton Timberlands). All of these forestry HCPs address long-term salmonid survival on industrial forest lands and are designed to provide healthy watersheds and riparian areas, and properly functioning salmonid habitats. These HCPs also give landowners long-term management clarity and certainty. Specific HCP conservation measures focus on attaining mature forest conditions in riparian areas, minimizing sediment input to streams, protecting and recovering floodplain functions, and protecting water quality during timber management and associated road operations. Each HCP has a different blend of conservation measures that reflect landowner operations, geographic limitations, and baseline environmental conditions. Although forest practices on all private lands are not yet procedurally compliant with ESA regulations under Section 10 or Section 4(d), the Washington State Forest Practice Rules were changed in 2000 to reflect the substance of NMFS' Section 4(d) protective regulations for threatened salmonids (65 FR 42422; July 10, 2000). Effective July 2001, these new rules cover a wide variety of forest practices and include: a new, more functional classification of rivers and streams on non-Federal forest land; improved plans for properly designing, maintaining, and upgrading existing and new forest roads; additional protections for unstable slopes; greater protections for riparian areas intended to maintain properly functioning conditions; a process for adaptive management; and other features. The above described protective efforts addressing forest land management are being implemented. Although these protective efforts are important contributions to addressing habitat degradation in upper tributaries and attendant adverse effects on habitat quality and structure downstream, there is insufficient information to assess the effectiveness and relative importance of these efforts in mitigating the extinction risk of the Puget Sound steelhead DPS. It is unlikely that these forestry measures substantially alter the BRT's assessment of extinction risk given that the loss and degradation of nearshore, estuarine, and lowland habitats due to

agricultural activities and urbanization remain significant limiting factors for the DPS.

Two municipal watersheds are also covered under HCPs that include protection of instream flows for anadromous salmonids: the City of Seattle Cedar River Watershed and the City of Tacoma Green River Water Supply. Instream flows are also provided through agreements negotiated with the Federal Energy Regulatory Commission on the Skagit, Sultan, Snoqualmie and Nisqually rivers. As noted above, there is insufficient information to assess the effectiveness of these efforts in mitigating the extinction risk of the Puget Sound steelhead DPS. Despite likely benefits at the watershed scale, it is unlikely that these efforts address instream flow issues on a spatial scale sufficiently broad to alter the extinction risk assessment for the DPS as a whole.

Two long-standing hydroelectric dams on the Elwha River are slated for removal starting in 2008. Congress has authorized funds for current phases of the complex effort that requires construction of several new water supplies. These dam removals will restore anadromous salmonid access to over 100 km of mainstem and tributary habitat. The construction of a fish ladder in 2000 at Electron Dam in the Puyallup River Basin has provided access to over 16 km of mainstem habitat. Studies are underway to evaluate its effectiveness in providing passage for adult and juvenile fish. Passage is now provided for steelhead and other salmonids (except sockeye) above Landsburg Dam on the Cedar River, which formerly blocked access to approximately 27.4 km of mainstem habitat since 1900. Although these efforts are important developments in providing for fish passage and addressing adverse impacts of dams on downstream habitats, in total they currently lack sufficient certainty of implementation and effectiveness to alter our risk assessment.

We support the many valuable conservation and recovery planning efforts in Puget Sound. While we are optimistic that these promising efforts will contribute to recovering listed Puget Sound salmonids, PECE establishes strict criteria for the consideration of such protective efforts in ESA listing determinations. At present, the efforts being made to protect Puget Sound salmonid species lack the certainty of implementation and effectiveness, or lack sufficient scope, to substantially mitigate the BRT's assessment of extinction risk for the Puget Sound steelhead DPS. In

developing our final listing determination, we will consider the best available information concerning the protective efforts described above, any changes or amendments to those efforts, as well as any other protective efforts that may come to our attention. Our evaluation of protective efforts will be conducted consistent with the PECE criteria for evaluating the likelihoods of implementation and effectiveness.

#### Proposed Listing Determination

The overwhelming majority of the BRT concluded that Puget Sound steelhead is "likely to become endangered within the foreseeable future throughout all or a significant portion of its range." The BRT fully considered the best available scientific and commercial information concerning the contributions of resident and hatchery-origin *O. mykiss* to the viability of the Puget Sound steelhead populations in total. The BRT noted that the resident *O. mykiss* below impassable barriers may reduce risks to the steelhead population abundance in the short term, but concluded that these resident populations are unlikely to significantly reduce the risk of extinction of steelhead populations over the long term. The BRT also noted that the two within-ESU hatchery programs (the Hamma Hamma River and Green River natural winter-run steelhead hatchery programs) have the potential to benefit natural populations in their respective rivers, but both programs are relatively recent and have not collected sufficient data to demonstrate positive contributions with any certainty. The BRT concluded that these two within-ESU hatchery programs do not significantly reduce the risk of extinction for Puget Sound steelhead.

We have reviewed the BRT's findings, considered the factors threatening the future viability of the Puget Sound steelhead DPS, and taken into account those efforts being made to protect the species. We conclude that the DPS is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range because of: the threatened destruction, modification, or curtailment of its habitat or range; the inadequacy of existing regulatory mechanisms; and other natural and manmade factors affecting its continued existence (see the "Factors Affecting the Species" section above for a description of the specific risks associated with these statutory listing factors). We also conclude that, at present, protective efforts in Puget Sound do not substantially mitigate the factors threatening the DPS's future viability, nor do they ameliorate the

BRT's assessment of extinction risk for the Puget Sound steelhead DPS. Based on the foregoing information, we propose that the Puget Sound steelhead DPS be listed under the ESA as a threatened species.

#### Protective Regulations for Threatened West Coast Salmonids

ESA section 9(a) take prohibitions (16 U.S.C. 1538(a)(1)(B)) apply to all species listed as endangered. In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether and to what extent to extend the statutory 9(a) "take" prohibitions, and directs the agency to issue regulations it considers necessary and advisable for the conservation of the species. We have flexibility under section 4(d) to tailor protective regulations based on the contributions of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

We have already adopted ESA 4(d) rules that exempt from the take prohibitions a range of activities that provide for the conservation of threatened salmonid ESUs (50 C.F.R. 223.203). These 4(d) regulations for threatened salmonids provide the necessary flexibility to ensure that fisheries and artificial propagation programs are managed consistently with the conservation needs of ESA-listed ESUs. (For a more detailed description of the latest amendments to the 4(d) protective regulations, the reader is referred to 70 FR 37160, June 28, 2005). The 4(d) protective regulations apply the take prohibitions to unmarked anadromous fish with an intact adipose fin. In other words, the take prohibitions do not apply to listed hatchery fish with a clipped adipose fin ("ad-clipped"). In a subsequent **Federal Register** notice we will propose protective regulations for the Puget Sound steelhead DPS.

#### Peer Review

In December of 2004 the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (Peer Review Bulletin) establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The OMB Peer Review Bulletin, implemented under the Information Quality Act (Public Law 106-554), is intended to provide public oversight on the quality of agency

information, analyses, and regulatory activities. The text of the Final Peer Review Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Peer Review Bulletin requires Federal agencies to subject "influential" scientific information to peer review prior to public dissemination. Influential scientific information is defined as "information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions," and the Peer Review Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. The Peer Review Bulletin establishes stricter standards for the peer review of "highly influential" scientific assessments, defined as information whose "dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest."

We consider the BRT's status review memorandum ("Status Review Update for Puget Sound Steelhead;" NMFS, 2005) to be "influential scientific information," and, as such, it is subject to the pre-dissemination peer review requirements of the Peer Review Bulletin. In November 2005 we solicited scientific peer review of the BRT's status review memorandum from three independent experts who have not been involved in the drafting of the report or in collecting the data considered therein, nor are the experts affiliated with agencies or organizations that have an interest in the outcome of the status review update for Puget Sound steelhead. The purpose of the review is to assess the scientific validity of the status review, including any assumptions, methods, results and conclusions. Specific aspects of the scientific peer review include: the quality of the data collected or used for the assessment; the appropriateness of the analyses employed; the validity of the results and conclusions; and the appropriateness of the scope of the assessment and information considered. The reviewers' comments will be summarized and addressed in the BRT's final status review update report, as well as in our final listing determination for Puget Sound steelhead. A description of our peer review plan for the BRT's status review memorandum was posted on the Internet in December 2005 by the U.S. Department of Commerce and is available at: <http://www.osec.doc.gov/cio/oipr/ID47.htm>.

### Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

We and the FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that the agencies shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. At the time of the final rule, we will identify to the extent known specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. We believe that, based on the best available information, the following actions will not result in a violation of section 9:

1. Possession of Puget Sound steelhead which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; or
2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which ESA section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that we believe could potentially "harm" steelhead populations (see ESA 3(19) and 50 CFR 222.102 [harm]) in the proposed Puget Sound DPS, and result in a violation of the section 9 take prohibition include, but are not limited to:

1. Land-use activities that adversely affect steelhead habitats in the Puget Sound area (e.g., logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion);
2. Destruction/alteration of the steelhead habitats in the proposed DPS, such as removal of large woody debris and "sinker logs" or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow;
3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or

riparian areas supporting Puget Sound steelhead populations;

4. Violation of discharge permits;
5. Pesticide applications;
6. Interstate and foreign commerce of steelhead from the proposed DPS and import/export of steelhead from the DPS without a threatened or endangered species permit;
7. Collecting or handling of steelhead from the proposed DPS. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species; or
8. Introduction of non-native species likely to prey on steelhead in the Puget Sound area or displace steelhead from their habitats.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of the proposed Puget Sound steelhead DPS under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the section 9 take prohibition, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

### Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. In keeping with agency regulations at 50 CFR 424.12, we conclude that critical habitat is not presently determinable for the Puget Sound steelhead DPS. Specifically, we lack biological, economic, and related mapping information sufficient to perform required analyses of the impacts of critical habitat designation to determine which areas may qualify as critical habitat for this DPS. We intend to propose critical habitat in separate rulemaking as soon as possible after completing the required analyses. In this notice we are soliciting information necessary to inform these analyses (see Information Solicited and **ADDRESSES**) and will consider such information in developing a future proposed designation for the Puget Sound steelhead DPS.

### Information Solicited

#### *Proposed Rule*

To ensure that the final action resulting from this proposed rule will be as accurate and effective as possible, and informed by the best available scientific and commercial information, we are soliciting information,

comments, and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. We recognize that in several instances there are serious limits to the quantity and quality of available information, and accordingly we have exercised our best professional judgment in developing this proposed rule. We will appreciate any additional information or comment regarding: (1) the relatedness of specific hatchery stocks to the Puget Sound steelhead DPS; (2) biological or other relevant data concerning the viability and/or threats to the Puget Sound steelhead DPS, including the abundance, productivity, spatial structure, and diversity of the subject DPS; (3) current or planned activities in the subject area and their possible impact on the species; (4) the relationship, range, distribution, and habitat-use patterns of steelhead populations in the Puget Sound area; and (5) the consideration of efforts being made to protect salmonid populations in the Puget Sound area. We invite and will consider all pertinent information and comment. We further request that data, information, and comments be accompanied by: supporting documentation such as maps, logbooks, bibliographic references, personal notes, and/or reprints of pertinent publications; and the name of the person submitting the data, the address, and any association, institution, or business that the person represents.

#### Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In a forthcoming **Federal Register** document, we will announce the date and location of any public meeting (or meetings) to provide the opportunity for the interested individuals and parties to fully understand issues relating to this proposed rule, give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

#### Critical Habitat

As noted above, we are soliciting biological and economic information relevant to making a critical habitat designation for the Puget Sound steelhead DPS. Data reviewed may include, but are not limited to: scientific

or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties. Comments and data particularly are sought concerning:

(1) Maps and specific information describing the amount, distribution, and use type (e.g., spawning, rearing, or migration) of steelhead habitat in the Puget Sound area (both freshwater and marine), as well as any additional information on occupied and unoccupied habitat areas;

(2) The reasons why any habitat should or should not be determined to be critical habitat as provided by sections 3(5)(A) and 4(b)(2) of the ESA;

(3) Information regarding the benefits of excluding lands covered by Habitat Conservation Plans (ESA section 10(a)(1)(B) permits), including the regulatory burden designation may impose on landowners and the likelihood that exclusion of areas covered by existing plans will serve as an incentive for other landowners to develop plans covering their lands;

(4) Information regarding the benefits of excluding Federal and other lands covered by habitat conservation strategies and plans (e.g. Northwest Forest Plan, Washington's Forest and Fish Plan), including the regulatory burden designation may impose on land managers and the likelihood that exclusion of areas covered by existing plans will serve as an incentive for land users to implement the conservation measures covering the lands subject to these plans;

(5) Information regarding the benefits of designating particular areas as critical habitat;

(6) Current or planned activities in the areas that might be proposed for designation and their possible impacts;

(7) Any foreseeable economic or other potential impacts resulting from designation, in particular, any impacts on small entities;

(8) Whether specific unoccupied areas (e.g., areas behind dikes or dams) may be essential to provide additional habitat areas for the conservation of this DPS; and

(9) Potential peer reviewers for a proposed critical habitat designation, including persons with biological and economic expertise relevant to the species, region, and designation of critical habitat.

We seek information regarding critical habitat for the Puget Sound steelhead DPS as soon as possible, but by no later than June 27, 2006 (see **ADDRESSES**, above).

#### References

A comprehensive list of the referenced materials is available on the Internet at <http://www.nwr.noaa.gov>, or upon request (see **ADDRESSES** section above).

#### National Environmental Policy Act

ESA listing decisions are exempt from the requirement to prepare an environmental assessment or environmental impact statement under the NEPA. See NOAA Administrative Order 216-6.03(e)(1) and *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Cir. 1981). Thus, we have determined that the proposed listing determination described in this notice is exempt from the requirements of the NEPA. We are preparing a draft Environmental Assessment (EA) under the NEPA analyzing alternative 4(d) protective regulations for the Puget Sound steelhead DPS. We will solicit review and comment on the draft EA in a forthcoming notice of availability to be published in the **Federal Register**.

#### Executive Order (E.O.) 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

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

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

**E.O. 13132 – Federalism**

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in the State of Washington (the state in which the subject DPS occurs), who will be invited to comment. We have conferred with the State of Washington and Puget Sound area tribal governments in the course of assessing the status of Puget Sound steelhead, and considered, among other things, state and local conservation measures. As the ESA listing process continues, we intend to continue engaging in informal and

formal contacts with Washington, Puget Sound tribes, and other affected local or regional entities, giving careful consideration to all written and oral comments received. We also intend to consult with appropriate elected officials in the establishment of a final rule.

**List of Subjects in 50 CFR Part 223**

Endangered and threatened species, Exports, Transportation.

Dated: March 21, 2006.

**William T. Hogarth,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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

**PART 223—THREATENED MARINE AND ANADROMOUS SPECIES**

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

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

2. In § 223.102, paragraph (a)(23) is added to read as follows:

**§ 223.102 Enumeration of threatened marine and anadromous species.**

\* \* \* \* \*  
(a) \* \* \*

Species <sup>1</sup>		Where Listed	Citation(s) for Listing Determinations)	Citation(s) for Critical Habitat
Common name	Scientific name			
(23) Puget Sound Steelhead	<i>Oncorhynchus mykiss</i>	U.S.A., WA, Distinct Population Segment including all naturally spawned anadromous winter-run and summer-run <i>O. mykiss</i> (steelhead) populations, in streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and Hamma Hamma winter-run steelhead hatchery stocks.	[INSERT DATE OF PUBLICATION WHEN PUBLISHED AS A FINAL RULE]	NA

<sup>1</sup> Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991)

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 635**

[Docket No. 060313062–6062–01; I.D. 082305E]

RIN 0648–AT37

**Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures; Gear Operation and Deployment; Complementary Closures**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would implement additional handling, release, and disentanglement requirements for

sea turtles and other non-target species caught in the shark bottom longline (BLL) fishery. These requirements are intended to reduce post hooking mortality of sea turtles and other non-target species, which is an objective of Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) published on December 24, 2003. This proposed rule would also implement management measures that are consistent with those implemented by the Caribbean Fishery Management Council (CFMC) on October 28, 2005. These complementary management measures are intended to minimize adverse impacts to Essential Fish Habitat (EFH) for reef-dwelling species. The proposed rule would apply to all participants in the Atlantic shark fishery.

**DATES:** Written comments must be received by 5 p.m. on June 27, 2006.

**ADDRESSES:** Written comments on the proposed rule or the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Draft EA/RIR/

IRFA) may be submitted to Mike Clark, Highly Migratory Species Management Division:

- E-mail: [SF1.082305E@noaa.gov](mailto:SF1.082305E@noaa.gov).
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on Rule for Dehooking and Complementary Caribbean Measures for the Commercial Shark Fishery.”
- Fax: 301–713–1917.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line the following identifier: I.D. 082305E.

See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations.

Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations; and copies of the document entitled “Careful Release and Handling Protocols for the Careful Release of Sea Turtles with Minimal Injury” may be obtained from the mailing address listed above, and are also available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>. Copies of the documents supporting the actions contained in the Comprehensive Amendment to the Fishery Management

Plans of the U.S. Caribbean may be obtained by contacting Dr. Steve Branstetter, Southeast Regional Office, 263 13<sup>th</sup> Ave. South, St. Petersburg, FL 33701; telephone 727-824-5305.

**FOR FURTHER INFORMATION CONTACT:**

Mike Clark or Karyl Brewster-Geisz by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:**

**Public Hearing Times, Date, and Locations**

1. April 26, 2006 from 7-9 p.m. Ponce Hilton, 1150 Caribe Avenue, Ponce, PR. 00716.

2. April 27, 2006 from 6-8 p.m. Florence Williams Public Library, 1122 King Street, Christiansted, St. Croix, U.S. Virgin Islands. 00802.

3. May 18, 2006 from 7-9 p.m. City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708.

4. June 1, 2006 from 6-8 p.m. Town Hall, 407 Budleigh Street, Manteo, NC 27954.

5. June 7, 2006 from 6-8 p.m. NMFS Laboratory, 3500 Delwood Beach Drive, Panama City, FL 32408.

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP for Atlantic Tunas, Swordfish, and Sharks and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks are implemented by regulations at 50 CFR part 635. The fisheries for spiny lobster, queen conch, reef fish, and corals and reef-associated invertebrates in the exclusive economic zone (EEZ) off Puerto Rico and off the U.S. Virgin Islands are managed under fishery management plans prepared by the CFMC. These fishery management plans are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

**Background**

An objective of the final rule implementing Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, was to minimize, to the extent practicable, bycatch of living marine resources and the mortality of such bycatch that cannot be avoided in the fisheries for Atlantic sharks. That rule finalized measures that required the use of non-stainless steel, corrodible hooks aboard shark BLL fishing vessels, the possession of release equipment (line cutters and dipnets, both with extended reach handles), and also required BLL vessels to immediately release any sea turtle, marine mammal, or smalltooth sawfish that is hooked or entangled and then move at least one nautical mile (2

km) before resuming fishing activities. At that time, NMFS had not yet approved dehooking devices for sea turtles. Therefore, while Amendment 1 to the HMS FMP requires vessel operators to possess, maintain, and utilize, dehooking and release equipment, implementation of the measure was delayed pending approval.

The purpose of this proposed rulemaking is to update the necessary equipment and protocols that vessel operators in the BLL fishery must possess, maintain, and utilize for the safe handling, release, and disentanglement of sea turtles and other non-target species. Significant new information, techniques, and equipment have been approved and implemented for the PLL fishery since NMFS enacted Amendment 1 to the HMS FMP's requirements for the BLL fishery. Participants in the pelagic longline (PLL) fishery are required to possess, maintain, and utilize a suite of NMFS-approved handling and dehooking equipment when engaged in fishing activities (July 6, 2004, 69 FR 40734). Research conducted in the Northeast Distant statistical reporting area (NED) has indicated that removing the maximum amount of gear from sea turtles significantly increases post-release survival. Dehooking devices that meet NMFS design standards are necessary for removal of fishing gear and are now available to release sea turtles. Because of similarities between the fisheries, NMFS is reassessing the BLL requirements in light of the July 6, 2004, rule for the PLL fishery.

Another objective of this action is to propose for commercial Atlantic shark BLL fisheries, implementation of measures that are complementary to CFMC-recommended measures that NMFS implemented on October 28, 2005 (70 FR 62073). These measures would minimize adverse impacts to EFH and reduce fishing mortality for mutton snapper, red hind, and other reef-dwelling species. Scoping hearings for the Comprehensive Amendment to the FMPs of the Caribbean, including the bottom longline closures being considered in this rulemaking, were conducted from June 4 to June 12, 2002, in Puerto Rico and the U.S. Virgin Islands. The Environmental Protection Agency published a notice of availability (NOA) of the Draft Supplemental Environmental Impact Assessment (DSEIS) in the **Federal Register** on March 18, 2005 (70 FR 13190). The final supplemental environmental impact statement for the Comprehensive Amendment to the FMPs of the Caribbean was filed with the Environmental Protection Agency

on June 17, 2005, with the Notice of Availability published on June 24, 2005, (70 FR 36581).

The Comprehensive Amendment to the FMPs of the Caribbean addressed several requirements of the Magnuson-Stevens Act including, but not limited to, reducing overfishing, rebuilding overfished stocks, and minimization, to the extent practicable, of the adverse effects on EFH caused by fishing. A proposed rule containing measures specific to Council-managed species in the Comprehensive amendment was published in the **Federal Register** on September 13, 2005 (70 FR 53979), with a comment period ending on September 28, 2005. The final rule, specific to Council-managed species, published in the **Federal Register** on October 28, 2005 (70 FR 62073), with an effective date of November 28, 2005.

Most of the elements contained in the Comprehensive Amendment, such as the establishment of biological reference points, rebuilding plans, and possession limits, apply solely to Council-managed species such as reef fish, queen conch, and spiny lobster. However, in several geographic areas, year-round prohibitions on BLL and other gear have been established to minimize, to the extent practicable, adverse effects on essential fish habitat caused by fishing activities and reduce fishing mortality of reef-dwelling species. These management measures could potentially impact commercial shark fisheries and are the subject of this current proposed rule.

**Implementation of Additional Dehooking Requirements for the BLL Fishery**

Currently, to reduce injuries and mortalities associated with protected resources interactions, all Atlantic vessels that have BLL gear onboard must use corrodible, non-stainless steel hooks. If a marine mammal, sea turtle, or smalltooth sawfish, is hooked or entangled by the gear, the operator of the vessel must immediately release the animal, retrieve the BLL gear, and move at least 1 nm (2 km). Vessel operators are required to follow guidelines for sea turtle handling in accordance with procedures specified by the NMFS at § 223.206(d)(1). Furthermore, vessel operators are required to possess long-handled (6 ft., 1.83 m) line cutters and a long-handled (6 ft., 1.82 m) dipnet, capable of supporting 100 lbs (39.4 kg). Dipnets are required to boat sea turtles, when practicable, and line cutters are required to disengage any hooked or entangled sea turtles by cutting the line as close as possible to the hook. If a smalltooth sawfish is caught, the fish

should be kept in the water while maintaining water flow over the gills, examined for research tags, and then the line should be cut as close to the hook as possible.

The preferred alternative would require vessel operators aboard all Federally permitted vessels for Atlantic HMS with BLL gear onboard to possess, maintain, and utilize additional equipment and protocols consistent with what is currently required for the PLL fishery. The preferred alternative would not change the requirements regarding use of corrodible, non-stainless steel hooks, moving 1 nautical mile after a protected resource interaction, or the handling of smalltooth sawfish. Diagrams, design specifications, and additional descriptions of the proposed pieces of equipment that vessels must possess, maintain, and utilize are provided in Appendix A of the draft environmental assessment (EA) prepared for this proposed rule and also listed in Table 1. Vessels would also be required to possess onboard a copy of the document entitled "Careful Release Protocols for Release with Minimal Injury" which describes the procedures for hook removal and careful release of sea turtles in detail. NMFS already provided these documents in either English, Spanish, or Vietnamese, to PLL and BLL fishermen. This document is available upon request from the HMS Management Division (see **ADDRESSES** section).

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.

Required Item	Examples of NMFS-Approved Models
(A) Long-handled (6ft. (1.83 m) or 150 percent of freeboard height) line cutter	LaForce Line Cutter; Arceneaux Line Clipper
(B) Long-handled (6 ft. (1.83 m) or 150 percent of freeboard height) dehooker for ingested hooks	ARC Pole Model BP11 Deep Hooked Dehooker

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.—Continued

Required Item	Examples of NMFS-Approved Models
(C) Long-handled (6ft. (1.83 m) or 150 percent of freeboard height) dehooker for external hooks	ARC 6ft. Pole Big Game Dehooker Model P610; ARC Model LJ6P (6ft. or 1.83 m); ARC Model LJ36; ARC 6ft. (1.83 m) Pole Big Game Dehooker (Model P610)
(D) Long-handled (6ft. (1.83 m) or 150 percent of freeboard height) device to pull an "inverted V"	ARC Model LJ6P (6ft. or 1.83 m); or ARC Model LJ36; ARC Pole Model Deep Hooked Dehooker (Model BP11); ARC 6ft. (1.83 m) Pole Big Game Dehooker (Model P610); Davis Telescoping Boat Hook (Model 85002A); West Marine Fishing Gaff (Model F6H5 with F6-006 handle)
(E) Dipnet (handle length must be 6ft. (1.83 m) or 150 percent of freeboard height)	ARC Breakdown Lightweight Dipnet Model (DN6P (6ft.), DNO8 (8ft.), or DN14 (12ft.)); Lindgren Pittman, Inc. Model NMFS-Turtle Net; ARC net assembly and Handle (Model DNIN)
(F) Standard Automobile Tire	Any standard automobile tire or other comparable, cushioned, elevated surface that allows boated turtles to be immobilized
(G) Short Handled Dehooker for Ingested Hooks	ARC 16in. (40.64 cm) Hand Held Bite Block Deep Hooked Turtle Dehooking Device (Model ST08)

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.—Continued

Required Item	Examples of NMFS-Approved Models
(H) Short Handled Dehooker for External Hooks	ARC Hand Held Large J style Dehooker (Model LJ07); ARC Hand Held Large J style Dehooker (Model LJ24); or ARC 17in. (43.18 cm) Hand Held Bite Block Deep Hooked Turtle Dehooking Device (Model ST08); or Scotty's Dehooker
(I) Long nose or needle nose pliers	12in. (30.48 cm) S.S. NuMark Model #030281109871; any 12in. (30.48 cm) stainless steel long or needle-nose pliers
(J) Bolt Cutter	H.K. Porter Model 1490 AC
(K) Monofilament Line Cutter	Jinkai Model MC-T
(L) Two of the following Mouth Openers and Mouth Gags	
(L1) Block Of Hard Wood	Any block of hard wood or long-handled wire brush (e.g., Olympia Tools Model 974174)
(L2) Set of (3) Canine Mouth Gags	Jorvet Model 4160, 4162, and 4164
(L3) Set of (2) Sturdy Dog Chew Bones	Nylabone®, Gumabone®, or Galileo® (trademarks owned by T. F. H. Publications, Inc)
(L4) Set of (2) Rope Loops Covered with Hose	Any set of (2) rope loops covered with hose meeting design standards
(L5) Hank of rope	Any size soft braided nylon rope is acceptable, provided it creates a hank of rope approximately 2-4in. (5.08 - 10.16 cm) in thickness

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.—Continued

Required Item	Examples of NMFS-Approved Models
(L6) Set of (4) PVC splice couplings	A set of (4) Standard Schedule 40 PVC splice couplings (1in. (2.54 cm), 1.25in. (3.175 cm), 1 1.5in. (3.81 cm), and 2in. (5.08 cm))
(L7) Large avian oral speculum	Webster Vet Supply Model (Model 85408); Veterinary Specialty Products (Model VSP 216-08); Jorvet (Model J-51z); and Krusse (Model 273117)

This proposed rule would allow for use of other items that are not listed to fulfill the requirements, provided they meet the minimum design standards at 50 CFR 635.21. For this proposed rule, those design standards are also described in Appendix A of the draft environmental assessment. At this time, NMFS is aware of only one commercial manufacturer of long and short-handled dehookers for ingested hooks that meet the minimum design standards.

The preferred alternative would require that vessels possess, maintain, and utilize items A through L (already required to possess long-handled linecutters (item A) and dipnets (item E)). For long-handled items (A-E), handle length must be at least 6ft. (1.83 m) or 150 percent of freeboard height, whichever is greater. Freeboard is defined at 50 CFR 635.2 as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design. Two different mouth openers or gags (items L1-L7) are required. Both long and short-handled dehookers for ingested hooks (items B and G) can be used in lieu of dehookers for external hooks (items C and H), provided all vessels possess both a short and a long-handled dehooker for ingested hooks (at a minimum). Furthermore, if vessels possess a 6ft. (1.83 m) J style dehooker to satisfy the requirement for item C, it would also satisfy the requirement for item D. Items A-D are intended to be used for turtles that are not boated. Items E-L are intended to be used for turtles that are boated.

The design standards for the NMFS-approved items are described in Appendix A of the draft EA for this proposed rule. These standards would allow fishermen to construct some of the equipment from material that is readily available to them and to use skills that most fishermen likely possess, provided the equipment meets design standards listed at 50 CFR 635.21. This gear is necessary to release sea turtles effectively with minimal harm or injury; however, the handling, release, and disentanglement equipment may also assist fishermen with other non-target species that are encountered during fishing activities. Possession of this equipment would not impact the number of interactions between BLL gear and sea turtles and other non-target species.

As described in Appendix A of the draft EA, NMFS also recommends possession and utilization of a "turtle tether" for controlling large turtles at the side of the boat and a "turtle hoist" for moving large turtles onto the boat, but these items are not being proposed as requirements at this time.

The existing requirements for sea turtle handling and resuscitation procedures specified by NMFS are described at 50 CFR 223.206(d)(1)(i). Additional handling requirements for sea turtles and other protected resources are described at 50 CFR 635.21(c)(5)(ii). This proposed rule makes a minor revision to the regulatory text at 50 CFR 223.206(d)(1)(ii) to clarify that the turtle handling and resuscitation provisions of § 223.206 (d)(1)(i) are in addition to the turtle handling requirements at 50 CFR 635.21.

The preferred alternative would have ecological, economic, and social impacts. The additional equipment required is necessary to maximize gear removal and would have positive ecological impacts by maximizing post-release survival of sea turtles and other non-target species after interactions with longline gear. It is estimated that approximately 17 leatherback and 123 loggerhead sea turtles are killed annually as a result of interactions with BLL gear. It is estimated that between two and ten fewer leatherback sea turtles, and between 12 and 71 fewer loggerhead sea turtles would die as a result of interactions with BLL gear by employing the additional dehooking equipment required by this alternative. Negative economic impacts would be expected initially as participants would be required to purchase or construct additional equipment as a result of this alternative. NMFS estimates that the one-time costs of initial compliance would range from \$253 to \$977; exact

costs would depend on how much of the equipment the fishermen are able to construct themselves, the vessel's freeboard height (freeboard height is related to handle-length required on items A-E), and the amount of equipment that they already possess. Some of these economic impacts may be offset over time as fishermen are able to retrieve more of their hooks by using the dehooking equipment. Costs may also be incurred in the future as equipment may need to be maintained or replaced, as necessary. NMFS anticipates negligible social impacts as a result of the preferred alternative.

NMFS also considered two other alternatives for this rulemaking. A status quo alternative would maintain the current dehooking equipment requirements and would result in negative ecological impacts as the equipment currently required does not ensure that participants are able to remove the maximum amount of fishing gear from sea turtles to reduce post-hooking mortality. Furthermore, this alternative does not comply with the October 2003 BiOp which required NMFS to implement additional dehooking equipment for the shark BLL when it was approved. This alternative would not result in any economic or social impacts as it would not require participants to modify their behavior or attain any additional equipment.

The other alternative that NMFS considered would require participants to possess additional equipment based on their vessel's freeboard height. Vessel's that have a freeboard height less than or equal to 4 feet (1.22 m) would not have to possess the full suite of long-handled dehooking equipment (items B (and/or C) and D). Vessel's with freeboard height greater than 4 feet (1.22 m) would be required to possess the full suite of long-handled equipment. This alternative was considered because BLL vessel's are generally smaller and have a lower freeboard height than PLL vessel's. The shark BLL fishery interacts with fewer sea turtles in general, and interactions with larger leatherback or loggerhead sea turtles that cannot be boated are more infrequent. For these smaller BLL vessels, the length of a short handled dehooker (items G and/or H), in addition to a fisherman's arm length, may be sufficient to dehook and release turtles that are too large to be brought on board. This alternative would result in positive ecological impacts relative to the status quo, however, these impacts would be less positive than those achieved with the preferred alternative which requires all participants to possess the full suite of long-handled equipment for dehooking

or disentangling turtles that can not be boated. The preferred alternative has increased positive ecological impacts because possessing the long-handled equipment would increase the likelihood that fishermen are able to dehook and or remove as much gear as possible from turtles that cannot be brought onboard. Similar to the preferred alternative, negative economic impacts would occur as a result of this alternative initially as it would require participants to procure additional equipment that would range in price from \$152 to \$477. Social impacts as a result of this alternative would likely be negligible.

The preferred alternative was selected in order to maximize post-hooking survival of sea turtles and maintain consistency between the PLL and BLL fisheries because of the similarities between these fisheries, the gear employed, and the fishermen. Furthermore, since many vessel operators and owners fish with both BLL and PLL gear NMFS selected a preferred alternative that would enable operators to possess the same equipment required in the PLL fishery. This would facilitate and improve compliance with the regulations and maintain consistency among longline and HMS fisheries. The economic impacts of compliance may be reduced if Atlantic shark fishermen construct additional equipment themselves, provided it meets the design specifications at 50 CFR 635.21.

#### **Restrictions to Minimize Adverse Effects on EFH and Reduce Fishing Mortality of Reef-Dwelling Species**

This proposed rule would prohibit persons issued an HMS permit with BLL gear onboard a vessel from fishing or deploying any type of fishing gear, on a year-round basis in: (1) The newly-implemented Grammanik Bank closed area; (2) the existing mutton snapper spawning aggregation area off the southwest coast of St. Croix, U.S. Virgin Islands; and (3) the existing red hind spawning aggregation areas (East of St. Croix, and West of Puerto Rico (including Bajo de Cico, Tourmaline Bank, and Abrir La Sierra Bank)). See 50 CFR 622.33(a) for the exact coordinates of these areas. The year-round prohibition on the use of BLL and other fishing gears within these discrete spawning aggregation sites would protect EFH and contribute to needed reductions in fishing mortality of mutton snapper, red hind, and other reef-dwelling species. As described in the Comprehensive Amendment to the Caribbean FMPs, there were several other requirements regarding fish traps

and pots that do not impact HMS fisheries, in addition to a No Action alternative.

The only HMS fishery in the Virgin Islands and Puerto Rico that could potentially be affected by this proposed action is the commercial shark BLL fishery. As of October 2005, only one shark incidental permit was held by a vessel in the USVI, and no shark limited access permits were held by vessels in Puerto Rico. Similarly, only one dealer held an Atlantic shark dealer permit in the USVI, with no dealer permits issued in Puerto Rico. Accordingly, the volume of sharks landed in Puerto Rico and the Virgin Islands from 1997 through 2002 was relatively minor. Based upon dealer weigh-out data, shark landings totaled less than 3,200 lb (1,422 kg) and consisted of 66 individual fish for that six-year period. It is possible, however, that these data may not be reflective of the actual extent of the Caribbean shark fishery due to unreported landings.

Due to the low level of documented commercial shark landings in Puerto Rico and the U.S. Virgin Islands, the social and economic impacts associated with this proposed action on HMS fisheries are expected to be *de minimus*. In fact, because the affected areas are significantly smaller than the area from which the landings estimate was derived, and because these areas are already closed to bottom-tending gears in other fisheries, the social and economic impacts are likely to be negligible. Based on the available data, NMFS does not anticipate that the proposed measures would result in a measurable reduction or redistribution of HMS-related effort, including shark BLL fishing, or any changes in HMS fishing practices.

The proposed measures are not expected to impact fishing costs, ex-vessel prices, or market availability given the limited quantities of sharks landed in the U.S. Caribbean. However, by complementing existing management measures to protect EFH in the Caribbean, the biological impacts associated with this alternative are expected to be positive. The non-preferred No Action alternative would not have adverse economic impacts on federal permit holders. Any positive ecological impacts on HMS are expected to be minimal because there has been little reported or observed HMS fishing effort in recent years. However, such complementary management measures could prevent future increases in fishing effort and provide ancillary conservation benefits to HMS in addition to Council-managed species.

#### **Classification**

The proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

The final rule implementing management measures specific to Council-managed species was determined to be significant for purposes of Executive Order 12866. This proposed rule, which would close complementary areas for HMS fisheries and require dehooking equipment for BLL fishermen, has been determined to be not significant for purposes of Executive Order 12866.

As required under the Regulatory Flexibility Act (RFA), NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the preferred alternatives and any significant alternatives to the proposed rule that could minimize significant economic impacts on small entities. A summary of the information presented in the IRFA is provided below. The draft EA prepared for this proposed rule provides further discussion of the biological, social, and economic impacts of all the alternatives considered.

NMFS prepared a final Regulatory Flexibility Act analysis (FRFA) for the final rule that implemented the management measures in the Comprehensive Amendment to the Caribbean FMPs. The FRFA incorporated the Initial Regulatory Flexibility Act analysis (IRFA) published on September 13, 2005 (70 FR 53979), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to public comments on the IRFA, and a summary of the analyses completed to support that action. No comments were received in response to the IRFA that related to HMS fisheries. The IRFA in this proposed rule incorporates by reference the findings of the FRFA published on October 28, 2005 (70 FR 62073), and describes the economic impact this proposed rule, if adopted, would have on small entities participating in HMS fisheries.

This proposed rule would apply to all vessels that have BLL gear onboard and have been issued, or are required to have, Federal HMS limited access permits. NMFS considers all commercial permit holders to be small entities. NMFS estimates that, as of October 2005, approximately 235 directed and 320 incidental shark permits (555 permits total) had been issued. It is estimated that 284 directed and incidental shark permit holders do not also fish with PLL gear, and therefore, do not already possess the

handling, dehooking, and release equipment that would be required by this rulemaking. These permit holders also do not possess directed or incidental swordfish permits, therefore, it can be assumed that they do not fish with PLL gear. Eighty percent of permit holders fish from the state of Florida. Since the same safe handling and release equipment and protocols are already required for the PLL fishery and permit holders that use PLL gear are already required to possess the equipment necessary to satisfy the requirements for the BLL fishery, fishermen who use PLL gear would not be affected by this current rulemaking.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be indirectly affected by the proposed alternative because of the direct impacts on fishermen. The proposed rule only applies directly to permit holders and shark BLL fishermen.

This proposed rule would also prohibit vessels issued an HMS permit with BLL gear onboard from fishing or deploying any type of fishing gear on a year-round basis in the: (1) Newly-implemented Grammanik Bank closed area; (2) existing mutton snapper spawning aggregation closed area off the southwest coast of St. Croix, U.S. Virgin Islands; and (3) existing red hind spawning aggregation closed areas (East of St. Croix, West of Puerto Rico (including Bajo de Cico, Tourmaline Bank, and Abrir La Sierra Bank)). This alternative could potentially impact one shark incidental permit holder and one shark dealer permit holder in the USVI. There are no shark limited access permit holders or shark dealer permit holders in Puerto Rico. It is possible, however, that the permit data may not reflect the actual number of small entities participating in the federal shark fishery in the U.S. Caribbean EEZ. The non-preferred No Action alternative would not affect any federal permit holders.

The proposed regulations do not contain additional reporting or record-keeping requirements, but would result in additional compliance requirements, including the possession of specific protocols that describe the proper handling, release, and disentanglement of sea turtles and other non-target species and how to employ the required equipment. A document entitled "Careful Release Protocols for Sea Turtle Release with Minimal Injury" contains the sea turtle careful release protocols and would be required to be possessed onboard. NMFS has already provided this document in English, Spanish, or Vietnamese (see ADDRESSES).

NMFS considered three alternatives for the implementation of additional dehooking requirements for protected resources in the BLL fishery. The alternatives included: no action, requiring additional handling and release equipment based on vessel freeboard height, and implementing the same dehooking equipment and protocols as those that are currently required in the PLL fishery. Maintaining consistency between the PLL and BLL fisheries by implementing the same dehooking equipment for both fisheries is the preferred alternative.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four categories for alternatives that must be considered. These categories are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage for small entities.

In order to meet the objectives of this proposed rule, consistent with Magunson-Stevens Act, Atlantic Tunas Convention Act (ATCA), and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities. Additionally, the handling and release gear requirements would not be effective with different compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). All alternatives considered are based on design standards rather than performance standards; fishermen would be in compliance of the proposed rulemaking as long as they possess and utilize gear that conforms to the design specifications located in Appendix A for the safe handling, release, and disentanglement of protected resources. Any item meeting the design standards may be constructed or purchased and used, as long as the design is first certified by the NMFS Pascagoula Laboratory. When new items are certified, a notice would be published in the **Federal Register**. As described below, NMFS considered three different

alternatives in this proposed rulemaking.

The no action alternative would not result in any economic impacts as it would not require Atlantic shark fishermen in the BLL fishery to possess additional sea turtle handling and release equipment. This alternative is not preferred, as it would result in negative ecological impacts, compared to the preferred alternative. Fishermen would not be able to effectively handle, release, and/or disentangle sea turtles and other non-target catch, which would not result in a decrease in post-hooking mortality.

Requiring additional equipment and release guidelines based on vessel freeboard height would result in negative economic impacts because fishermen would be expected to possess, maintain, and utilize additional equipment that would range from \$152 - \$477. Costs would vary depending on what equipment vessels already possess, how much of the equipment fishermen are able to construct themselves, and the vessel's freeboard height. This alternative would not require vessels with a freeboard height of 4ft. (1.22 m) or less to possess the full suite of long-handled equipment.

The four-foot or less freeboard height was chosen as the threshold for exempting vessels from possessing long-handled dehookers because it is assumed that the handle length of a short-handled dehooker, in addition to a fisherman's arm length, might be sufficient for reaching and dehooking most non-boated sea turtles and other protected resources. The majority of sea turtles that would interact with Atlantic BLL fisheries are large juvenile loggerhead and adult leatherback sea turtles. Requiring additional long-handled equipment would facilitate more effective handling of these larger turtles that can not be boated. Long-handled dehookers might facilitate improved hook removal, release, or disentanglement of larger turtles. Research in the NED for the PLL fishery has shown that some turtles released alive may subsequently die from hook ingestion, trailing gear, or injuries suffered when entangled in gear. Therefore, a freeboard height dependant alternative would have less of an ecological benefit compared to the preferred alternative. The freeboard height based alternative is also not preferred because it would result in inconsistency between the PLL and BLL fisheries.

The preferred alternative would maintain consistency between the PLL and BLL fisheries by requiring Atlantic shark fishermen with BLL gear onboard

to possess, maintain, and utilize the same equipment currently required on PLL vessels. This alternative would enable Atlantic shark fishermen with BLL gear onboard to follow the protocols and possess the equipment necessary for the PLL fishery, easing determination of compliance for both fishermen and enforcement. This alternative would have negative economic impacts as it would impose initial compliance costs for some Atlantic shark fishermen ranging from \$253 to \$977, depending upon what equipment vessels already possess, how much of the equipment fishermen are able to construct themselves, and the vessel's freeboard height because freeboard height is related to required handle length on long-handled equipment (items A-E).

These proposed regulations are not expected to increase endangered species or marine mammal interaction rates. A Biological Opinion (BiOp) issued October 29, 2003, concluded that the continued operation of the Atlantic shark fisheries was not likely to jeopardize the continued existence of any listed species under NMFS purview. An analysis of the anticipated incidental takes of sea turtles (primarily loggerhead and leatherback sea turtles) and smalltooth sawfish resulted in a "non-jeopardy" determination in the BiOp. Measures proposed in this rule are expected to reduce post hooking mortality by removing the maximum amount of gear from sea turtles and other non-target species that are caught incidentally on BLL gear in the Atlantic shark fishery. This proposed rule would implement handling and release measures beyond those required in the October BiOp. Furthermore, this proposed rule would not alter fishing practices or fishing effort significantly and therefore should not have any further impacts on endangered species or marine mammals beyond those considered in the October 29, 2003, BiOp for Atlantic shark fisheries.

The preferred alternative of closing certain areas in the Caribbean would reduce fishing mortality of reef-dwelling species and minimize adverse effects on EFH, to the extent practicable, caused by BLL fishing. It is expected to have a negligible impact on small entities participating in HMS fisheries due to the small number of permit holders, and the low level of documented commercial shark landings in Puerto Rico and the U.S. Virgin Islands. Based upon dealer weigh-out data, shark landings totaled less than 3,200 lbs. and consisted of 66 individual fish for the six-year period from 1997 through 2002. Because the affected areas are

significantly smaller than the area from which these landings estimates were derived, and because these areas are already closed to bottom-tending gears in other fisheries, the impacts are expected to be minor. A No Action alternative was considered, and would have less onerous impacts on small businesses but would not satisfy Magnuson-Stevens Act requirements to minimize, to the extent practicable, adverse effects on EFH caused by fishing.

The preferred alternatives are not expected to alter HMS fishing practices, techniques, or effort in any way that would increase interactions with protected species or marine mammals.

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic, including the Gulf of Mexico and Caribbean, that have approved coastal zone management programs. Letters will be sent to the relevant states asking for their concurrence when the proposed rule is filed with the Office of the Federal Register.

This proposed rule does not contain any new reporting or recordkeeping requirements.

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

NMFS does not believe that the proposed regulations would conflict with any other relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

#### List of Subjects

##### 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

##### 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 22, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

#### 50 CFR Chapter II

For reasons set out in the preamble, 50 CFR part 223 Chapter II and part 635 Chapter VI are proposed to be amended as follows:

#### PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

**Authority:** 16 U.S.C. 1531 *et seq.*

2. In § 223.206, paragraph (d)(1)(ii) is revised to read as follows:

##### § 223.206 Exceptions to prohibitions relating to sea turtles.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic or bottom longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under 50 CFR 635.4, must comply with the handling and release requirements specified in 50 CFR 635.21.

\* \* \* \* \*

#### 50 CFR Chapter VI

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

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

4. In § 635.21, paragraph (d)(3)(iv) is removed and paragraphs (a)(3), (d)(1), (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) are revised to read as follows:

##### § 635.21 Gear operation and deployment restrictions.

(a) \* \* \*

(3) All vessels that have pelagic and bottom longline gear onboard and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled "Careful Release Protocols for Sea Turtle Release with Minimal Injury," and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

\* \* \* \* \*

(d) \* \* \*

(1) If bottom longline gear is onboard a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) The mid-Atlantic shark closed areas from January 1 through July 31 each calendar year; and

(ii) The areas designated at § 622.33(a) of this chapter, year-round.

\* \* \* \* \*

(3) \* \* \*

(i) *Bycatch mitigation measures.* The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the bycatch mitigation measures under paragraphs (c)(5)(i) and (c)(5)(ii)(A) - (C) of this section to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(ii) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(3)(ii) of this section.

(iii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(ii) of this section, must be used to disengage any hooked or entangled sea turtles as stated in paragraphs (c)(5)(ii)(A) - (C) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed in category D of Table 1 of Appendix A to this part. If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible. Dehooking devices should not be used to release smalltooth sawfish.

\* \* \* \* \*

5. In § 635.71, paragraph (a)(33) is revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(3)(i) for bottom longline gear. This equipment must be utilized appropriately, as specified in § 635.21(c)(5)(ii) and (d)(3)(ii) for pelagic and bottom longline gear, respectively.

\* \* \* \* \*

[FR Doc. E6-4582 Filed 3-28-06; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 040610180-6065-02; I.D. 030806A]

RIN 0648-AR09

**Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting; Tagged Pacific Halibut and Tagged Sablefish**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to amend regulations for excluding tagged halibut and tagged sablefish catches from deduction from fishermen's Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ) accounts. This action is necessary to ensure that only halibut and sablefish that are tagged with an external research tag are excluded from IFQ deduction, and to extend the same exclusion to halibut and sablefish harvested under the CDQ Program, which allocates specific harvesting privileges among U.S. fishermen and eligible western Alaska communities. This action is intended to improve administration of the IFQ and CDQ Programs, to enhance collection of scientific data from external tags, and to further the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), and the halibut management program.

**DATES:** Comments on this proposed rule must be received by April 28, 2006.

**ADDRESSES:** Send written comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Officer. Comments may be submitted by:

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.

- E-mail: *tagged-halibut-0648-AR09@noaa.gov*. Include in the subject line the following document identifier: Tagged Halibut RIN 0648 AR09. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

- Fax: 907-586-7557.

- Mail: P.O. Box 21668, Juneau, AK 99802-1668.

Copies of the Categorical Exclusion (CE) and Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region Web site at *www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the addresses above and by e-mail to *David\_Rostker@omb.eop.gov*, or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Becky Carls, 907-586-7228 or *becky.carls@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone of the BSAI and the Gulf of Alaska are managed by NMFS under the FMPs for these areas. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the "Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada, on March 2, 1953, and was amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). The directed commercial Pacific halibut fishery in Alaska is managed under an IFQ Program, as is the fixed gear sablefish fishery. The IFQ Program is a limited access management system. Both species are also a part of the annual apportionment under the CDQ Program. These programs are codified at 50 CFR part 679.

The International Pacific Halibut Commission (IPHC) develops halibut fishery management regulations pursuant to the Convention and submits those regulations to the U.S. Secretary of State for approval. NMFS publishes approved IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

NMFS published the IPHC's current annual management measures on February 25, 2005, at 70 FR 9242. The Halibut Act also authorizes the Council to develop Pacific halibut fishery regulations in and off Alaska that are in addition to, but not in conflict with, the approved IPHC regulations (Halibut Act, section 773c(c)). Regulations developed by the Council pursuant to the Halibut Act are implemented only with the approval of the U.S. Secretary of Commerce (Secretary).

## Background

### *IFQ and CDQ Programs*

In December 1991, the Council adopted a limited access system for managing the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. The Council designed the IFQ and CDQ Programs to allocate specific harvesting privileges among U.S. fishermen and eligible western Alaska communities to resolve management and conservation problems associated with "open access" fishery management, and to promote the development of fishery-based economic opportunities in western Alaska. Acting on behalf of the Secretary, NMFS initially implemented the IFQ Program and CDQ halibut and sablefish programs through regulations published in the **Federal Register** on November 9, 1993 (58 FR 59375), and fully implemented beginning in March 1995.

NMFS and the State of Alaska jointly manage the CDQ Program that was adopted by the Council in 1991 for halibut, fixed gear sablefish, and pollock in the BSAI. The CDQ Program for pollock was implemented beginning in 1992, and for halibut and fixed gear sablefish in 1995. The CDQ Program has expanded several times and now includes allocations of all FMP groundfish and crab species, and allocations for bycatch of prohibited species. Currently, 65 communities, representing about 27,000 western Alaska residents, are eligible to participate in the CDQ Program. These communities are located within 50 nautical miles of the Bering Sea coast and are predominantly populated by Alaska Natives. The eligible communities formed six non-profit corporations, known as CDQ groups, to manage and administer allocations, investments, and economic development projects.

### *Tagged Halibut*

The IPHC tags Pacific halibut with external research tags to obtain general information on their life history. Tagging information also is used to

improve the estimates of halibut incidental catch mortality rates or to evaluate the survival of halibut released by longliners that use the prescribed "careful release techniques" (i.e., careful shaking, gangion cutting, and hook straightening). Over the years, the IPHC has used several types of external research tags, including spaghetti-wire tags, metal- or plastic-tipped dart tags, and electronic Pop-up Satellite-transmitting Archival Tags.

In 2003, the IPHC also began using internal tags called Passive Integrated Transponder (PIT) tags, which are inserted into the heads of the fish. These PIT tags cannot be identified from any external marking and cannot be recovered by fishermen. Only shoreside scan samplers using special electronic equipment can locate the PIT tags after the fish are landed.

### *Tagged Sablefish*

NMFS has been tagging and releasing sablefish in waters adjacent to Alaska since 1972 under the Sablefish Tag Program. Each year, NMFS catches thousands of fish in the course of NMFS surveys. NMFS weighs and measures the fish, determines their sex, and tags them before releasing them. Fishermen and seafood processors subsequently find the tagged fish. Since 1972, about 300,000 tagged sablefish have been released, of which nearly 26,000 have been recovered. Additionally, the Alaska Department of Fish and Game has used PIT tags for sablefish studies off Alaska.

Sablefish tagging supports estimates of important biological parameters such as fishing and natural mortality, growth, and migration of fish among management areas. These parameters are incorporated into stock assessment models that are used to recommend harvest levels. Information derived from tagging results in stock assessments that enhance the fishery management process and decrease costs associated with under- and over-harvest of groundfish resources. The common types of external tags used for sablefish include plastic T-bar tags, and tags alerting fishermen to the presence of surgically implanted electronic tags in particular fish.

### **Need for Action**

The purposes of this action are: (1) To eliminate an inconsistency between Federal and IPHC regulations, and (2) to include the CDQ Program in the exemption from deduction of halibut and sablefish tagged with external research tags.

IPHC regulations at Section 21(3) require externally tagged halibut and

sablefish harvested in commercial fisheries to count against Individual Vessel Quotas (used in Canada), CDQs, IFQs, or daily bag or possession limits "unless otherwise exempted by state, provincial, or federal regulations." Federal regulations at 50 CFR 679.40(g) exempt any tagged halibut and sablefish landed in Federal commercial IFQ fisheries from counting against a person's IFQ. The regulatory language currently included in the Federal exemption is inconsistent with that in the IPHC regulations because it does not specifically identify "external" tags for halibut. This Federal regulatory text was written when only external tags were used on Pacific halibut and sablefish. Now, various types of internal and external tags are used to identify fish for scientific purposes. The proposed action would amend Federal regulations so only halibut and sablefish that are "externally" tagged may be excluded from quota deduction.

The exemption from quota deduction for tagged fish currently provided in Federal regulations for IFQ halibut and IFQ sablefish does not extend to CDQ halibut and CDQ sablefish. Halibut CDQ and sablefish CDQ are allocated to Western Alaska CDQ groups as fixed percentages of the annual total allowable catch of halibut and of sablefish. IFQ holders and CDQ groups operating in the Western Alaska CDQ region target essentially the same stock of fish and either may harvest externally tagged fish. However, CDQ groups do not currently receive the incentive of a deduction exemption for externally tagged fish from CDQ limits. Thus, to encourage recovery of scientific information used to evaluate and manage the halibut and sablefish fisheries, the exemptions from deduction of harvested halibut and sablefish with attached external research tags would be extended to CDQ catches.

This action will improve governmental processes. Externally tagged halibut and sablefish are not counted against a fisherman's IFQ allocation if they are reported when landed. This exemption from quota deduction is intended to give fishermen an incentive to take the time to report tagging information that is important to the management of the halibut and sablefish fisheries. The original tag exemption regulations were prepared prior to the introduction of internal tags. Because fishermen are unaware of the tags' presence prior to discovery by scan samplers, this incentive does not apply to internally tagged fish. This regulatory change would eliminate the potential for ambiguity and confusion over the

exemption status of fish. Extension of the exemption to the CDQ fisheries will provide an incentive for fishermen operating in these programs to return tags.

#### *Proposed Changes to Regulations*

NMFS proposes to amend the current regulations on tagging at 50 CFR 679.40(g) by removing "Tagged" and adding in its place "External research tags for." This action would specify that only halibut or sablefish bearing an external research tag issued by any state, Federal, or international agency, are excluded from program quota deduction.

In section 679.40 paragraph (g)(1), the phrase "a research tag" would be revised to read "an external research tag" to ensure that only halibut and sablefish bearing external research tags are exempt from quota deduction.

Paragraph (g)(1)(i) would be amended by removing "50 CFR 300.18" and adding in its place "50 CFR 300.62 and 50 CFR part 679." The reference to "50 CFR 300.18" is an artifact from when the IPHC regulations for annual management measures were codified in the Code of Federal Regulations (CFR). NMFS publishes the IPHC regulations as annual management measures in the **Federal Register**, but now does not codify them in the CFR.

Paragraph (g)(1)(ii) would be revised to require fishermen to comply with all sablefish regulations at 50 CFR part 679 in addition to turning in a tagged sablefish.

Paragraph (g)(2) would be amended by removing "Tagged halibut and sablefish" and adding in its place "Halibut and sablefish bearing an external research tag from any state, Federal, or international agency." In addition a reference to 50 CFR 679.5(l) would be added. Section 679.5 paragraph (l) describes the recordkeeping and reporting requirements for the IFQ Program. Language specifying which quotas would not be debited by harvest of externally tagged halibut or sablefish would be broken out into two separate paragraphs (g)(2)(i) and (g)(2)(ii). The first would address halibut IFQ and sablefish IFQ, while the second would address halibut CDQ and sablefish CDQ.

Additional language would be added to § 679.40(g)(1) and (g)(2) to improve the clarity of the regulations.

#### **Classification**

NMFS has determined that the proposed rule is consistent with the Halibut Act and the FMPs, and preliminarily determined that the rule is

consistent with the Magnuson-Stevens Act and other applicable laws.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reasons why it is being considered, a statement of the objectives of, and legal basis for, this action are contained in the preamble and are not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The entities that would be directly regulated by this action are the Western Alaska CDQ groups that annually receive halibut and sablefish quota, and those entities harvesting halibut and/or sablefish under the IFQ and CDQ Programs. There were six Western Alaska CDQ groups in 2004. Each of these groups is organized as a not-for-profit entity, and none is dominant in its field, thus, each group is considered to be a directly regulated small entity.

In 2004, 1,524 unique vessels harvested halibut and/or sablefish. A total of 1,304 unique vessels were used to harvest IFQ halibut, 199 to harvest CDQ halibut, and 1,489 to harvest IFQ halibut and/or CDQ halibut (i.e., 14 harvested both). A total of 396 unique vessels were used to harvest IFQ sablefish, 18 to harvest CDQ sablefish, and 403 to harvest IFQ and/or CDQ sablefish (i.e. 11 harvested both). Contractual arrangements, ownership information, and any resulting affiliations between such parties are proprietary. Though affiliation status for these entities is not well known, vessel operations are believed to be small entities and will be treated as such for the purposes of this action.

This action would amend regulations to provide that only halibut or sablefish that are externally tagged with research tags would be exempt from deduction from IFQ or CDQ accounts. The exemption is believed to provide an economic incentive for fishermen to take the additional time to notify fishery managers about the tags and about the tagged fish they encounter during their fishing operations. This information is important for the conservation and management of the halibut and sablefish fisheries.

The benefits of this action are as follows: (1) Regulatory consistency leading to the potential for fewer disagreements and lower transactions

costs during landings, (2) potentially improved fisheries management via improved collection of scientific data, and (3) a potential, although very slight, economic benefit to CDQ groups, which recover and turn in external halibut and/or sablefish research tags, accruing from the exemption from quota deduction. The benefits to the CDQ groups are expected to be small due to the overall low numbers of halibut and sablefish external tag returns.

This regulation appears to impose no costs on directly regulated small entities. IFQ fishermen currently voluntarily bear the small burden of collecting and returning tags. Fishermen in the IFQ halibut and IFQ sablefish fisheries are accustomed to IFQ exemptions for delivery of externally tagged fish, and would continue to enjoy this benefit. CDQ groups harvesting CDQ halibut and CDQ sablefish would, under the proposed action, also benefit from this exemption. CDQ groups would not be required to return tags, so no costs would be imposed on them. Overall, this action would have no known adverse impacts on the profitability or competitiveness of small regulated entities.

This proposed regulation does not impose new recordkeeping or reporting requirements on the directly regulated small entities. Affected small entities may choose to ignore external research tags and are not under any obligation to report them. However, if affected small entities wish to benefit from this regulation, they must report the presence of external research tags to IPHC port samplers, to the IPHC directly, to the Alaska Department of Fish and Game, or to NMFS as appropriate.

This proposed action does not duplicate, overlap, or conflict with other Federal rules.

The no action alternative would have no direct impact on small entities. Under this alternative the regulations would not be changed to eliminate the inconsistency between IPHC and Federal regulations, nor would CDQ groups be eligible for exemptions from quota deduction for halibut or sablefish tagged with external tags issued by any state, Federal, or international agency. Therefore, the no action alternative would not meet the objectives of this action to eliminate inconsistency in the regulations and to extend the exemption from quota deduction to the CDQ groups.

An alternative that would leave the CDQ program fisheries out of the proposed action was considered but was rejected. This alternative would not encourage all fishermen that harvest

halibut and sablefish in quota fisheries to return tagged fish. Moreover, this alternative would provide less benefit to CDQ groups, which are small entities under SBA guidelines. This alternative, therefore, would not meet the objectives of this action.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by OMB under control number 0648-0276. Public reporting burden for tag information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 24, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

2. In § 679.40, paragraph (g) is revised to read as follows:

#### **§ 679.40 Sablefish and halibut QS.**

\* \* \* \* \*

(g) *External research tags for halibut and sablefish.* (1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture an external research tag from any state, Federal, or

international agency, provided that the halibut or sablefish is one of the following:

(i) A Pacific halibut landed pursuant to 50 CFR 300.62 and 50 CFR part 679; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program, and in compliance with all sablefish requirements of 50 CFR part 679.

(2) Halibut and sablefish bearing an external research tag from any state, Federal, or international agency, landed pursuant to paragraphs (g)(1)(i) or (g)(1)(ii) of this section, and in accordance with § 679.5(l), shall be excluded from IFQ or CDQ deduction as follows:

(i) The fish shall not be calculated as part of a person's IFQ harvest of halibut or sablefish and shall not be debited against a person's halibut IFQ or a person's sablefish IFQ; or

(ii) The fish shall not be calculated as part of the CDQ harvest of halibut or sablefish and shall not be debited against a CDQ group's halibut CDQ or a CDQ group's sablefish CDQ.

[FR Doc. E6-4576 Filed 3-28-06; 8:45 am]

**BILLING CODE 3510-22-S**

# Notices

Federal Register

Vol. 71, No. 60

Wednesday, March 29, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### Information Collection: Agricultural Foreign Investment Disclosure Act

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection associated with Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).

**DATES:** Comments on this notice must be received on or before May 30, 2006 to be assured consideration.

**ADDRESSES:** Comments concerning this notice should be addressed to Patricia A. Blevins, Agricultural Foreign Investment Specialist, Natural Resources Analysis Group, Economic and Policy Analysis Staff, USDA, FSA, STOP 0531, 1400 Independence Avenue, SW., Washington, DC 20250-0531, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by writing to Patricia A. Blevins at the above address. Comments may also be submitted by e-mail to: [patrica.blevins@wdc.usda.gov](mailto:patrica.blevins@wdc.usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Patricia Blevins, Agricultural Foreign Investment Specialist, (202) 720-0604 and [patrica.blevins@wdc.usda.gov](mailto:patrica.blevins@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Agricultural Foreign Investment Disclosure Act Report.

*OMB Control Number:* 0560-0097.

*Expiration Date of Approval:* November 30, 2006.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* AFIDA requires foreign persons who hold, acquire, or dispose of any interest in U.S. agricultural land to report the transactions to the FSA on the AFIDA report. The information collected is available to States. Also, although not required by law, the information collected from the AFIDA reports is used to prepare an annual report to Congress and the President concerning the effect of foreign investment upon family farms and rural communities so that Congress may review the annual report and decide if further regulatory action is required.

*Estimate of Average Time to Respond:* .4818 hours per response.

*Type of Respondents:* Foreign investors, corporate employees, attorneys or farm managers.

*Estimated Number of Respondents:* 4,375.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 4,375.

*Estimated Total Annual Burden on Respondents:* 2,108 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Signed at Washington, DC, on March 23, 2006.

**Teresa C. Lasseter,**

*Administrator, Farm Service Agency.*

[FR Doc. E6-4542 Filed 3-28-06; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), approved a petition for trade adjustment assistance (TAA) that was filed on February 21, 2006, by the National Grape Cooperative Association representing Washington Concord juice grape producers. The certification date is March 15, 2006. Beginning on March 27, 2006, Washington Concord juice grape producers will be eligible to apply for fiscal year 2006 benefits during an application period ending June 26, 2006.

**SUPPLEMENTARY INFORMATION:** Upon investigation, the Administrator determined that increased imports of grape juice, non-concentrated and concentrated (frozen and not frozen) contributed importantly to a decline in producer prices of Concord juice grapes in Washington by 36 percent during August 2004 through July 2005, when compared with the previous 5-year average.

Eligible producers must apply to the Farm Service Agency for benefits. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and may receive an adjustment assistance payment, if certain program criteria are satisfied. Applicants must obtain the technical assistance from the Extension Service by September 29, 2006, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

*Producers Certified as Eligible for TAA, Contact:* Farm Service Agency service centers in Washington.

*For General Information About TAA, Contact:* Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov).

Dated: March 17, 2006.

**Michael W. Yost,**

*Administrator, Foreign Agricultural Service.*  
[FR Doc. E6-4622 Filed 3-28-06; 8:45 am]

BILLING CODE 3410-10-P

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), denied a petition for trade adjustment assistance (TAA) for fresh potatoes that was filed on March 6, 2006, by the Washington State Potato Commission.

**SUPPLEMENTARY INFORMATION:** Upon investigation, the Administrator determined that imports did not contribute importantly to a decline in producer prices. During the 2004/2005 marketing year, imports declined by 5.1 percent. Therefore the Washington fresh potato petition did not meet the criteria that imports contributed importantly in a decline in producer prices, a condition required for certifying a petition for TAA.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov).

Dated: March 17, 2006.

**Michael W. Yost,**

*Administrator, Foreign Agricultural Service.*  
[FR Doc. E6-4521 Filed 3-28-06; 8:45 am]

BILLING CODE 3410-10-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Plumas National Forest; Butte and Plumas Counties, California; Watdog Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplement to the environmental impact statement.

**SUMMARY:** The Forest Service will prepare a supplement to the final Environmental Impact Statement to document and clarify the analysis of environmental effects, primarily in the following resource areas: air quality, rare plants and noxious weeds, economics, fire and fuels, hydrology,

recreation, soils, vegetation, and wildlife. Additional maps will be included to provide further information to the public.

**DATES:** Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)4(4)). The draft supplemental environmental impact statement is expected to be issued in April 2006 and the final supplemental environmental impact statement is expected in July 2006.

**ADDRESSES:** Plumas National Forest, 159 Lawrence Street, P.O. Box 11500, Quincy, CA 95971; Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965.

**FOR FURTHER INFORMATION CONTACT:** Susan Joyce, Project Leader, Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965; (530) 534-6500.

**SUPPLEMENTARY INFORMATION:** This notice of intent to prepare a draft environmental impact statement for this project appeared in the **Federal Register** on February 10, 2005. The Notice of Availability for the Draft Environmental Impact Statement appeared on June 24, 2005. A Final Environmental Impact Statement and Record of Decision were issued on September 15, 2005. The legal notice of the Record of Decision appeared in the Feather River Bulletin on September 28, 2005. The decision was appealed and later withdrawn by the Responsible Official on December 20, 2005.

#### Purpose and Need for Action

The purpose and need remain the same as was described in the FEIS. The purpose of and need for the project has several elements: (1) Implement fuels reduction by proposing defensible fuel profile zone (DFPZ) treatments to provide for fire resiliency and improved fire fighter safety; (2) Implement group selection provisions of the HFQLC Act providing for shifting existing conditions towards desired conditions of an uneven-aged (all-aged), multistory, fire-resilient forest and contributing toward community stability; (3) Provide for reduced impacts of the transportation system on forest resources by implementing road relocation or improvements as part of project access. The purpose and need includes the following restoration opportunities: (1) Promote a more natural forest ecosystem with a higher abundance of hardwoods and create openings around existing California black oaks to stimulate natural regeneration; and (2) Provide for healthy aquatic and riparian ecosystems by implementing restoration projects to

improve fish passage in streams and restore selected streams and meadows.

#### Proposed Action

The proposed action and alternatives will remain the same as described in the FEIS. These alternatives include varied levels of fuel treatments, group selection timber harvest, and transportation system improvement.

#### Responsible Official

Jim Peña, Forest Supervisor, Plumas National Forest, PO Box 11500, Quincy, CA 95971.

#### Nature of Decision To Be Made

Based on the supplement, the responsible official will decide whether to implement the project based on an alternative in the FEIS or not implement the project at this time.

#### Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft supplement environmental impact statement will be prepared for comment. The comment period on the draft supplemental 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 state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplement 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 supplemental environmental impact statement stage but that are not raised until after completion the final supplemental 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, (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 supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Comments may also address the adequacy of the draft supplemental 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 addresses 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: March 6, 2006.

**James M. Peña,**

*Forest Supervisor.*

[FR Doc. 06-2988 Filed 3-28-06; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Gold Camp Road Final Plan/ Environmental Impact Statement, Supplemental Information Report and Record of Decision #2**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability and decision.

**SUMMARY:** In accordance with the National Environmental Policy Act, the Pike National Forest of the Rocky Mountain Region of the Forest Service announces availability of the Final Plan and Final Environmental Impact Statement (Final Plan/EIS), Supplemental Information Report (SIR) and Record of Decision #2 (ROD #2) for the Gold Camp Road. The Forest Service is also announcing the agency's decision to restore and open a collapsed railroad tunnel and reopen a closed section of Gold Camp Road to one-way traffic, with a third party partner to operate the 8.5-mile segment of road (Modified Alternative E). The objective of the management plan for the road is to best accommodate public use and access to National Forest System lands and nearby private in-holdings while maintaining public safety and the

historic character of the road. The affected road segment has been closed since 1988 for safety reasons.

On December 6, 2005, the Forest Service withdrew the original ROD. During this initial appeal process, five appeals were received. The Forest Service contacted each appellant and notified them that a ROD #2 would be issued and a new appeal process will be started.

No changes were made to the Final Plan/EIS, however, a Supplemental Information Report (SIR) is incorporated into the Final Plan/EIS. The SIR does not introduce new information, rather provides a greater detailed understanding of contents within the Final Plan/EIS and the intended effects they have on the Modified Alternative E.

**DATES:** The appeal period for the decision will be 45 days from the date of publication in the Pueblo Chieftain Newspaper on April 2, 2006. The appeal period will be 45 consecutive calendar days and closing at midnight on May 17, 2006.

**Document Availability:** The Final Plan/EIS, SIR and ROD #2 are available on the Internet at [http://www.fs.fed.us/r2/psicc/projects/gold\\_camp/](http://www.fs.fed.us/r2/psicc/projects/gold_camp/). Copies of the Final Plan/EIS, SIR and ROD #2 may be obtained by contacting the Pikes Peak Ranger District, 601 S. Weber St., Colorado Springs, CO 80903. Phone number is 719-636-1602.

**Appeal Process:** Must be postmarked, delivered or electronic mail received before midnight on May 17, 2006. Notice of Appeal may be sent by U.S. Mail to: USDA-Forest Service, Rocky Mountain Region, Attn: Appeals Deciding Officer, P.O. Box 25127, Lakewood, Colorado 80225. Notice of Appeal sent by other than U.S. Mail or dropped off in person to: Attn: Appeals Deciding Officer, U.S.D.A. Forest Service—Rocky Mountain Region, 740 Simms Street, Lakewood CO. 80401. Electronic Appeals may be sent to: [appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:**

Frank Landis, Supervisory Outdoor Recreation Planner, Pikes Peak Ranger District, at the address listed above or by telephone at 719-477-4203.

**SUPPLEMENTARY INFORMATION:** The Final Plan/EIS, SIR and ROD #2 are also available for inspection at the following public libraries in Colorado: Penrose Public Library—20 N. Cascade Ave., Colorado Springs, CO 80903 East Library—5550 N. Union Blvd., Colorado Springs, CO 80918

The Forest Service announced in the **Federal Register** (69 FR 39401, June 30,

2004) that the agency intended to prepare an EIS addressing the possible Federal action of preparing a plan for the Gold Camp Road and inviting comments on the scope of the EIS. Comments were received from April 12 through August 17, 2004 and were considered in the Draft Plan/EIS.

Notices of availability were published in the **Federal Register** for the Gold Camp Road Draft Plan/EIS by the Forest Service (70 FR 2605, January 14, 2005) and the EPA (70 FR 4119, January 28, 2005). Comments were accepted on the Draft Plan/EIS through March 29, 2005. Comments were considered and the Final Plan/EIS was prepared based on agency and public input. The Final Plan/EIS contains a new preferred alternative that incorporates elements of three of the other action alternatives.

A ROD #2 accompanies the Final Plan/EIS and SIR. The ROD #2 accompanying the Final Plan/EIS and SIR are subject to appeal pursuant to 36 CFR part 215.

Reviewers are obligated to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewer's position and contentions, [*Vermont Yankee Nuclear Power Corp. v. NRDS*, 435 U.S. 519, 553, (1978)]. Environmental objections that could have been raised at the draft stage may be waived if not raised until after completing the Final EIS [*City of Angoon v. Hodel* (9th Circuit 1986) and *Wisconsin Heritages Inc. v. Harris* 490 F. Suppl. 1334, 1338 (E.D. Wis. 1980)].

This notice is provided pursuant to federal regulations implementing the National Environmental Policy Act (40 CFR 1506.6).

Dated: March 17, 2006.

**Robert J. Leaverton,**

*Forest Supervisor.*

[FR Doc. E6-4547 Filed 3-28-06; 8:45 am]

**BILLING CODE 3410-ES-P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### **Notice of Availability of Funds; Multi-Family Housing, Single Family Housing; Correction**

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice; correction.

**SUMMARY:** The Rural Housing Service is correcting a notice published March 20, 2006 [71 FR 14056-14070]. The action is taken to correct the listing of the State Office addresses on pages 14062 and 14063. The list is attached at the end of the document.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this notice contact Robert Nelson, Management Analyst, Single Family Housing Direct Loan Division, telephone 202-720-

0654, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250. (The telephone number listed is not toll free number).

Dated: March 23, 2006.  
**Russell T. Davis,**  
*Administrator, Rural Housing Service.*  
**BILLING CODE 3410-XV-P**

### USDA Rural Development State Office Locations State Directors / Rural Housing Program Directors

<b>ALABAMA</b>	<b>ALASKA</b>	<b>ARIZONA</b>
Steve Pelham	Bill Allen	Eddie Browning
Sterling Centre	Suite 201	Phoenix Corporate Center
4121 Carmichael Road, Suite 601	800 W Evergreen	3003 N Central Avenue, Suite 900
Montgomery, AL 36106-3683	Palmer, AK 99645-6539	Phoenix, AZ 85012-2906
(334) 279-3400	(907) 761-7705	(602) 280-8755
<b>ARKANSAS</b>	<b>CALIFORNIA</b>	<b>COLORADO</b>
Roy Smith	D. Paul Venosdel	Joe Hostetler, Acting
Room 3416	Agency 4169	Room E100
700 W Capitol	430 G Street	655 Parfet Street
Little Rock, AR 72201-3225	Davis, CA 95616-4169	Lakewood, CO 80215
(501) 301-3200	(530) 792-5800	(720) 544-2903
<b>DELAWARE &amp; MARYLAND</b>	<b>FLORIDA &amp; VIRGIN ISLANDS</b>	<b>GEORGIA</b>
Marlene B. Elliott	Charles W. Clemons, Sr.	F. Stone Workman
1221 College Park Drive	PO Box 147010	Stephens Federal Building
Suite 200	4440 NW 25th Place	355 E Hancock Avenue
Dover, DE 19904	Gainesville, FL 32614-7010	Athens, GA 30601-2768
(302) 857-3625	(352) 338-3435	(706) 546-2162
<b>HAWAII</b>	<b>IDAHO</b>	<b>ILLINOIS</b>
Lorraine Shin	Michael A. Field	Douglas Wilson
Room 311, Federal Building	Suite A1	2118 W. Park Court
154 Waiianuenu Avenue	9173 W Barnes Dr	Suite A
Hilo, HI 96720	Boise, ID 83709	Champaign, IL 61821
(808) 933-8309	(208) 378-5600	(217) 403-6222
<b>INDIANA</b>	<b>IOWA</b>	<b>KANSAS</b>
Robert White	Mark Reisinger	Charles (Chuck) R. Banks
5975 Lakeside Boulevard	873 Federal Bldg	1303 SW First American Place
Indianapolis, IN 46278	210 Walnut Street	Suite 100
(317) 290-3100	Des Moines, IA 50309	Topeka, KS 66604-4040
	(515) 284-4663	(785) 271-2700
<b>KENTUCKY</b>	<b>LOUISIANA</b>	<b>MAINE</b>
Kenneth Slone	Michael B. Taylor	Michael W. Aube
Suite 200	3727 Government Street	P.O. Box 405
771 Corporate Drive	Alexandria, LA 71302	967 Illinois Avenue, Suite 4
Lexington, KY 40503	(318) 473-7920	Bangor, ME 04402-0405
(859) 224-7322		(207) 990-9118

**USDA Rural Development State Office Locations  
State Directors / Rural Housing Program Directors**

<b>MASSACHUSETTS/CT/RI</b>	<b>MICHIGAN</b>	<b>MINNESOTA</b>
David H. Tuttle	Dale Sherwin	Stephen G. Wenzel
451 West Street	3001 Coolidge Road, Suite 200	410 AgriBank Bldg.
Amherst, MA 01002	East Lansing, MI 48823	375 Jackson Street
(413) 253-4300	(517) 324-5100	St. Paul, MN 55101-1853
		(651) 602-7792
<b>MISSISSIPPI</b>	<b>MISSOURI</b>	<b>MONTANA</b>
Nick Walters	Gregory Branum	Tim Ryan
Federal Bldg., Suite 831	Parkade Center, Suite 235	Suite B
100 W. Capitol Street	601 Business Loop 70 West	900 Technology Boulevard
Jackson, MS 39269	Columbia, MO 65203	Bozeman, MT 59715
(601) 965-4325	(573) 876-9301	(406) 585-2551
<b>NEBRASKA</b>	<b>NEVADA</b>	<b>NEW JERSEY</b>
Scot Blehm	Larry J. Smith	Andrew M.G. Law
Federal Bldg., Room 152	1390 South Curry Street	5th Floor N. Suite 500
100 Centennial Mall N	Carson City, NV 89703	8000 Midlantic Drive
Lincoln, NE 68508	(775) 887-1222	Mt. Laurel, NJ 08054
(402) 437-5551		(856) 787-7700
<b>NEW MEXICO</b>	<b>NEW YORK</b>	<b>NORTH CAROLINA</b>
Paul Gutierrez	Patrick H. Brennan	John Cooper
Room 255	The Galleries of Syracuse	Suite 260
6200 Jefferson Street, NE	441 S. Salina Street, Suite 357	4405 Bland Road
Albuquerque, NM 87109	Syracuse, NY 13202-2541	Raleigh, NC 27609
(505) 761-4973	(315) 477-6417	919-873-2000
<b>NORTH DAKOTA</b>	<b>OHIO</b>	<b>OKLAHOMA</b>
Clare Carlson	Randall Hunt	Brent J. Kisling
Federal Bldg., Room 208	Federal Bldg., Room 507	Suite 108
220 East Rooser, P.O. Box 1737	200 N. High Street	100 USDA
Bismarck, ND 58502-1737	Columbus, OH 43215-2477	Stillwater, OK 74074-2654
(701) 530-2061	(614) 255-2500	(405) 742-1000
<b>OREGON</b>	<b>PENNSYLVANIA</b>	<b>PUERTO RICO</b>
Mark Simmons	Gary Groves	Jose A. Otero
Suite 1410	Suite 330	654 Plaza
101 SW Main	One Credit Union Place	Suite 601
Portland, OR 97204-3222	Harrisburg, PA 17110-2996	San Juan, PR 00936-6106
(503) 414-3300	(717) 237-2299	(787) 766-5095

**USDA Rural Development State Office Locations  
State Directors / Rural Housing Program Directors**

<b>SOUTH CAROLINA</b>	<b>SOUTH DAKOTA</b>	<b>TENNESSEE</b>
Tee Miller	Lynn Jensen	Mary (Ruth) Tackett
Strom Thurmond Federal Bldg	Federal Bldg, Room 210	Suite 300
1835 Assembly Street, Room 1007	200 Fourth Street, SW	3322 W End Avenue
Columbia, SC 29201	Huron, SD 57350	Nashville, TN 37203-1084
(803) 765-5163	(605) 352-1100	(615) 783-1300
<b>TEXAS</b>	<b>UTAH</b>	<b>VERMONT &amp; NEW HAMPSHIRE</b>
R. Bryan Daniel	John R. Cox	Jolinda H. LaClair
Federal Bldg, Suite 102	Wallace F Bennett Federal Bldg	City Center, 3rd Floor
101 S Main	125 S State Street, Room 4311	89 Main Street
Temple, TX 76501	Salt Lake City, UT 84147	Montpelier, VT 05602
(254) 742-9700	(801) 524-4320	(802) 828-6000
<b>VIRGINIA</b>	<b>WASHINGTON</b>	<b>WEST VIRGINIA</b>
Philip Stetson (Acting)	Sandy Boughton (Acting)	Robert Steptoe
1606 Santa Rosa Road	Suite B	Federal Bldg, Room 320
Suite 238	1835 Black Lake Blvd, SW	75 High Street
Richmond, VA 23229-5014	Olympia, WA 98512-5715	Morgantown, WV 26505-7500
(804) 287-1598	(360) 704-7740	(304) 284-4860
<b>WISCONSIN</b>	<b>WYOMING</b>	
Frank Frassetto	William Butler (Acting)	
4949 Kirschling Court	Federal Building, Room 1005	
Stevens Point, WI 54481	100 East B, PO Box 820	
(715) 345-7600	Casper, WY 82602	
	(307) 233-6700	

[FR Doc. 06-3072 Filed 3-28-06; 8:45 am]

BILLING CODE 3410-XV-C

**DEPARTMENT OF COMMERCE****Submission for OMB Review;  
Comment Request**

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Licensing Responsibilities and Enforcement.

*Agency Form Number:* None.

*OMB Approval Number:* 0694-0122.

*Type of Request:* Extension of a Currently Approved Collection.

*Burden:* 77,926 hours.

*Average Time Per Response:* From 5 seconds to 1 hour per response.

*Number of Respondents:* 1,827,450 respondents.

*Needs and Uses:* This information collection package supports the various collections, notifications, reports, and information exchanges that are needed by the Office of Export Enforcement and Customs to enforce the Export Administration Regulations and maintain the National Security of the United States.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482-0266, Department of Commerce, Room 6625; 14th and Constitution Avenue, NW.; Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk

Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 23, 2006.

**Madeleine Clayton,**  
*Management Analyst, Office of the Chief Financial Officer.*

[FR Doc. E6-4526 Filed 3-28-06; 8:45 am]

BILLING CODE 3510-JT-P

**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:** March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dunyako Ahmadu or Dave 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) 482-0198 and (202) 482-4033, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 8, 2005, the Department of Commerce (the Department) published the preliminary results of the 2003-2004 administrative review of the antidumping duty order covering Mittal Steel Galati S.A. (formerly S.C. Ispat Sidex S.A.). See *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results Notice of Antidumping Duty Administration Review and Notice of Intent to Rescind in Part*, 70 FR 72984 (December 8, 2005).

**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 results were published. 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.

On February 27, 2006, we requested that MS Galati provide written clarification of certain issues the parties raised in case and rebuttal briefs. MS Galati filed its response on March 8, 2006. In turn, United States Steel Corporation filed comments on March 17, 2006. As such, we require additional time to analyze and incorporate the information from these submissions into our calculations for the final results. Further, additional time is necessary to invite all interested parties to review and provide comments on our draft liquidation instructions to U.S. Customs and Border Protection.

Therefore, the Department has determined that it is not practicable to complete the final results by the current deadline of April 7, 2006. Accordingly, the Department is extending the time limit for the final results by 45 days to May 22, 2006, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

We are issuing this notice in accordance with section 751(a)(3)(A) of the Act.

Dated: March 22, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6-4573 Filed 3-28-06; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**A-570-879**

**Notice of Extension of Time Limit for the Final Results of the Antidumping Administrative Review of Polyvinyl Alcohol from the People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6412.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 7, 2005, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on polyvinyl alcohol ("PVA") from the People's Republic of China ("PRC"), covering the period August 11, 2003, through September 30, 2004. See *Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67434 (November 7, 2005) ("*Preliminary Results*"). In the *Preliminary Results*, we stated that we would make our final determination for the antidumping duty review no later than 120 days after the date of publication of the preliminary results (*i.e.*, March 7, 2006). On February 27, 2006, the Department published in the **Federal Register** a notice extending the time limit for the final results of the administrative review from March 7, 2006, to April 6, 2006. See *Notice of Extension of Time Limit for the Antidumping Duty Administrative Review of Polyvinyl Alcohol from the People's Republic of China*, 71 FR 9781 (February 27, 2006).

**Extension of Time Limit of Final Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"),

requires the Department to issue the final results in an administrative review within 120 days of the publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, the Department may extend the time limit for the final results to 180 days. Completion of the final results within the 120-day period is not practicable because this review involves certain complex issues, including examination of the co-product allocation methodology, application of by-products, and the valuation of certain factors.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing these final results of review by an additional 15 days until April 21, 2006.

Dated: March 22, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6-4574 Filed 3-28-06; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[I.D. 032206C]**

**Subsistence Harvest Management of Cook Inlet, Alaska Beluga Whales by Alaska Natives**

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

**ACTION:** Notice of intent to prepare a Supplemental Environmental Impact Statement; request for comments.

**SUMMARY:** NMFS announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA), for the Subsistence Harvest Management of Cook Inlet, Alaska, Beluga Whales by Alaska Natives.

**ADDRESSES:** To request inclusion on a mailing list of persons interested in the SEIS, please contact Kaja Brix, Assistant Regional Administrator, Protected Resources Division, NMFS, Alaska Region, Attn: Ellen Walsh. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802-1668.
  - Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK
  - FAX: 907-586-7557
  - Email: [CIB-Harvest-SEIS@noaa.gov](mailto:CIB-Harvest-SEIS@noaa.gov).
- Include in the subject line the following

document identifier: CI Beluga SEIS (Email comments, with or without attachments, are limited to five (5) megabytes).

**FOR FURTHER INFORMATION CONTACT:** Barbara Mahoney or Brad Smith, NMFS Alaska Region, Anchorage Field Office, (907) 271-5006.

**SUPPLEMENTARY INFORMATION:** NMFS is initiating this SEIS process for the Subsistence Harvest Management of Cook Inlet, Alaska, Beluga Whales by Alaska Natives. An SEIS is required when, among other reasons, there are substantial changes in a proposed action or there significant new circumstances or information relevant to the proposed action or its impacts. Additional Cook Inlet beluga information, including the Subsistence Harvest Management of Cook Inlet Beluga Whales, Final Environmental Impact Statement, July 2003, is available at: <http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm>.

### Background

The Cook Inlet beluga whale stock declined dramatically between 1994 and 1998. Aerial survey results indicated that the 1998 abundance estimate of 347 Cook Inlet beluga whales represented a decline of 47 percent from the 653 1994 estimate. In response to this significant decline, NMFS published a final rule to designate the Cook Inlet stock of belugas as depleted under the Marine Mammal Protection Act, 1972, as amended (MMPA) on May 31, 2000 (65 FR 34590).

The MMPA exempts subsistence takes by Alaska Natives from marine mammal take prohibitions. The exemption allows Alaska Natives to use the Cook Inlet beluga as traditional food and Native handicrafts.

Cook Inlet beluga harvests have been severely restricted (0-2 whales annually) since 1999, due to both the voluntary efforts of the Native hunters and federal law requiring co-management agreements to authorize harvests (Public Law No. 106-31 (May 21, 1999, and Public Law No. 106-553 (December 21, 2000)). Since 2000, NMFS has entered into co-management agreements with an Alaska Native organization for the subsistence harvest of Cook Inlet belugas. NMFS has worked cooperatively with beluga hunters to recover the stock, while recognizing traditional values of continuing a harvest.

Following the depletion determination and pursuant to the MMPA, NMFS proposed regulations limiting the harvest of belugas in Cook Inlet (65 FR 59164, October 4, 2000). An

Administrative Law Judge (ALJ) convened a hearing on the proposed regulations in December 2000. The ALJ issued a recommended decision to the Assistant Administrator for Fisheries (AA) that allowed a harvest of six whales from 2001 through 2004 (67 FR 30646, May 7, 2002). In July 2003, a Final EIS was released with interim harvest regulations for the period 2001-2004 (69 FR 17973, April 6, 2004). This EIS, which NMFS intends to supplement, analyzed the impacts of various alternatives, including a preferred alternative. The preferred alternative adopted the ALJ's recommended decision calling for harvest of six whales from 2001 through 2004 and for determining harvest for 2005 and beyond after NMFS made further abundance estimates.

Because the interim harvest regulations authorized harvest only through 2004, the ALJ conducted a second hearing in August 2004 to receive evidence on a harvest plan for 2005 until recovery of the Cook Inlet beluga. The ALJ presiding in the August 2004 hearings submitted his recommended decision on the future harvest plan for Cook Inlet belugas to the AA on November 8, 2005. As required by regulations, NMFS published notice of this recommended decision (71 FR 8268, February 16, 2006) and solicited comments for a 20-day period that ended on March 8, 2006.

### Alternatives

After preliminary review of recent annual abundance estimates and the November 8, 2005, ALJ's recommended decision, NMFS anticipates four alternative harvest management regimes:

Alternative 1: no action alternative;  
Alternative 2: maximizing the recovery of the Cook Inlet beluga stock by minimizing or allowing no harvest until the stock had recovered to optimum sustainable population levels;  
Alternative 3: maximizing the short term opportunity for subsistence harvests and prolonging the recovery of the stock; and

Alternative 4: the November 8, 2005, harvest plan recommended by the ALJ, allowing an intermediate level of harvest that would provide some subsistence use and promote recovery of the stock in a longer time frame than alternative (1), but shorter time frame than alternative (2).

Major SEIS issues will include: subsistence removal impacts on this stock; regulated harvest impacts on the traditional and cultural values of Alaska Natives and the social and economic

impacts of various population levels of the CI beluga stock of whales.

### Public Involvement

Comments on this SEIS process should be directed to NMFS (see **ADDRESSES**). All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public. NMFS will ask for additional public comments once the draft SEIS is prepared and available.

Please visit NMFS Alaska Region web page at <http://www.fakr.noaa.gov> for more information on this SEIS. NMFS estimates the draft SEIS will be available in September 2006.

### Authority

The preparation of the SEIS for the Subsistence Harvest Management of Cook Inlet, Alaska, Beluga Whales by Alaska Natives will be conducted under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR 1500-1508), other applicable Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations.

Dated: March 23, 2006.

**Angela Somma,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E6-4604 Filed 3-28-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 032406A]

### General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC); Meeting Announcement

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** NMFS announces a meeting of the General Advisory Committee to the U.S. Section to the IATTC on April 11, 2006, via telephone conference call.

**DATES:** The General Advisory Committee meeting will be held on April 11, 2006, from 12 noon to 3 p.m., Pacific time.

**ADDRESSES:** The meeting will be held via telephone conference call at (866) 857-1547, participant passcode, 3313634.

**FOR FURTHER INFORMATION CONTACT:** J.Allison Routt at (562) 980-4019 or (562) 980-4030.

**SUPPLEMENTARY INFORMATION:** In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee to the U.S. Section to the IATTC. The U.S. Section consists of the four U.S. Commissioners to the IATTC and the representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The Advisory Committee supports the work of the U.S. Section in a solely advisory capacity with respect to U.S. participation in the work of the IATTC, with particular reference to the development of policies and negotiating positions pursued at meetings of the IATTC. NMFS, Southwest Region, administers the Advisory Committee in cooperation and consultation with the Department of State.

The General Advisory Committee to the U.S. Section to the IATTC will meet by telephone conference to receive and discuss information on: (1) 2006 IATTC activities; (2) recent and upcoming meetings of the IATTC and its working groups; (3) IATTC cooperation with other regional fishery management organizations; and (4) Advisory Committee operational issues.

#### Special Accommodations

The meeting is accessible to people with disabilities. Requests for a telephone teletype device, language interpretation or other auxiliary aids should be directed to Allison Routt at (562) 980-4019 at least 10 days prior to the meeting date for this conference call.

Dated: March 24, 2006.

**Tracey L. Thompson,**

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

[FR Doc. E6-4565 Filed 3-28-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**AGENCY:** National Ocean Service, NOAA, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of the next meeting of the Marine Protected Areas Federal Advisory Committee (MPA FAC) in Corpus Christi, Texas.

**DATES:** The meeting will be held Monday, April 24, 2006, from 8:30 a.m. to 5 p.m., Tuesday, April 25, 2006, from 8 a.m. to 5 p.m., and Wednesday, April 26, 2006, from 8 a.m. to 5 p.m. These times and the agenda topics described

below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

**ADDRESSES:** The meeting will be held at the Omni Marina Tower Hotel, 900 North Shoreline Boulevard, Corpus Christi, Texas 78401.

**FOR FURTHER INFORMATION CONTACT:** Lauren Wenzel, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland, 20910. (Phone: 301-713-3100 x 136, Fax: 301-713-3110); e-mail: [lauren.wenzel@noaa.gov](mailto:lauren.wenzel@noaa.gov); or visit the National PMA Center Web site at <http://www.mpa.gov>.

**SUPPLEMENTARY INFORMATION:** The MPA FAC, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation, with a one hour time period set aside from 4 p.m. to 5 p.m. on Monday, April 24, 2006, and one hour set aside from 8:10 a.m. to 9:10 a.m. on Wednesday, April 26, 2006, for the MPA FAC to receive verbal comments or questions from the public. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Copies of written statements should be submitted to the Designated Federal Official by April 18, 2005.

**Matters to Be Considered:** On Monday, April 24, 2006, the MPA FAC will elect a chair and vice chair, receive a response from DOC and the Department of the Interior (DOI) on their recommendations submitted in June 2005, and receive its new charge from DOC and DOI. The MPA FAC will also discuss and form the subcommittees needed to address the charge. On Tuesday, April 25, 2006, the MPA FAC will hear a panel presentation on MPAs and marine management issues in the Gulf of Mexico, and the subcommittees will meet. On Wednesday, April 26, 2006, the MPA FAC will hear a panel presentation MPAs and ecosystem approaches to management and the subcommittees will meet. The agenda is subject to change, and the latest version will be posted at <http://www.mpa.gov>.

Dated: March 17, 2006.

**Eldon Hout,**

*Director, Office of Ocean and Coastal Resource Management.*

[FR Doc. 06-2989 Filed 3-28-06; 8:45 am]

**BILLING CODE 3510-08-M**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the Application for the President's Higher Education Community Service Honor Roll 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). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Robert Davidson at (202) 606-6906. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 606-3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Rachael Potter, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

- (1) By fax to: (202) 395-6974, Attention: Ms. Rachael Potter, OMB Desk Officer for the Corporation for National and Community Service; and
- (2) Electronically by e-mail to: [Rachael\\_F.\\_Potter@omb.eop.gov](mailto:Rachael_F._Potter@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** 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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### Comments

A 60-day public comment Notice was published in the **Federal Register** on January 5, 2006. This comment period ended March 6, 2006. Several commenters expressed appreciation for the effort to recognize higher education community service. One commenter suggested that information be collected about the service and donations of a college's alumni, and another sought collection of detailed information about the hurricane relief agencies to which colleges and students made donations. In the interest of keeping the application as short and easy to complete as possible, these questions have not been added. One commenter suggested that the application guidance state that applicants need fill out "only as much as they can." In order to minimize burden, several questions have been eliminated; and, for some questions, an "information not available" option has been provided. One commenter asked that the application request only "actual data," not estimates, because "responsible institutions should be able to provide actual numbers." Recognizing that not all colleges have established systems for collecting data on student service, the application continues to request estimates rather than insist on verifiable data. However, the application guidance requests that estimates be based on the best information available. One commenter suggested that the application provide an example in order to give applicants a sense of what a good project summary should include. Applicants will be directed to examples of good project summaries that will be provided on the Corporation's Web site.

*Description:* The President's Higher Education Community Service Honor Roll and Awards program supports the President's Call to Service and the Corporation's strategic goals, especially the goal of significantly increasing community service by college students. The Application for the President's Higher Education Community Service Honor Roll will collect information from institutions of higher education about student community service activities, and—in this first year especially—hurricane relief activities. Data from this application will provide the basis for a national honor roll and awards program designed to promote awareness of higher education community service efforts and to inspire expanded and more effective service efforts in the

future. The initial deadline for institutions to submit applications is July 31, 2006, based on information for the year ending June 30. It is expected that a similar application/information collection activity will be repeated annually, with a similar annual deadline.

The estimated number of respondents and estimated burden hours reflected in this notice are lower than those in the 60-day notice. These estimates, as reflected below, properly should be based on the number of anticipated applicants rather than the number of eligible institutions.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* Application for the President's Higher Education Community Service Honor Roll.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* All U.S. degree-granting colleges and universities interested in being recognized for student community service, including hurricane relief, activities.

*Total Respondents:* 1,000 estimated.

*Frequency:* Annual.

*Average Time Per Response:* 1 hour.

*Estimated Total Burden Hours:* 1,000 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: March 6, 2006.

**Amy Cohen,**

*Director, Learn and Serve America.*

[FR Doc. E6-4512 Filed 3-28-06; 8:45 am]

**BILLING CODE 6050--SS-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### U.S. Court of Appeals for the Armed Forces Code Committee Meeting

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442-0001, at 10 a.m. on Tuesday, May 16, 2006. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform

Code of Military Justice throughout the Armed Forces.

**FOR FURTHER INFORMATION CONTACT:** William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442-0001, telephone (202) 761-1448.

Dated: March 23, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 06-3005 Filed 3-28-06; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Threat Reduction Advisory Committee

**AGENCY:** Department of Defense Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Threat Reduction Advisory Committee will meet in closed session on Thursday, June 1, 2006, at the Defense Threat Reduction Agency (DTRA), and on Friday, June 2, 2006, in the Pentagon, Washington, DC.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on technology security, combating weapons of mass destruction, chemical and biological defense, transformation of the nuclear weapons stockpile and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

**DATES:** Thursday, June 1, 2006 (8 a.m. to 4 p.m.) and Friday, June 2, 2006 (8 a.m. to 9:20 a.m.).

**ADDRESSES:** Defense Threat Reduction Agency, Defense Threat Reduction Center, Conference Room G, Room 1252, 8725 John J. Kingman Road, Fort Belvoir, Virginia and the USD (AT&L) Conference Room (3D1019), the Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060-6201. Phone: (703) 767-5717.

Dated: March 23, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. 06-2998 Filed 3-28-06; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### U.S. Strategic Command Strategic Advisory Group

**AGENCY:** Department of Defense, USSTRATCOM.

**ACTION:** Notice.

**SUMMARY:** The Strategic Advisory Group (SAG) met in closed session on March 23, 2006. The mission of the SAG is to provide timely advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans. Full development of the topics will require discussion of information classified in accordance with Executive order 12958, dated April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 2), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c), and that, accordingly, this meeting will be closed to the public. This notice was not published within the 15-day timeframe because of a recent determination that this meeting is deliberative in nature.

Dated: March 23, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Registered Liaison Officer, DoD.*

[FR Doc. 06-2999 Filed 3-28-06; 8:45 am]

**BILLING CODE 5001-96-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[DoD-2006-OS-0046]

#### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 28, 2006 unless comments are received which results in a contrary determination.

**ADDRESSES:** Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696-4940.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 23, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

#### DHA 05

##### SYSTEM NAME:

Military Deployment Issues Files (December 8, 2000, 65 FR 76999).

##### CHANGES:

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

##### RECORD ACCESS PROCEDURES:

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

#### DHA 05

##### SYSTEM NAME:

Military Deployment Issues Files.

##### SYSTEM LOCATION:

Office of the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg

Pike, Suite 901, Falls Church, VA 22041-3226; DoD Deployment Health Clinical Center (including the Comprehensive Clinical Evaluation and Special Care Programs), Walter Reed Army medical center, Washington, DC 20307-0002; DoD Deployment Health Research Center, Naval Health Research Center, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152-5302; DoD Deployment Health Medical Surveillance Center, Director of Epidemiology and Disease Surveillance, U.S. Army Center for Health Promotion and Preventive Medicine, Aberdeen Proving Ground, MD 21010-5422; and U.S. Armed Services Center for Unit Records Research, 7798 Cissna Road, Suite 101, Springfield, VA 22150-3197.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participated in military deployments or related operations, exercises, or tests, or served in Operation Desert Storm and/or Operation Desert Shield, the Kuwait Theater of Operations who feel they may have been exposed to biological, chemical, radiological, disease, or environmental agents.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in military deployments or related operations, exercises, or tests, perceived issues, exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical radiological, disease, or environmental agents. The system contains information from unit and historical records, medical and hospital records, and information provided to the DoD by individuals with first-hand knowledge of reports of possible biological, chemical, radiological, disease, or environmental incidents. Information from health care providers who have evaluated patients with illnesses possibly related to military deployments is also included. Records include those documents, files, and other media that could relate to possible deployment health issues or illnesses. Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 136, Under

Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN).

**PURPOSE(S):**

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, radiological, disease, or environmental agents incident to service in military deployments or related operations, exercises, or tests, or service in Gulf War deployments, to conduct scientific or related studies or medical follow-up programs, and to assist in the resolution of deployment related issues.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

To the Department of Veterans Affairs and Health and Human Services, and the Centers for Disease Control and Prevention to permit investigative, scientific, medical and other analyses regarding deployment health issues and incidents and possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to service member's and veteran's health.

To the Military and Veterans Health Coordinating Board (MVHCB), which will coordinate with several agencies the clinical, research, and health risk communications issues relating to service member's (and veteran's) pre and post deployment health.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

**RETRIEVABILITY:**

Records are retrieved by case number, name, Social Security Number or service number and key words.

**SAFEGUARDS:**

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA approves retention and disposition schedule, treat records as permanent.)

**SYSTEM MANAGER(S) AND ADDRESS:**

Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041-3226.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041-3226; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 80, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041-3226; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is from the individual's themselves, witnesses to a possible event, health care providers who have evaluated patients with illnesses possibly related to service in military deployments or related operations, exercises, or tests as well as extracts from official DoD records to include: Personnel files and lists, unit histories, medical records, and related sources.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06-3000 Filed 3-28-06; 8:45 am]

BILLING CODE 5001-06-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DoD-2006-OS-0047]

**Privacy Act of 1974; System of Records**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 28, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696-4940.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 23, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

**DTMA 04**

**SYSTEM NAME:**

Medical/Dental Claim History Files (May 9, 2003, 68 FR 24938).

**CHANGES:**

**NOTIFICATION PROCEDURE:**

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite

810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

**RECORD ACCESS PROCEDURES:**

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

**DTMA 04**

**SYSTEM NAME:**

Medical/Dental Claim History Files.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011-9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Eligible beneficiaries and all individuals who seek health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains claims, billings for services, applications or approval forms, enrollment files, recoupment files, third-party liability files, fraud and abuse files, case management files, resource sharing files, utilization management/quality assurance files, payment files, medical/dental records, family history files, records of grievances with a medical/dental provider, appeals, hearings, or any other correspondence, memoranda, or reports which are acquired or utilized in the development and processing of TRICARE/CHAMPUS or CHAMPVA claims. Records are also maintained on health care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports, which are acquired or utilized during the projects.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR 101-11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

**PURPOSE(S):**

TRICARE Management Activity and its contractors, DoD staff (including Military Treatment Facilities, clinics and Lead Agent Staff) use the information to control and process health care benefits available under TRICARE/CHAMPUS and CHAMPVA including the processing of medical/dental claims, the control and approval of medical/dental treatments, issuance

of deductible certificates, and necessary interface with providers of health care. The system also supports audits of contractor-processed claims to determine payment and occurrence accuracy of the contractor's adjudication process.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, State, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

**RETRIEVABILITY:**

Information is retrieved by sponsor's name; sponsor's Social Security Number; beneficiary's name; beneficiary's Social Security Number; provider's name; provider's number (Tax Identification Number or Social Security Number); internal control number; classification of medical diagnosis; procedure code; geographical location of care provided; and selected utilization limits.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through TRICARE Management Activity on-line data systems. Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Paper records are closed out at the end of the calendar year in which finalized and held six additional years and then destroyed. Where hard copy

records (except Claims History Files) have been converted to electronic, microfilm, imaging, or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion and then destroyed. Claims History Files maintained in electronic format are kept for ten years and are then destroyed or deleted.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16501 East Centretech Parkway, Aurora, CO 80011-9066.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive

measures to ensure the individual is provided the requested information.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Contractors, Health Benefit Advisors; other Components of the Department of Defense; all branches of the uniformed Services; Congressional offices; providers of care; consultants; and individuals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06-3001 Filed 3-28-06; 8:45 am]

**BILLING CODE 5001-06-M**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DoD-2006-OS-0048]

**Privacy Act of 1974; System of Records**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to amend Systems of Records.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 28, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696-4940.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as

amended, which requires the submission of a new or altered system report.

Dated: March 23, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

**DTMA 03**

**SYSTEM NAME:**

Legal Opinion Files (May 9, 2003, 68 FR 24938).

**CHANGES:**

\* \* \* \* \*

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

**RECORD ACCESS PROCEDURES:**

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

\* \* \* \* \*

**DTMA 03**

**SYSTEM NAME:**

Legal Opinion Files.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 800011-9066.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have contacted or corresponded with TRICARE Management Activity regarding any matter requiring legal clarification or resolution.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Inquiries received from individuals, attorneys, fiscal administrators, hospital contractors, other government agencies, Health Care Advise Nurse records, and congressional offices. Files contain legal opinions, correspondence, memoranda for the record, and similar documents. Medical/dental treatment records, authorizations and pre-authorizations, care and claims inquiry documents, and medical/dental history files may be included in these records, as appropriated to document TRICARE legal determinations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR 101-11.000; Chapter 55, 10 U.S.C. 613, Chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

**PURPOSE(S):**

TRICARE Management Activity uses these records to address and resolve legal issues and for research, precedent, historical, and record purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to provide business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of ODS's compilation of systems of records notices apply to this system.

**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such mentioned beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

**RETRIEVABILITY:**

Information is retrieved by subject matter with cross-reference by individual name and/or Social Security Number.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Records are permanent. Paper records are retired to the Denver Regional Records Center when ten years old or when no longer needed for current business. Records are transferred to the NARA when thirty years old. Electronic and other non-paper media records are maintained until no longer needed for current business and are then deleted or destroyed.

**SYSTEM MANGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East Centretch Parkway, Aurora, CO 80011-9066.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretch Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretch Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, and sponsor's Social Security

Number, current address and telephone number.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individuals (TRICARE/CHAMPUS and CHAMPVA beneficiaries, sponsors, or others), attorneys, fiscal administrators, hospital contractors, managed care support contractors, providers of care, medical records, other government agencies (Federal, state, local and foreign), and Congressional offices.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06-3002 Filed 3-28-06; 8:45 am]

BILLING CODE 5001-06-M

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DoD-2006-OS-0050]

**Privacy Act of 1974; System of Records**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April

28, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696-4940.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 23, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

#### **DTMA 01**

##### **SYSTEM NAME:**

Health Benefits Authorization Files (May 9, 2003, 68 FR 24938).

##### **CHANGES:**

##### **NOTIFICATION PROCEDURE:**

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

##### **RECORD ACCESS PROCEDURES:**

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

#### **DTMA 01**

##### **SYSTEM NAME:**

Health Benefits Authorization Files.

##### **SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011-9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All individuals who seek authorization or pre-authorization for medical and dental health care under TRICARE/CHAMPUS and CHAMPVA.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Original correspondence to and from individuals; medical/dental statements; medical/dental histories; Health Care Advise Nurse records; Congressional inquiries; medical/dental treatment records; authorization and pre-authorization requests for care; case status sheets; memoranda for the record; follow-up reports justifying extended care; correspondence with contractors; and work-up sheets maintained by case workers.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR part 101-11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

##### **PURPOSE(S):**

To maintain and control records pertaining to requests for authorization or pre-authorization of health and dental care under TRICARE/CHAMPUS.

To determine eligibility of an individual, authorize payment, control and review health care management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for internal and external audits and reviews of the program.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or

criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

##### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

##### **RETRIEVABILITY:**

Information is retrieved by sponsor's Social Security Number and sponsor's or beneficiary's name.

##### **SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

##### **RETENTION AND DISPOSAL:**

Automated indexes are maintained for six years. Hard copy records are closed out at the end of the calendar year in which finalized and held six additional years. Where hard copy records have been converted to electronic, microfilm, imaging, or optical formats, the hard copy is destroyed and the electronic, microfilm, imaging, or optical format is

kept by the contractor for six years after claim is processed to completion.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretch Parkway, Aurora, CO 80011-9066.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretch Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretch Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number. For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Contractors, Health Benefits Advisors, all branches of the Uniformed Services, congressional offices, providers of care, consultants and individuals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06-3003 Filed 3-28-06; 8:45 am]

**BILLING CODE 5001-06-M**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DoD-2006-OS-0049]

**Privacy Act of 1974; System of Records**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 28, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696-4940.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 23, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

**DTMA 02**

**SYSTEM NAME:**

Medical/Dental Care and Claims Inquiry Files (May 9, 2003, 68 FR 24938).

**CHANGES:**

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

**RECORD ACCESS PROCEDURES:**

Add the following to the end of the entry: "or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201."

**DTMA 02**

**SYSTEM NAME:**

Medical/Dental Care and Claims Inquiry Files.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, 16401 East Centretch Parkway, Aurora, CO 80011-9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All individuals who seek information concerning health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Documents reflecting inquiries received from private individuals for information on TRICARE/CHAMPUS and CHAMPVA and replies thereto; congressional inquires on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR 101-11.000; chapter 55, 10 U.S.C.; section 613, chapter 17, 38 U.S.C.; and E.O. 9397 (SSN).

**PURPOSE(S):**

To maintain and control records pertaining to requests for information concerning an individual's TRICARE/CHAMPUS eligibility status, the benefits provided under programs of TRICARE/CHAMPUS and CHAMPVA and the processing of individual TRICARE/CHAMPUS and CHAMPVA claims.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibility under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

**RETRIEVABILITY:**

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel

who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed. Where hard copy records have been converted to electronic, microfilm, imaging or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretech Parkway, Aurora, CO 80011-9066.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011-9066; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3201.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a

physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 06-3004 Filed 3-28-06; 8:45 am]

BILLING CODE 5001-06-M

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**Notice of Availability for Donation as a Museum/Memorial, the Battleships ex-IOWA (BB 61) and ex-WISCONSIN (BB 64)**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of the availability for donation as a museum/memorial the battleship ex-IOWA (BB 61), located at the Suisun Bay Reserve Fleet, Benecia, CA, and battleship ex-WISCONSIN (BB 64) located adjacent to the Nauticus National Maritime Center/Hampton Roads Naval Museum in Norfolk, VA. The availability of these battleships for donation is in compliance with Public Law 109-163, the FY06 National Defense Authorization Act, and under the authority of 10 U.S.C. 7306. The Secretary of the Navy requires, as a condition of transfer, that the donee locate ex-IOWA within the State of California and ex-WISCONSIN within the Commonwealth of Virginia.

The transfer of ships for donation under 10 U.S.C. 7306 shall be made at no cost to the United States Government. The donee will be required to maintain the ship as a static display

in a condition that is satisfactory to the Secretary of the Navy.

In accordance with Public Law 109-163, the 30-day Congressional notification of donation was waived for ex-IOWA and ex-WISCONSIN. It is in the best interests of the Navy to donate these ships as soon as possible. Therefore, a letter of intent will be required within 45 days from the date of this notice and all ship donation applications must be received within six months from the date of this notice.

Prospective donees must submit a letter of intent to the Navy Inactive Ship Program Office within 45 days of this **Federal Register** notice. The letter of intent must:

a. Identify the specific ship sought for donation;

b. Include a statement of the proposed use for the ship;

c. Identify the proposed berthing location;

d. If the applicant is not a state, territory or possession of the United States, or a political subdivision or municipal corporation thereof, or the District of Columbia, provide a copy of a determination letter by the Internal Revenue Service that the applicant is exempt from tax under the Internal Revenue Code, or submit evidence that the applicant has filed the appropriate documentation in order to obtain tax exempt status;

e. If the applicant asserts that it is a corporation or association whose charter or articles of agreement denies it the right to operate for profit, provide a properly authenticated copy of the charter, certificate of incorporation, and a copy of the organization's by-laws;

f. Provide a notarized copy of the resolution or other action of the applicant's governing board authorizing the person signing the application to represent the organization and to sign on its behalf for the purpose of obtaining a vessel; and

g. Provide written affirmation that the prospective donee can submit a complete ship donation application to the Navy, compliant with the Navy's application requirements, within six months of this **Federal Register** notice. If the applicant is incapable of meeting this deadline, specific rationale must be provided along with identification of the events that must be achieved and the timeline necessary in order to submit a complete ship donation application to the Navy. The Navy reserves the right to provide a reasonable extension for receipt of applications, or to reject a request for extension and to proceed with other applications received within the six-month deadline.

Upon receipt of the letter of intent, the Navy will contact the prospective donees to ensure a full understanding of the application requirements.

Qualified organizations in the state of California wishing to apply for ex-IOWA, and qualified organizations in the Commonwealth of Virginia wishing to apply for ex-WISCONSIN, must submit a complete application to the Navy within six months of this notice, comprised of a business/financial plan, a technical plan (includes a towing plan, mooring plan, maintenance plan and environmental plan), a curatorial/museum plan, and a community support plan (includes information concerning support from the community and benefit to the Navy). The application must address the following areas:

a. *Business/Financial Plan:* The Business/Financial Plan must detail the estimated start-up and operating costs, and provide detailed evidence of firm financing adequate to cover these costs. Start-up costs include towing, mooring (this includes but not limited to the cost of acquiring and improving facilities, and dredging if required), ship restoration, museum development, and meeting environmental requirements (including permitting fees and expenses). Operating costs are those associated with operating and maintaining the vessel as a museum/memorial, including rent, utilities, personnel, insurance, periodic dry-docking, etc. Firm financing means available funding to ensure the first five years of operation and future stability for long-term operation. This can include pledges, loans, gifts, bonds (except revenue bonds), funds on deposit at a financial institution, or any combination of the above. The applicant must also provide income projections from sources such as individual and group admissions, facility rental fees and gift shop revenues sufficient to cover the estimated operating expenses.

b. *Technical:* The technical plan is comprised of a Towing Plan, Mooring Plan, Maintenance Plan, and Environmental Plan.

The Towing Plan describes how the ship will be prepared for tow and safely towed from its present location to the permanent display site proposed by the applicant. The Towing Plan must comply with all U.S. Navy Tow Manual requirements, which can be found at <http://www.supsalv.org/pdf/towman.pdf>.

The Mooring Plan describes how the ship will be secured at its permanent display site during normal and extreme weather conditions (including the 100-year storm event) to prevent damage to

the ship, its mooring system, the pier, and surrounding facilities. Provide evidence of availability of a facility for permanent mooring of the ship, either by ownership, existing lease, or by letter from the facility owners indicating a statement of intent to utilize such facilities. Address any requirement to obtain site-specific permits and/or municipality approvals required for the facility, to include but not limited to, Port Authority and Army Corps of Engineers approvals/permits, where required. The mooring location must be acceptable to the Navy and not obstruct or interfere with navigation.

The Environmental Plan describes how the applicant will comply with all Federal, state and local environmental and public health & safety regulations and permit requirements. The applicant must also provide information necessary for the Navy to complete an environmental assessment of the donation as required by the National Environmental Policy Act (NEPA), including the impact of the donation on the natural and man-made environment, local infrastructure, and evaluation of the socio-economic consequences of the donation.

The Maintenance Plan must describe plans for long-term, short-term, and daily maintenance of the vessel, including preservation and maintenance schedule, underwater hull inspections, emergency response and fire/flood/intrusion control, pest control, security, periodic dry-docking, and qualifications of the maintenance team.

c. The Curatorial/Museum Plan includes two parts: A Curatorial Plan and a Historic Management Plan. The Curatorial Plan must describe the qualifications for a professional curator (and curator staff, if necessary). The plan must also describe how the museum will collect and manage artifacts, including a statement of purpose and description of access, authority, and collection management responsibilities. The Historic Management Plan must describe how the museum will display the vessel and exhibits, including a description of the historical context of the ship, vessel restoration plans, historical subject matter that will be displayed with the ship, and exhibit display plans.

d. The Community Support Plan must include evidence of local support. Evidence of regional support should also be provided. This includes letters of endorsement from adjacent communities and counties, cities or states. Also describe how the location of the ship will encourage public visitation and tourism, become an integral part of the community, and how the ship will

enhance community development. The Community Support Plan must also describe the benefit to the Navy, including, but not limited to, addressing how the prospective donee may support Navy recruiting efforts, the connection between the Navy and the proposed berthing location, how veterans associations in the area are willing to support the vessel, how the prospective donee will honor veterans' contributions to the United States, and how the exhibit will commemorate those contributions and showcase Naval traditions.

The relative importance of each area that must be addressed in the donation application is as follows: Business/Financial Plan and Technical Plan are the most important criteria and are equal in importance. Within the Technical Plan, the Mooring Plan is of greatest importance, and the Towing Plan, Maintenance Plan and Environmental Plan are individually of equal importance but of lesser importance to the Mooring Plan. The Curatorial/Museum Plan and Community Support Plan are of equal importance, but of lesser importance than the aforementioned plans.

Evaluation of the application(s) will be performed by the Navy to ensure the application(s) are compliant with the minimum acceptable application criteria and requirements. In the event of multiple compliant applications for the same battleship, the Navy will perform a comparative evaluation of the applications to determine the best-qualified applicant. The adjectival ratings to be used for each criterion include: Outstanding, Good, Satisfactory, Marginal and Unsatisfactory. The Secretary of the Navy or his designee will make the final donation decision.

Additional information concerning the application process and requirements are found on the Navy's Ship Donation Web site, <http://www.navsea.navy.mil/ndp>. The complete application must be submitted in hard copy and electronically on a CD to the Navy Inactive Ship Program Office within six months of this **Federal Register** notice. As stated above, the Navy Reserves the right to provide a reasonable extension for receipt of applications, or to reject a request for extension and to proceed with other applications received within the 6-month deadline.

*For Further Information and Submission of Ship Donation Applications, Contact:* Commander, Program Executive Office Ships (PEO SHIPS), PMS333, Navy Inactive Ship Program Office, Ship Donation Program,

ATTN: Ms. Gloria Carvalho (PMS 333G), 300 M Street, SE., Suite 500, Washington, DC 20003, telephone number 202-781-0485.

Dated: March 23, 2006.

**Eric McDonald,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E6-4557 Filed 3-28-06; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 18, 2006. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 30, 2006.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management

Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 23, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Elementary and Secondary Education

*Type of Review:* New.

*Title:* Application for the Teacher Incentive Fund.

*Abstract:* This application will be used to award grants to local education agencies, state education agencies, or partnerships with a local or state education agency for the purpose of creating a performance-based compensation system for teachers and principals.

*Additional Information:* The Department is requesting permission for an emergency clearance to allow more time for State and local entities to prepare their designs for performance-based compensation systems, consult as appropriate or partner with non-profit organizations experienced in this area, and identify State and local resources that can be matched to the Federal investment. In addition, this grant program is extremely important to the administration and will allow grant awards to be made in time.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 40.  
Burden Hours: 3,200.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3008. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4520 Filed 3-28-06; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF EDUCATION****Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 28, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 23, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Office of the Chief Financial Officer**

*Type of Review:* Revision.

*Title:* Small Business Innovation Research (SBIR) Program—Phase II—Grant Application.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 50.

Burden Hours: 3,750.

*Abstract:* This application package invites small business applicants to submit a Phase II application for the Small Business Innovation Research (SBIR) program. This is in response to Public Law 106-554, the "Small Business Reauthorization Act of 2000, H.R. 5667" (the "Act") enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED), to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive, three-phase process each fiscal year.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review

may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2924. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4523 Filed 3-28-06; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF EDUCATION****Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 28, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance

Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 23, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

#### **Office of the Chief Financial Officer**

*Type of Review:* Revision.

*Title:* Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 200.

Burden Hours: 9,000.

*Abstract:* This application package invites small business concerns to submit a Phase I research application for the Small Business Innovation Research (SBIR) program. This is in response to Public Law 106-554, the "Small Business Reauthorization Act of 2000, H.R. 5667" (the "Act") enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED), to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development (R/R&D) through a uniform, highly competitive, three-phase process each fiscal year. The Act further requires the Small Business Administration (SBA) to issue policy directives for the general conduct of the SBIR programs within the Federal government.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review

may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2919. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4524 Filed 3-28-06; 8:45 am]

**BILLING CODE 4000-01-P**

#### **DEPARTMENT OF EDUCATION**

##### **Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 28, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance

Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 23, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

#### **Federal Student Aid**

*Type of Review:* Extension.

*Title:* Federal Family Education Loan, Direct Loan and Perkins Loan Total Permanent Disability Discharge Form.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 15,000.

Burden Hours: 7,500.

*Abstract:* This form will serve as the means of collecting the information to determine whether a FFEL, Direct Loan, or Perkins Loan borrower qualifies for a discharge of his or her loan(s) due to total and permanent disability.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2972. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4525 Filed 3-28-06; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF EDUCATION****Submission for OMB Review;  
Comment Request****AGENCY:** Department of Education.**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.**DATES:** Interested persons are invited to submit comments on or before April 28, 2006.**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 23, 2006.

**Angela C. Arrington,**  
*IC Clearance Official, Regulatory Information Management Services, Office of Management.***Office of Special Education and  
Rehabilitative Services***Type of Review:* Revision.*Title:* Annual Protection & Advocacy of Individual Rights (PAIR) Program Performance Report.*Frequency:* Annually.*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.*Reporting and Recordkeeping Hour Burden:*

Responses: 57.

Burden Hours: 912.

*Abstract:* Form RSA-509 will be used to analyze and evaluate the Protection & Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2976. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4559 Filed 3-28-06; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF EDUCATION****Submission for OMB Review;  
Comment Request****AGENCY:** Department of Education.**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.**DATES:** Interested persons are invited to submit comments on or before April 28, 2006.**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 23, 2006.

**Angela C. Arrington,**  
*IC Clearance Official, Regulatory Information Management Services, Office of Management.***Office of Postsecondary Education***Type of Review:* Extension.*Title:* FIPSE: Brazil, North America, EU-U.S. Consolidated Grants.gov Application Forms.*Frequency:* Annually.*Affected Public:* Not-for-profit institutions.*Reporting and Recordkeeping Hour Burden:*

Responses: 110.

Burden Hours: 780.

*Abstract:* These three special focus international programs promote multilateral, international curricular development, student recruitment and exchange, credit recognition, and tuition reciprocity in a wide range of academic

disciplines for undergraduate and graduate students and faculty.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2973. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4560 Filed 3-28-06; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 28, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or

Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 23, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Revision.

*Title:* Annual Client Assistance Program (CAP) Report.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 56.

Burden Hours: 896.

*Abstract:* Form RSA-227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to individuals seeking or receiving services from programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2944. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to

[ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-4561 Filed 3-28-06; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 28, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 23, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision.

*Title:* Section 704 Annual Performance Report (Parts I and II).  
*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions. Reporting and Recordkeeping Hour Burden:

*Responses:* 392.

*Burden Hours:* 13,720.

*Abstract:* Section 706(d), 721(b)(3), and 725(c) of the Rehabilitation Act of 1973, as amended (Act) and corresponding program regulations in 34 CFR parts 364, 365, and 366 require centers for independent living, Statewide Independent Living Councils (SILCs) and Designated State Units (DSUs) supported under Parts B and C of Chapter 1 of Title VII of the Act to submit to the Secretary of Education (Secretary) annual performance information and identify training and technical assistance needs.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2974. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339.

[FR Doc. E6-4562 Filed 3-28-06; 8:45 am]

BILLING CODE 4000-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OECA-2005-0019; FRL-8050-7]

**Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Asbestos (Renewal); OMB Number 2060-0101; EPA ICR Number 0111.11**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and costs.

**DATES:** Additional comments may be submitted on or before April 28, 2006.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA-HQ-OECA-2005-0019, to (1) EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by e-mail to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-7027; fax number: (202) 564-0050; e-mail address: [malave.maria@epa.gov](mailto:malave.maria@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OECA-2005-0019, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566-1752. Use EPA's electronic docket and comment system at [www.regulations.gov](http://www.regulations.gov), to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

*Title:* NESHAP for Asbestos (Renewal).

*ICR Numbers:* EPA ICR Number 0111.11; OMB Control Number 2060-0101.

*ICR Status:* This ICR is scheduled to expire on March 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos standards were

proposed on January 10, 1989, and promulgated on November 20, 1990. The standards apply to the following affected facilities: demolition and renovation of facilities; the disposal of asbestos waste; asbestos milling, manufacturing and fabricating; the use of asbestos on roadways; asbestos waste conversion facilities; and the use of asbestos insulation and sprayed-on materials. This information is being collected to assure compliance with 40 CFR part 61, subpart M.

The monitoring, recordkeeping, and reporting requirements outlined in these rules are similar to those required for other NESHAP regulations. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), respondents are required to submit initial notifications, conduct performance tests, and submit semiannual reports. They are also required to maintain records of applicability determinations; performance test results; exceedances; periods of startup, shutdown, or malfunction; monitoring records; and all other information needed to determine compliance with the applicable standard, such as records of visible emissions monitoring at potential sources of asbestos and of inspection records of air cleaning devices to ensure proper operation.

An owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. Records and reports must be retained for a total of two years. The files may be maintained on microfilm, on a computer or floppy disks, on magnetic tape disks, or on microfiche. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the United States Environmental Protection Agency (EPA) regional office.

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, and are identified on the form and/or instrument, if applicable.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the

time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** Owners or operators of asbestos milling, manufacturing, fabricating, waste disposal, and waste conversion facilities.

**Estimated Number of Respondents:** 9,432.

**Frequency of Response:** Initially, on occasion, and semiannually.

**Estimated Total Annual Hour Burden:** 229,381 hours.

**Estimated Total Annual Cost:** \$18,514,228, which includes \$0 annualized capital/startup costs, \$0 annual O&M costs, and \$18,514,228 annual labor costs.

**Changes in the Estimates:** There is a decrease of 112,868 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease in burden from the most recently approved ICR is due to a reduction in the total number of respondents subject to this ICR from 9,848 to 9,394.

Dated: March 21, 2006.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. E6-4564 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2005-0033; FRL-8050-6]

### Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Flexible Polyurethane Foam Fabrication EPA ICR Number 2027.03, OMB Number 2060-0516

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Request (ICR) has been forwarded to the Office

of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, abstracted below, describes the nature of the information collection and its estimated burden and costs.

**DATES:** Additional comments may be submitted on or before April 28, 2006.

**ADDRESSES:** Submit your comments, referencing Docket ID number EPA-HQ-OECA-2005-0033, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Learia Williams, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-4113; fax number: (202) 564-0050; e-mail address: [williams.learia@epa.gov](mailto:williams.learia@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA-HQ-OECA-2005-0033, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1752.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov), to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. When in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

*Title:* NESHAP for Flexible Polyurethane Foam Fabrication (Renewal).

*ICR Status:* This ICR is scheduled to expire on May 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) for flexible polyurethane foam fabrication were proposed on August 8, 2001 (66 FR 41729), and promulgated on April 14, 2003 (68 FR 18070). These standards apply to each existing, new, or reconstructed flexible polyurethane foam fabrication. For the purpose of the rule, flexible polyurethane foam fabrication is divided in the following two subcategories: (1) Loop slitter adhesive use, and (2) flame lamination.

Owners or operators of the affected facilities must make the following notification: (1) Initial notification, (2) notification of compliance status, and (3) notification of intent to conduct a performance test (flame lamination only). Affected sources must submit compliance reports, and a startup, shutdown, malfunction report. Owners or operators are also required to maintain records of the occurrence and

duration of any startup, shutdown, or malfunction (flame lamination only). Annual compliance reports are only required for loop slitter facilities and semiannual compliance reports for flame lamination facilities.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 89 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to 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; to adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; to train personnel to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owner or operator of each flexible polyurethane foam fabrication facility.

*Estimated Number of Respondents:* 11.

*Frequency of Response:* On occasion, annually, semiannually and initially.

*Estimated Total Annual Hour Burden:* 12,303.

*Estimated Total Annual Costs:* \$1,004,834, which includes \$997 annualized capital/startup costs, \$1,674 annual O&M costs, and \$1,002,163 annual labor costs.

*Changes in the Estimates:* There was an increase of 11,092 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase in burden hours from the most recently approved ICR is due, in part, to an increase of new sources. However, most of the burden increase is due to accounting for full compliance with the standard by all existing respondents. There is also an increase in the annual cost, which is

due to the revised hourly rates from the United States Department of Labor.

There are no changes in the capital/startup and operations and maintenance costs from the previous ICR.

Dated: March 21, 2006.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. E6-4566 Filed 3-28-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OARM-2005-0003; FRL-8050-5]

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Contractor Cumulative Claim and Reconciliation (Renewal), EPA ICR Number 0246.09, OMB Control Number 2030-0016**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before April 28, 2006.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA-HQ-OARM-2005-0003 for Contractor Cumulative Claim and Reconciliation (Renewal), EPA ICR Number 0246.09, OMB Control Number 2030-0016, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket (OEI), Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Nikki Burley, Policy and Oversight Service Center, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-9723 ; fax number: (202) 565-2552; e-mail address: [burley.nikki@epa.gov](mailto:burley.nikki@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 20, 2005 (70 FR 61124), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA-HQ-OARM-2005-0003, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the OEI Docket is 202-566-1752. An electronic version of the public docket is available for online viewing at <http://www.regulations.gov>.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

**Title:** Contractor Cumulative Claim and Reconciliation (Renewal).

**ICR Numbers:** EPA ICR No. 0246.09, OMB Control No. 2030-0016.

**ICR Status:** This ICR is scheduled to expire on March 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when

approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Abstract:** At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA Form 1900-10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close out the contract. Responses to the information collection are mandatory for those contractors completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** All contractors who have completed an EPA cost reimbursement type contract will be required to submit EPA Form 1900-10.

**Estimated Number of Respondents:** 47.

**Frequency of Response:** At contract completion.

**Estimated Total Annual Hour Burden:** 32.

**Estimated Total Annual Cost:** \$3,500, which includes \$0 annual capital/startup costs, \$500 annual O&M costs, and \$3,000 annual labor costs.

**Changes in the Estimates:** In the last OMB clearance, respondent burden hours were estimated at 163 hours per year. The current estimate is 32 hours per year for an overall decrease of 131 hours. The decrease in burden from the previous approval is due to the fact that EPA had a large backlog of expired contracts that the Agency actively closed out during that time, thus increasing the need for submitting the EPA form 1900-10. The requested burden estimate is consistent with EPA's normal business activity for requiring the contractor's cumulative claim and reconciliation. The time required to prepare each information collection has not changed since the last clearance.

Dated: March 21, 2006.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. E6-4567 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8051-3]

### Guidelines for the Award of Monitoring Initiative Funds Under Section 106 Grants to States, Interstate Agencies, and Tribes

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

**ACTION:** Notice of availability.

**SUMMARY:** These guidelines describe the formula necessary for EPA to allot Clean Water Act (CWA) Section 106 water pollution control program grant funds that have been targeted in EPA's appropriation process to support enhanced monitoring efforts by states, interstate agencies, and tribes for FY 2006 and beyond. These guidelines also describe the specific activities that states, interstate agencies, and tribes must carry out under the monitoring initiative in order to receive the funds. These activities will improve state and tribal capacity to monitor and report on water quality, and include two components: implementation of comprehensive monitoring strategies, including building capacity for state-scale statistically-valid surveys of water condition, and collaboration on statistically-valid surveys of the nation's waters.

**DATES:** The guidelines are effective on March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Joan Warren, Office of Water, Office of Wetlands, Oceans, and Watersheds, 4503T, Environmental Protection

Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566-1215; e-mail address: [warren.joan@epa.gov](mailto:warren.joan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*Regulated Entities:* States, Interstate agencies, and Tribes that are eligible to receive grants under section 106 of the CWA.

##### II. Background

Numerous reports have identified the need for improved water quality monitoring and analysis at local, state, or national scales. In 2000, the General Accounting Office reported that EPA and states cannot make statistically-valid assessments of water quality and lack the data to support key management decisions. In 2001, the National Research Council recommended that EPA and states promote a uniform, consistent approach to ambient monitoring and data collection to support core water quality programs. In 2002, the H. John Heinz III Center for Science, Economics, and the Environment found that water quality data are inadequate for reporting on fresh water, coastal and ocean water quality indicators at a nationwide scale. The U.S. Commission on Ocean Policy issued similar conclusions in 2004. The National Academy of Public Administration (NAPA) stated that improved water quality monitoring is necessary to help states make more effective use of limited resources. EPA's Report on the Environment 2003 found that there is not sufficient information to provide a national answer, with confidence and scientific credibility, to the question, "What is the condition of U.S. waters and watersheds?"

EPA has been working with Federal, state, and other partners to develop and promote the use of a variety of monitoring tools to most efficiently answer water quality management questions at multiple geographic scales. Statistically-based surveys, predictive models, remote sensing and targeted monitoring are examples of these tools. Used in combination, these tools can help focus and prioritize site-specific monitoring activities to identify and address problem areas, as well as achieve comprehensive assessments of water quality. Incorporating these tools into state and tribal monitoring strategies and into their monitoring program designs should help them meet multiple state and national monitoring objectives cost-effectively.

In partial response to these critiques and the need for credible reports on water quality status and trends

nationwide, the President's FY 2005 and FY 2006 budgets specifically requested increases in CWA section 106 funds to enhance monitoring activities, including funds for maintaining and improving statistically-valid water quality monitoring programs to provide information for decision makers and the public. The FY 2006 Conference Report, which accompanied EPA's FY 2006 appropriation, designated a separate portion of the total 106 funds to be targeted for this monitoring initiative.

On January 3, 2006, EPA published a revision to its CWA Section 106 grant regulations (40 CFR 35.162(d)) that provides the Agency with the flexibility to allot separately funds such as these which have been targeted for specific water pollution control elements (71 FR 17, January 3, 2006). In this situation, such allotment can occur only after EPA establishes an allotment formula after consultation with states and interstate agencies. These guidelines include this allotment formula, as well as further details regarding the use of and accountability for these funds.

##### III. Guidelines for the Award of Monitoring Initiative Funds Under Section 106 Grants to States, Interstate Agencies, and Tribes

These guidelines describe the formula necessary for EPA to allot Clean Water Act (CWA) section 106 water pollution control program grant funds that have been targeted in EPA's appropriation process to support enhanced monitoring efforts by states, interstate agencies, and tribes for FY 2006 and beyond. These guidelines also describe the specific activities that states, interstate agencies, and tribes must implement to receive the monitoring initiative funds. These activities will improve state and tribal capacity to monitor and report on water quality through the two components of the monitoring initiative: Implementation of comprehensive monitoring strategies, including building capacity for state-scale statistically-valid surveys of water condition, and collaboration on statistically-valid surveys of the nation's waters.

The first component will strengthen state and tribal programs consistent with priorities contained in their comprehensive monitoring strategies. The second component may serve state and tribal programs and produce a statistically-valid survey of water condition at nationwide and regional scales. Data gathered through the national/regional scale surveys could be used to support water quality criteria development and to identify the extent to which emerging pollutants may be of

concern. Survey data may potentially be used for developing state-scale predictive tools, documenting the performance of monitoring methods, and assessing the comparability of data.

EPA consulted with states and interstate organizations in the development of these guidelines beginning in March 2004. EPA reached an understanding with the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) on the distribution of the monitoring initiative increment in the FY 2005 section 106 grant funds. EPA continued discussions with ASIWPCA about the monitoring increment grant funds, including use of the FY 2006 increment for statistically-valid surveys of the nation's waters. EPA also consulted with state environmental commissioners through the Environmental Council of the States.

##### A. Formula for Allocation of Monitoring Initiative Funds

To be eligible to receive monitoring initiative funds, states, interstate agencies, and tribes must apply for the funds by preparing a workplan that details planned actions for carrying out both components of the monitoring initiative: implementation of comprehensive monitoring strategies and collaboration on statistically-valid surveys of the nation's waters. States may request in-kind assistance from EPA under the grant to complete the survey for the sites located within its jurisdiction. If a state does not apply for funds or meet the workplan criteria in these guidelines to implement its strategy and/or complete the survey, including requesting in-kind assistance, EPA may withhold the funds allotted for this purpose and award the funds to any eligible recipient in the region, including another agency of the same State or an Indian Tribe/Tribal consortium for the same environmental program (40 CFR 35.117).

For Fiscal Year 2006

\$18.23 million will be distributed in the following manner:\*

1. Allocate \$9.77 million of these funds as follows for implementing monitoring strategies and building monitoring program capacity—  
\$169,900 for each state,  
\$84,950 for each Territory and the District of Columbia,  
\$240,410 to be distributed among interstate agencies, and

\* EPA will use this numerical formula to determine the monitoring allotments for FY 2007 and beyond based on the amount of EPA's final annual budget targeted for these purposes.

\$528,506 to be distributed among the tribes, in accordance with the Section 106 grant formula for tribes.

2. Allocate \$8.45 million for surveying water quality condition nationwide. Grant recipients will use this portion of the monitoring initiative funds for statistically-valid surveys of water body condition repeated over time to determine status and trends in water condition. The distribution of these funds will be tailored based on the water body type being surveyed, i.e., coastal waters, streams, lakes, rivers, and wetlands, and the number of sample sites needed. EPA will work with states, interstate agencies, and tribes to define the target population (size and type of water body) for each survey. After this consultation, EPA will develop a list of randomly selected sites to be sampled for the survey. For each survey, approximately 1,000 sites in the contiguous 48 states will be sampled. A state or tribe in the contiguous 48 states will receive \$8,000 for each sampling site falling within its jurisdiction. A separate fund of \$450,000 will be used to support survey work in Alaska, Hawaii, Puerto Rico and the trust territories. If a grant recipient is able to sample the sites needed for its participation in a nationwide survey for less than the \$8,000 per site, the remaining funds must be used for implementation of its monitoring strategy and to build capacity for state-scale statistically-valid surveys.

#### *B. Supplemental Workplans for Monitoring Initiative Activities*

These guidelines describe the types of commitments grant recipients must include in a separate workplan covering the monitoring initiative portion of their section 106 grant. Because these funds have to be tracked separately, EPA will negotiate specific annual activities to be included in these workplans that must address how recipients will (1) implement the state, interstate agency, or tribal monitoring strategy, including building capacity for state-scale statistically-valid surveys of water condition, and (2) collaborate on statistically-valid surveys of the nation's waters.

#### 1. Implementing Monitoring Strategies

##### Why Strategies Are Important

An important objective for state, interstate agency, and tribal monitoring strategies is to help maximize the efficiency of monitoring and assessment resources to help to increase the amount of waters monitored or assessed; provide the information needed to allow decisionmakers and the public to set

priorities; develop and apply controls; and determine the effectiveness of our investments in water quality protection and restoration. EPA agrees with the NAPA finding that investing in efficient monitoring and assessment programs will result in social cost savings by ensuring that the resources invested in environmental protection activities are addressing the greatest needs and are achieving performance objectives. In addition, the successful use of market-based approaches, such as trading for water quality protection and restoration, depends on the availability of adequate monitoring data and information.

#### State Water Monitoring and Assessment Strategies

In March 2003, EPA issued the *Elements of State Water Monitoring and Assessment Program* guidance to provide a framework for strengthening state monitoring programs by the end of FY 2014. This guidance describes 10 elements of a water monitoring and assessment program. The elements provide a basic framework that may be tailored to the specific needs of states or other organizations. A brief description of each element is provided below.

#### Monitoring Program Strategy

The comprehensive monitoring program strategy is a long-term plan that describes how the state implements a monitoring program that serves water quality decision needs for all its waters, including streams, rivers, lakes, the Great Lakes, reservoirs, estuaries, coastal waters, wetlands, and ground water. The strategy should describe how the state addresses each of the other nine elements of the guidance. It should reflect the input of the full range of monitoring partners within the state.

#### Monitoring Objectives

Monitoring objectives drive the state's implementation of monitoring activities. The state's objectives should reflect the needs of the Clean Water Act and the Safe Drinking Water Act and other water management activities.

#### Monitoring Design

The monitoring design explains how monitoring sites are selected to meet monitoring objectives. To meet decision needs most efficiently, states may integrate several monitoring designs (e.g., fixed station, intensive and screening-level monitoring, rotating basin, judgmental and probability design). Nearly half of the states are implementing statistically-valid surveys as a component of their monitoring network. As states implement their state monitoring strategies, EPA expects them

to build capacity for state-scale statistically-valid surveys of water condition. EPA encourages states to leverage the national/regional scale surveys to support these state-scale statistically-valid surveys. Monitoring designs may also incorporate predictive tools such as landscape and water quality modeling, remote sensing and deployed data sondes.

#### Core and Supplemental Water Quality Indicators

A core set of monitoring indicators (e.g., water quality parameters) includes physical/habitat, chemical/toxicological, and biological/ecological endpoints selected to assess attainment with applicable water quality standards throughout the state. The core indicators should be supplemented, as appropriate, to meet the full range of monitoring objectives. Supplemental indicators should be monitored when there is a reasonable expectation that a specific pollutant may be present in a watershed, or to support a special study such as screening for potential pollutants of concern.

#### Quality Assurance

A state must have a quality assurance program to ensure the scientific validity of monitoring data and of sampling and laboratory activities. Data of documented quality are critical to support decision making and resource allocation.

#### Data Management

Timely access to data of documented quality is another key element of a state monitoring program. All states are expected to use an electronic data system to manage water quality, fish tissue, toxicity, sediment chemistry, habitat, and biological data. The state data management strategy should address timely data entry, follow appropriate metadata and state/federal geo-locational standards, and allow public access. In the future, EPA will require states to directly or indirectly use the new Water Quality Exchange/STORET-compatible system to facilitate public access to data of documented quality.

#### Data Analysis/Assessment

A state's assessment methodology describes how water quality data are evaluated to determine whether waters are attaining water quality standards. The assessment methodology addresses how states collect data from various monitoring sources (including federal, state and local governments, volunteer monitors, academia, permitted dischargers under the National Pollutant

Discharge Elimination System (NPDES), drinking water utilities, etc.), what types and quality of data are needed to support different levels of decisions, and how data are reviewed, analyzed and compared to water quality standards.

#### Reporting

A monitoring program must ensure timely submission of water quality reports and lists, such as those required under sections 106, 303(d), 305(b), 314 and 319 of the Clean Water Act and section 406 of the Beaches Act. EPA encourages states to streamline reporting activities by consolidating reports and using electronic data management and reporting systems. EPA's "2002 Integrated Water Quality Monitoring and Assessment Report Guidance" called for integration and consistency in the development and submission of section 305(b) water quality reports and section 303(d) impaired waters lists. To accomplish this integration, EPA expects that all states will use EPA's Assessment Database (ADB) or a compatible electronic format to record their water quality assessment decisions.

#### Programmatic Evaluation

The state, in consultation with EPA, should conduct periodic reviews of its monitoring program to determine how well it serves water quality decision needs for all waters of the state. This involves evaluating each aspect of the monitoring program to determine how well each of the elements listed here are being implemented to serve water resource management activities and to identify needed changes and additions for future monitoring cycles.

#### General Support and Infrastructure Planning

The state monitoring strategy should identify current and future resource needs to fully implement its monitoring program. This planning activity should describe funding, staff, training, laboratory and information management resources and needs.

#### Tribal Monitoring Strategies

EPA will issue guidelines in 2006 for tribes on the use of Section 106 grants for building Clean Water Act program capabilities, including monitoring and reporting on water conditions. The Tribal Section 106 Guidance will require that tribes develop monitoring strategies appropriate to their capabilities and needs. The specifics of implementing the tribal strategies will be included in the tribe's annual Section 106 workplan.

#### Using Section 106 Monitoring Initiative Funds To Implement Monitoring Strategies

EPA expects states, territories, interstate organizations and tribes to use the first component of the monitoring initiative to assist in implementation of their monitoring strategies in keeping with schedules set out in the strategies, including building capacity for state-scale statistically-valid surveys of water condition. The funds should be accounted for in separate section 106 workplans and should be used to help states and tribes build program capacity to enhance water monitoring activities. Funds should not be used for ongoing or routine monitoring activities. They could be used to develop or augment a state's monitoring network design. For example, activities could include implementing a state-scale statistically-valid survey, expanding coverage, adding waterbody types, increasing intensive monitoring (e.g., watersheds); developing or refining core and supplemental indicators, including biological assessment programs; enhancing data analysis and management; increasing lab capability; and hiring new staff or purchasing equipment. EPA Regional monitoring and section 106 staff will work with each section 106 grant recipient to ensure that the workplan reflects these monitoring activities and that the state or tribe is making progress in implementing the priorities and milestones set out in its monitoring strategy.

EPA and the state monitoring strategies have identified the following activities, among others, as priorities for enhancing monitoring programs:

- Leveraging resources through partnerships to improve data management to facilitate data sharing and reduce redundancy of sample collection;
- Developing predictive tools to extend use of monitoring data;
- Using statistically-valid monitoring designs and assessment methodologies to represent the condition of all state or tribal waters with statistically-valid (probability-based) surveys and account for variability in water quality and uncertainty in sampling methods; and
- Improving the rigor of biological condition assessment to take advantage of its ability to integrate the effects of multiple stressors, provide a more accurate assessment of ecological effects, and improve diagnostic ability to identify causes of degradation.

#### 2. Collaborating on Statistically-Valid Surveys of the Nation's Waters

Supplemental workplans must also address activities that state and tribes will implement as part of their participation in the statistically-valid surveys of the nation's waters.

A key element of improving the credibility of reports on the condition of the nation's waters as called for under CWA section 305(b) is the use of a statistically-valid survey design. The *Elements of a State Water Monitoring and Assessment Program* recommends that monitoring strategies include the use of probability-based networks that support statistically-valid inferences about the extent of waters that support the goals of the CWA and achieve state water quality standards. EPA's 1997 *Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates*, written with state participation, also recommended the use of probabilistic monitoring or statistically-valid surveys as a cost-effective and reliable means for assessing water quality status and trends.

#### Why Surveys Are Important

Statistically-valid surveys are an efficient way to determine the extent to which waters support healthy aquatic communities. Detailed information collected about the health of aquatic communities in a random sample of a specific water body type (streams, coastal waters, lakes, rivers, and wetlands) can be used to make inferences, with documented confidence, about the condition of the larger universe of similar waters—most of which are currently unassessed (only 19% of streams and rivers, 43% of lakes, and less than 2% of wetlands were assessed for the 2002 reporting cycle). This design can be implemented at a national, regional, state, or local level to provide a benchmark about how much of the resource needs protection or restoration.

The short-term objective for water quality surveys is to achieve comprehensive assessments of water quality. Over the long-term, statistical surveys are a cost-effective means of determining trends over time and evaluating the effectiveness of water quality protection and restoration efforts. Statistically-valid surveys provide data that serve other water quality management needs ranging from additional information about each monitoring site to contributing to the development of water quality standards. They can be used with other datasets to

develop predictive tools that help prioritize site-specific monitoring and identify problem areas.

#### Basic Activities for Implementing Statistically-Valid Surveys

These CWA section 106 monitoring initiative guidelines require states and tribes to collaborate on statistically-valid surveys to assess water condition in coastal waters, streams, lakes, rivers and wetlands. Many states are already implementing or participating in statistically-valid designs for monitoring the condition of coastal waters, rivers and streams, and lakes. EPA intends that these national/regional scale surveys complement existing state efforts using survey designs and methods that generate comparable assessment results. The collaborative assessments will build upon and continue the success of national, regional, state, tribal, and local partnerships such as the National Coastal Assessment, the Wadeable Streams Assessment and Assessment of Western Rivers and Streams, the National Lake Fish Tissue Study, the Mid-Atlantic Integrated Assessment, and the Southern California Coastal Water Research Project.

The guidelines generally address the roles and responsibilities of EPA, states, and tribes in generating cost-effective comparable assessments of water resources. As EPA, states, and tribes collaborate on the survey for each water resource type, EPA will issue clarifying guidance for the specific activities involved in planning and implementing the survey. The clarifying guidance will contain information on number and location of sampling sites, indicators, quality assurance/quality control (QA/QC) protocols, field data collection and lab methods, and timelines for carrying out survey activities. The basic activities involved in statistical surveys are described below.

#### Monitoring Objectives

The basic objective of these surveys is to generate statistically-valid estimates of the extent of water resources that support healthy aquatic communities and human activities and to assess the relative importance of key stressors on water quality. The surveys will produce estimates of the condition of various water body types, i.e., coastal waters, streams, lakes, rivers, and wetlands, at both regional and national scales. States are encouraged to leverage these surveys to help support their own state-scale surveys. EPA will host meetings to bring together states and other experts to shape the planning and implementation of each survey, including detailed

definitions of the survey objectives, design and indicators, field implementation, and analysis and reporting.

#### Statistically-Valid Design

The design, developed in collaboration with states, tribes and other partners, will reflect the input provided through national meetings and other discussions about the definition of the water resources under investigation and the various sub-classes of the resource that need to be characterized by the survey. EPA will generate a statistically-valid representative network design that identifies the primary and alternative random monitoring sites within each eco-region. In addition, EPA will provide interested states with a randomized network design for state-scale or finer characterizations.

#### Indicators

The indicators used to describe the condition of water resources and extent of waters will vary depending upon the water body type surveyed. EPA will work with states and other experts to identify the core indicators that will be used to evaluate the ecological condition of water resources, the extent of water resources that support human activities, and the key stressors affecting waters. The indicator measurements will be taken using consistent or comparable procedures at all sites to ensure the results can be compared across the country. States and tribes are encouraged to include additional indicators (as described in the *Elements of a State Water Monitoring and Assessment Program*) to address specific questions and to generate more robust assessments.

#### Quality Assurance

EPA policy and regulations require documentation and implementation of standard operating procedures (SOPs) and quality assurance/quality control (QA/QC) protocols for environmental monitoring. After meetings and discussions with states and other experts on the objectives, design and indicators for each survey, EPA will develop a Quality Assurance Project Plan (QAPP) and SOPs. The QAPP describes the study objectives, the survey design, the data quality objectives it supports, the core indicators or parameters and their related measurement quality objectives, and field and lab protocols including quality control activities, data management, data analysis and reporting. EPA will provide training for field crews and will ensure

implementation of the quality control measures defined in the QAPP. States and other partners participating in the survey will either certify that they will implement the EPA QAPP and SOPs or, if the state elects to implement comparable methods, the state will provide its QAPP and SOPs to EPA for review and approval prior to initiating field work.

#### Field Data Collection

Field data collection includes site reconnaissance, field data collection, and quality control activities such as repeat sampling. The CWA section 106 grant survey fund will provide resources to states and tribes for the implementation of field data collection activities as well as lab analysis described below. States and other organizations accepting responsibility for site reconnaissance and field data collection will certify that they are adhering to the approved EPA and/or state QAPP and SOPs described above. EPA will provide training in field sampling protocols and oversee implementation of the QA/QC activities.

EPA's intent is that the survey fund can offset the costs of state-scale water quality surveys in addition to contributing to national and regional assessments of the condition of the nation's waters. State and tribal water quality programs may direct these resources a number of ways to accomplish the site reconnaissance and field sampling: Implementing site reconnaissance and field sampling directly; providing the funds to other organizations within the state through interagency agreement; issuing grants and/or contracts; and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the field data collection activities on behalf of the state.

#### Lab Analysis

Any laboratory processing the chemical or biological samples collected for the surveys must demonstrate that they can meet the quality standards presented in the QAPP. This includes initial demonstrations of technical capability and performance evaluations. Field samples should be promptly shipped to the approved analytical or processing laboratories as these facilities are generally better geared to properly hold the samples while they await analyses. At the laboratory, samples will be processed in accordance with the lab SOPs, including QA/QC activities. Each participating lab must certify that they are adhering to the approved EPA and/or state QAPP and lab SOPs. Each laboratory is expected to review their

final data for completeness, accuracy, and precision to assure that the basic quality criteria are met prior to submitting their final data report. EPA will oversee implementation of the QA/QC activities.

The CWA section 106 grant survey fund will provide resources to states and tribes for the implementation of laboratory analysis of field samples. State and tribal water quality programs may direct these resources a number of ways to accomplish the laboratory analysis of field samples: Analyzing samples directly; providing the funds to other organizations within the state through interagency agreement; issuing grants and/or contracts; and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the lab analysis activities on behalf of the state.

#### Data Management

EPA will provide support for data management to facilitate rapid access to data and transfer of data into EPA's Water Quality Exchange or STORET-compatible system.

#### Data Analysis and Interpretation

EPA will work with states and tribes to develop general protocol(s) to analyze and interpret the survey results. The data analysis protocols will build on existing efforts of states, tribes, EPA, USGS, and other organizations to develop statistically-valid and environmentally relevant thresholds for interpreting the physical, chemical and biological integrity of water resources, including the Tiered Aquatic Life Workgroup's framework for reporting data within a biological condition gradient that is independent of individual state water quality standards. EPA will host national and/or regional meetings to facilitate evaluation and selection of appropriate protocols for data analysis and interpretation.

#### Reporting

EPA will work with states and tribes to develop regional and national scale reports that present the results of the surveys and provide information to track the condition of the nation's waters and help guide setting of national, regional and state priorities for water quality protection and restoration. The reports will describe the extent that the water body type surveyed supports healthy aquatic communities and human activities such as fishing and swimming. The reports will also describe key water quality and habitat characteristics associated with healthy and degraded resources. As states continue to implement state-scale

surveys, the report will include these results as well as describe additional insights gained from analyzing additional data that states and tribes add to the analysis. EPA will host national and/or regional meetings to provide input to the reports.

#### Using Section 106 Monitoring Initiative Funds for State Activities To Support Surveys of the Nation's Waters

The distribution of these funds will ensure states and tribes receive the basic level of funding required to implement the surveys at the minimal scale of regional and national reporting. EPA's intent is that this seed money can be leveraged by states to support implementation of state-scale surveys as states are able to incorporate this tool into their monitoring programs.

The initial strategy for distribution of the survey funds is to tailor distribution, based on the water resource type being surveyed, i.e., coastal waters, streams, lakes, rivers, and wetlands, and the number of sample sites needed within each jurisdiction. For example, in the contiguous 48 states, a state or tribe will receive \$8,000 for each sampling site falling within its jurisdiction. A separate fund of \$450,000 will be used to support survey work in Alaska, Hawaii, Puerto Rico and the trust territories over time.

To ensure the success of the surveys, states and tribes must commit annually, in separate state and tribal section 106 workplans, to undertake activities that will be needed as part of the surveys. Grant commitments will address both the timing and scope of these activities, which are described in the previous section and include:

- Travel to participate in national and/or regional meetings for planning, scoping, data analysis and interpretation and reporting;
- Site reconnaissance to verify that sites meet the definition for inclusion in the survey;
- Sample collection and lab analysis in accordance with EPA approved QAPP and SOPs;
- Participation in QA/QC activities; and
- Provision of final sample results in electronic format.

State and tribal water quality programs may use the CWA section 106 survey funds to accomplish these activities in a number of ways including implementing the survey directly, providing the funds to other organizations within the state through interagency agreement, issuing grants and/or contracts, and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the

survey implementation activities on behalf of the state.

#### Schedule for Statistically-Valid Surveys

See <http://www.epa.gov/owow/monitoring/repguid.html> to view the schedule for statistically-valid surveys.

#### Conclusion

EPA's long-term goal for water quality monitoring is to enhance state and tribal capacity to implement an integrated monitoring framework which uses multiple tools to cost-effectively address the full range of water quality management decision needs, for all water resource types and uses at appropriate scales. EPA and the states will work together to meet this goal through assessing all waters using sound science; strengthening state monitoring and assessment programs, and employing innovations that implement cost-effective monitoring.

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#### IV. Additional Supplementary Information

The complete text of today's guidelines, located above, is also available at the following EPA Web sites: <http://www.epa.gov/owm/cwfinance/pollutioncontrol.htm> and <http://www.epa.gov/owow/monitoring>.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

Dated: March 22, 2006.

**Benjamin H. Grumbles,**

*Assistant Administrator, Office of Water.*

[FR Doc. E6-4585 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2006-0233; FRL-7771-1]

#### Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC); Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** There will be a meeting of the Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC) on April 18 through April 20, 2006, in Washington, DC. This meeting, as with all EDMVAC meetings, is open to the public. Seating is on a first-come basis. The purpose of the meeting is to receive advice and input from the EDMVAC on: Male and Female Pubertals Assay Interlaboratory Studies, EDSP's Applied Approach to Validation, Tier 1 Fish Screen Assay Validation Status, updates on Tier 1 Aromatase Assay, and Tier 1 Steroidogenesis Cell Based H295R Assay.

**DATES:** The meeting will be held on Tuesday, April 18, 2006, from 12:30 p.m. to 6 p.m.; Wednesday, April 19, 2006, from 8:30 a.m. to 5:30 p.m.; and Thursday, April 20, 2006, 8 a.m. to 1:30 p.m., eastern standard time. Request to make public comments at the meeting must be received by EPA on or before April 14, 2006.

To request accommodation of a disability, please contact the person

listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at the Capital Hilton Hotel and Conference Center, 1001 16th St., NW., Washington, DC 20036; telephone number: (202) 393-1000; e-mail: <http://www.hilton.com>.

Requests to make public comments at the meeting may be submitted by e-mail, telephone, fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

Comments may be submitted electronically, by fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** *For general information or for information on access or services for individuals with disabilities:* William Wooge, Designated Federal Official (DFO), Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides and Toxic Substances (OPPTS), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8476; fax number: (202) 564-8482; e-mail address: [wooge.william@epa.gov](mailto:wooge.william@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with, or import pesticide chemicals and other substances. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104-170), 21 U.S.C. 346a(p), and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104-182), 42 U.S.C. 300j-17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA-HQ-OPPT-2006-0233. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other related information. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566-0282.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A meeting agenda, a list of EDMVAC members and information from previous EDMVS meetings are available electronically, from the EPA Internet Home Page at <http://www.epa.gov/scipoly/oscpendo/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "Advance search," select "Docket search," then key in the appropriate docket ID number.

*C. How Can I Request to Give Comments in Person at the Meeting?*

You may submit a request to make public comments at the meeting through e-mail, telephone, fax, or hand delivery/courier. We would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, we cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before April 14,

2006. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-HQ-OPPT-2006-0233 in the subject line on the first page of your request.

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on the topic of this meeting. The EDMVAC will have a period available during the meeting for public comment. It is the policy of the EDMVAC to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVAC expects that public statements presented at its meeting will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

1. *Electronically.* If you submit an electronic request to make public comments at the meeting or comments as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your request or comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the request or comment and allows EPA to contact you in case EPA cannot read your request or comment due to technical difficulties or needs further information on the substance of your request or comment. EPA's policy is that EPA will not edit your request or comment, and any identifying or contact information provided in the body of a request or comment will be included as part of the request or comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your request or comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your request or comment.

i. *EPA Docket.* You may use EPA's electronic public docket <http://www.regulation.gov/>, and follow the online instructions for submitting materials. Once in the system, select "Advance search," select "Docket search," and then key in docket ID number EPA-HQ-OPPT-2006-0233. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your request.

ii. *E-mail.* Requests to make public comments at the meeting or written comments may be sent by e-mail to [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov), Attention: Docket ID

Number EPA-HQ-OPPT-2006-0233. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail request directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the request that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM by hand delivery, courier, or package service, such as Federal Express, to the person listed under **FOR FURTHER INFORMATION CONTACT**. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. Do not submit any disk or CD ROM through the mail. Disks and CD ROMs risk being destroyed when handled as Federal Government mail.

2. *Telephone or fax.* Telephone or fax your request to participate at the meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2006-0233. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

## II. Background

In 1996, through enactment of FQPA, which amended the FFDCFA, Congress directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of FACA, to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier 1 screens) and tests (Tier 2 tests) for determining whether a chemical substance may have an effect similar to that produced by naturally occurring hormones. EPA adopted almost all of

EDSTAC's recommendations in the program that it developed, the Endocrine Disruptor Screening Program (EDSP), to carry out Congress' directive.

EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM) and other validation groups, as appropriate. EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocrine Disruptors Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA chartered the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). The EDMVS convened nine meetings between October 2001 and December 2003. In 2003, NACEPT recommended EDMVS become an Agency level 1 FACA Committee due to the complexity of the recommendations. The EDMVAC was chartered in 2004. The EDMVAC provides independent advice and counsel to the Agency on scientific and technical issues related to validation of the EDSP Tier 1 screens and Tier 2 tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate. EDMVAC and previous EDMVS meeting information and corresponding docket numbers are available electronically, from the EPA Internet Home Page at <http://www.epa.gov/scipoly/oscpendo/>. You may also go to the EPA Docket at <http://www.regulations.gov/>, and follow the online instructions for submitting materials.

### III. Meeting Objectives for the April 18–20, 2006 Meeting

The objectives for the April 18 through April 20, 2006 meeting (docket ID number EPA–HQ–OPP–2006–0233) are to review and discuss: Aromatase Assay Update (Tier 1), Steroidogenesis Cell Based H295R Assay Update (Tier 1), Male and Female Pubertals Assay Interlaboratory Studies, Fish Screen Assay Validation Status (Tier 1), and EPA's Applied Approach to Validation.

A list of the EDMVAC members and meeting materials are available at <http://www.epa.gov/scipoly/oscpendo/> and in the public docket.

#### List of Subjects

Environmental protection, Endocrine disruptors, Hazardous substances, Health, Safety.

Dated: March 21, 2006.

**Clifford J. Gabriel,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. E6–4570 Filed 3–28–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0202; FRL–7770–5]

### Chloroacetanilide Cumulative Risk Assessment; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's cumulative risk assessment for the chloroacetanilide group of pesticides and opens a public comment period on these documents. As required by the Food Quality Protection Act (FQPA), a cumulative risk assessment, which evaluates exposures based on a common mechanism of toxicity, was conducted to evaluate the risk from food, drinking water, and non-occupational exposure resulting from all registered uses of chloroacetanilide pesticides. The chloroacetanilides group includes the pesticides acetochlor, alachlor and butachlor; however, butachlor was not incorporated into the cumulative assessment because there are no U.S. registrations or established tolerances. The Agency is also releasing the Report on FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED) for Acetochlor concurrent with the release of the chloroacetanilide cumulative assessment. See EPA–HQ–OPP–2005–0227 in the Notice section of this issue of the **Federal Register**.

**DATES:** Comments must be received on or before May 30, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0202, by one of the following methods:

- <http://www.regulations.gov/> Follow the on-line instructions for submitting comments.
- *Mail.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs

(OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0202. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions.* Direct your comments to docket ID number EPA–HQ–OPP–2006–0202. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/docket.htm/>.

*Docket.* All documents in the docket are listed in the [regulations.gov](http://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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov/> or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Felicia Fort, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7478; fax number: (703) 308-8005; e-mail address: [fort.felicia@epa.gov](mailto:fort.felicia@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

- i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

**II. Background**

*A. What Action is the Agency Taking?*

EPA is making available the completed cumulative risk assessment for the chloroacetanilide pesticides. The chloroacetanilides group includes the pesticides, acetochlor, alachlor and butachlor; however, butachlor was not incorporated into the cumulative assessment because there are no U.S. registrations or established tolerances. The Agency developed this risk assessment as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by FQPA.

A chloroacetanilide cumulative risk assessment was conducted for acetochlor and alachlor exposures based on a common mechanism of toxicity, their ability to cause nasal turbinate tumors. This determination can be found in the chloroacetanilides decision document published in 2001 entitled "The Grouping of a Series of Chloroacetanilide Pesticides Based on a Common Mechanism of Toxicity" ([http://www.epa.gov/oppfod01/cb/csb\\_page/updates/commechs.htm](http://www.epa.gov/oppfod01/cb/csb_page/updates/commechs.htm)). The Agency has concluded that the

cumulative risk associated with chloroacetanilide pesticides is below the Agency's level of concern.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's completed cumulative risk assessment for the chloroacetanilides. Such comments and input could address the Agency's risk assessment methodologies and assumptions as applied to this cumulative assessment.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to chloroacetanilide pesticides, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide.

Comments should be limited to issues raised within the risk assessment and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for the chloroacetanilide cumulative risk assessment. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

Section 4(g)(2)(A) of FIFRA, as amended, requires the Administrator to make "a determination as to the eligibility for reregistration (i) for all

active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a(q)(1)(C)) \* \* \*

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006. A tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2), respectively, if “the Administrator determines the pesticide chemical residue is safe,” i.e., “that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” 21 U.S.C. 346a(b)(2)(A), (c)(2)(A). In making this safety finding, FFDCA requires the Administrator to consider, among other factors, “available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity \* \* \*” 21 U.S.C. 346a(b)(2)(D)(v), (c)(2)(B).

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 21, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6-4505 Filed 3-28-06; 8:45 am]

BILLING CODE 6560-50-S

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2005-0123; FRL-7768-7]

#### Methyl Bromide Revised Risk Assessment for Uses in Enclosures, Chambers and Structural Food Processing/Storage Facilities; Notice of Availability and Solicitation of Risk Reduction Options

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA’s revised risk assessment for the pesticide methyl bromide’s uses in enclosures, chambers

and structural food processing/storage facilities. In addition, this notice solicits public comment on risk reduction options for methyl bromide’s commodity uses. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for uses in enclosures, chambers and structural food processing/storage facilities of methyl bromide (i.e. uses that result in a food tolerance) through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before May 30, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0123, by one of the following methods:

- <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.
- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP-2005-0123. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2005-0123. 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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an

“anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/docket.htm/>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov/> or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Steven Weiss, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8293; fax number: (703)308-8005; e-mail address: [weiss.steven@epa.gov](mailto:weiss.steven@epa.gov).

#### SUPPLEMENTARY INFORMATION:

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members

of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

- i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessment for methyl

bromide use in enclosures, chambers and structural food processing/storage facilities, initially issued for comment through a **Federal Register** notice published on July 13, 2005, 70 FR 40336, (FRL-7721-3) a response to comments; and related documents for methyl bromide. EPA also is soliciting public comment on risk reduction options for methyl bromide's uses in enclosures, chambers and structural food processing/storage facilities and EPA's initial assessment of the impacts of these risk reduction options. EPA developed the risk assessment for methyl bromide as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The risk assessment includes methyl bromide uses that have accompanying food residue tolerances such as post-harvest fumigation of food commodities in chambers at ports or specialized structural fumigations at food processing facilities. Although some methyl bromide uses such as fumigation of timber, wood products, and industrial equipment do not require a food residue tolerance, they have been included in this assessment since they are performed in similar facilities and were assessed with similar methods.

EPA plans to release a revised assessment (Phase 5) for all other uses of methyl bromide, mainly soil fumigant applications, later this year. The Agency is delaying the soil fumigant component of methyl bromide reregistration in response to stakeholder comments that the risks, benefits, and risk management of soil fumigation uses of methyl bromide and its alternatives should be considered in the same general time frame. Alternatives currently in the reregistration process include metam sodium, dazomet, and chloropicrin. In particular, stakeholders have noted that chloropicrin is frequently applied in conjunction with methyl bromide and thus commenters have asserted that it makes sense to consider risk management strategies jointly for these chemicals. The Agency agrees with this logic and thus has separated the assessments so that risk management decisions can be made as expeditiously as feasible for all uses.

EPA estimated the methyl bromide usage in the U.S. for 2004 based on information from the methyl bromide critical use exemption process, U.S.

Department of Agriculture, Animal and Plant Health Inspection Service, and EPA proprietary sources. Based on these sources EPA estimates there was a total of 23 million pounds of methyl bromide used in the U.S. in 2004 with 3 million pounds used on commodities, food processing facilities, and food quarantine uses, and 20 million pounds used for all other uses, mainly pre-plant soil applications.

Application rates for commodity fumigations can range from 1 to 20 lb ai/1000 ft<sup>3</sup> but most are in the 1 to 9 lb ai/1000 ft<sup>3</sup> range. Likewise, structural fumigations are in the 1 to 9 lb ai/1000 ft<sup>3</sup> range. For structural, commodity and other types of applications, an application rate of 9 lb ai/1000 ft<sup>3</sup> was used as the basis for risk assessment purposes.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for methyl bromide. Regarding risks to humans from methyl bromide commodity uses, there are no aggregate dietary risks of concern resulting from acute and chronic exposures (food and water only). Risks of concern associated with the use of methyl bromide commodity uses are:

1. Occupational exposures during treatment and aeration processes and;
2. Bystander exposure during treatment and aeration processes. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA's Office of Atmospheric Programs (OAP) has also estimated the number of UV-related skin cancer incidents and deaths due to ozone depletion caused by methyl bromide's uses in enclosures, chambers, and structural food processing/storage facilities. OAP's assessment is also included in the docket for public comment. The Agency believes it is appropriate to consider these cancer risks as part of the reregistration process because the risks clearly result from use of methyl bromide products registered for use under FIFRA.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated

with each pesticide. Due to its uses, risks, and other factors, methyl bromide is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for methyl bromide. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. After considering comments received, EPA will develop and issue for comment the methyl bromide RED.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

#### **List of Subjects**

Environmental protection, Pesticides and pests.

Dated: March 22, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6-4568 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OPP-2005-0227; FRL-7770-6]**

### **Acetochlor; Tolerance Reassessment Decision**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for

the chloroacetanilide pesticide acetochlor. The Agency's risk assessments and other related supporting documents also are available in the acetochlor docket. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards. This decision is being released concurrent with the Notice of Availability of the cumulative risk assessment for the chloroacetanilide pesticides which include acetochlor and alachlor. See EPA-HQ-OPP-2006-0202 in the Notice section of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Felicia Fort, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7478; fax number: (703) 308-8005; e-mail address: [fort.felicia@epa.gov](mailto:fort.felicia@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under Docket identification number (ID) [EPA-HQ-OPP-2005-0227; FRL-7770-6]. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet

under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

## **II. Background**

### *A. What Action is the Agency Taking?*

EPA has assessed risks associated with use of the chloroacetanilide pesticide acetochlor, and reached a tolerance reassessment and risk management decision reassessing 12 existing tolerances or legal residue limits for acetochlor. Acetochlor, 2-chloro-N-(ethoxymethyl)-N-(2-ethyl-6-methylphenyl)acetamide, is a preemergence herbicide used for the control of weeds and is registered for use on field corn and popcorn. Corn fields treated with acetochlor may later be rotated to grain sorghum (milo), soybeans, wheat, and tobacco, according to the currently registered use pattern. Corn and the rotational crops listed above were considered in the risk assessment supporting the acetochlor TRED. There are no risks of concern associated with the use of acetochlor. The Agency is now issuing a Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for acetochlor, known as a TRED, as well as related technical support documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the acetochlor tolerances included in this notice.

The acetochlor TRED presents the Agency's tolerance reassessment conclusions for acetochlor alone; however, section 408(b)(2)(D)(v) of the Federal Food, Drug and Cosmetic Act (FFDCA) directs the Agency also to consider available information on the cumulative risk from substances sharing a common mechanism of toxicity. Because the chloroacetanilides pesticides share a common mechanism of toxicity, due to their ability to cause nasal turbinate tumors, the Agency evaluated the cumulative risk posed by this group before making its final tolerance reassessment decision on the chloroacetanilide pesticide, acetochlor. EPA has determined that the cumulative risk associated with chloroacetanilide pesticides, which include acetochlor and alachlor, is below the Agency's level of concern. Therefore, the 12 tolerances established for residues of

acetochlor in/on raw agricultural commodities are now considered reassessed as safe under section 408(q) of FFDCA, as amended by FQPA.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, acetochlor was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for acetochlor.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Few substantive comments were received during the earlier comment period for this pesticide, and all issues related to this pesticide were resolved through consultations with stakeholders. The Agency therefore is issuing the acetochlor TRED without a comment period. However, the Agency is concurrently issuing the cumulative risk assessment for the chloroacetanilide group of pesticides, which includes acetochlor and alachlor, for public comment (see EPA-HQ-OPP-2006-0202 in the Notice section of this issue of the **Federal Register**).

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

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006. A tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2), respectively, if "the Administrator determines the pesticide chemical residue is safe", i.e., "that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." 21 U.S.C.

§346a(b)(2)(A),(c)(2)(A). In making this safety finding, FFDCA requires the Administrator to consider, among other factors, "available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity . . ." 21 U.S.C. §346a(b)(2)(D)(v), (c)(2)(B).

Section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, requires the Administrator to make "a determination as to the eligibility for reregistration (i) for all active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a(q)(1)(C)). . . ."

#### **List of Subjects**

Environmental protection, Pesticides and pests.

Dated: March 21, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6-4503 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

#### **ENVIRONMENTAL PROTECTION AGENCY**

**EPA-HQ-OPP-2005-0061; FRL-7771-4]**

#### **Azinphos-methyl; Order to Amend Registrations to Terminate Certain Uses**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the order to amend registrations to terminate certain uses, voluntarily requested by the registrant(s) and accepted by the Agency, of end-use products containing the pesticide azinphos-methyl, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an August 17, 2005, **Federal Register** Notice of Receipt of Requests (70 FR 48395) (FRL-7733-3) from the azinphos-methyl registrants to amend their product registrations to terminate certain uses of azinphos-methyl from their product registrations. In the August 17, 2005 Notice, EPA indicated that it would issue an order implementing the amendments to terminate uses, unless the Agency

received substantive comments within the 60-day comment period that would merit its further review of these requests. The Agency received two comments on the notice. These comments have been reviewed and taken into consideration in the Agency's decision to proceed with this termination order, and a response was sent to each commentor and placed in the public docket. EPA's decision is discussed in Unit III. of this notice. Any distribution, sale, or use of the azinphos-methyl products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The cancellations are effective March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8154; fax number: (703) 308-8041; e-mail address: [isbell.diane@epa.gov](mailto:isbell.diane@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under Docket identification number (ID) EPA-HQ-OPP-2006-0061; FRL-7771-4. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

**II. What Action is the Agency Taking?**

In May of 2002, Bayer CropScience, Makhteshim Chemical Works, Gowan Company, and Micro-Flo Corporation signed a Memorandum of Agreement with EPA implementing the provisions of the Azinphos-methyl Interim Reregistration Eligibility Decision by dividing the universe of uses into three groups. Group 1 contained 23 crops with little use that were deleted from product labels immediately. Group 2 consists of the seven uses that are the subject of this order, and are scheduled to be phased out in September, 2006. The Group 2 uses included: caneberries, cotton, cranberries, peaches/nectarines, potatoes, and Southern pine seed orchards. Group 3 is comprised of the only 10 remaining uses which have time-limited registrations that are currently in the process of being reevaluated. This Order implements the Agency’s decision on the Group 2 uses for azinphos-methyl.

Table 1 includes the product registration numbers, the names of the products requested to be terminated and the name of the registrants in sequence by EPA number.

**TABLE 1.— AZINPHOS-METHYL PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES**

Registration No.	Product name	Company
264–733	Guthion Solupak 50% Wettable Powder Insecticide	Bayer CropScience
10163–78 10163–138 10163–139 10163–180	Gowan Azinphos-M 50 WSB Gowan Azinphos-M 35 WP Gowan Azinphos-M 35 WSB Gowan Azinphos 50 PVA	Gowan Company
11678–53 66222–11	Cotnion-Methyl Azinphos-methyl 50W	Makhteshim Chemical Works
51036–164	Azinphos-methyl 50W	Microflo Company

Table 2 includes the names and addresses of record for the registrants that requested use terminations for their products, in sequence by EPA company number.

**TABLE 2.— REGISTRANTS OF AMENDED AZINPHOS-METHYL PRODUCTS**

EPA Company No.	Company Name and Address
264	Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, North Carolina 27709
10163	Gowan Company P.O. Box 5569 Yuma, Arizona 85366–5569
11678 66222	Makhteshim Chemical Works 4515 Falls of Neuse Road, Suite 300 Raleigh, North Carolina 27609
51036	Micro-Flo Corporation, LLC Oak Court Drive Memphis, Tennessee 38117

**III. Summary of Public Comments Received and Agency Response to Comments**

During the public comment period provided, EPA received two comments in response to the August 17, 2005 **Federal Register** notice announcing the Agency’s receipt of the requests to terminate certain uses of azinphos-methyl. The Agency has responded individually to each of those comments and placed copies of the responses in the public docket.

**IV. Cancellation Order**

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations and amendments to terminate uses of azinphos-methyl registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the azinphos-methyl product registrations identified in Table 1 of Unit II. are hereby amended to terminate the affected uses. Any distribution, sale, or use of the products identified in Table 1 of Unit II. in a manner inconsistent with this order, including any of the provisions for disposition of existing stocks set forth below in Unit VI., will be considered a violation of FIFRA.

**V. What is the Agency’s Authority for Taking this Action?**

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses.

FIFRA further provides that, before acting on the request, EPA must publish for public comment a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may act on such a request.

**VI. Provisions for Disposition of Existing Stocks**

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

The Agency proposed to include the following provisions for the treatment of any existing stocks of the azinphos-methyl end-use products identified in Table 1: The distribution or sale of these products is permitted until March 31, 2006. The use of existing stocks of these products in the United States is permitted until September 30, 2006 provided such use is in a manner consistent with the labeling of these products.

Section III B 3 of the 2002 Memorandum of Agreement provides for extension of sale and distribution of existing stocks of end-use products by an equal period of time if EPA issues the termination order after August 31, 2005. Distribution or sale of existing stocks of end-use products, is allowed until March 31, 2006. Use of these end-use products is allowed until September 30, 2006, to avoid difficulties and confusion to growers that could result from a mid-use season existing stocks date. The existing stocks dates in this notice for end-use products are compatible with those established for the corresponding manufacturing-use products.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: March 23, 2006.

**Debra Edwards,**  
*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*  
[FR Doc. E6–4569 Filed 3–28–06; 8:45 am]

**BILLING CODE 6560–50–S**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA–HQ–OPP–2006–0274; FRL–7771–5]

**Pesticide Product; Registration Applications**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Comments must be received on or before April 13, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0274, by one of the following methods:

- <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *Mail.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Attention: Docket ID number EPA-HQ-OPP-2006-0274. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions.* Direct your comments to docket ID number EPA-HQ-OPP-2006-0274. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov/) or e-mail. The [regulations.gov](http://www.regulations.gov/) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov/), your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/docket.htm/>.

*Docket.* All documents in the docket are listed in the [regulations.gov](http://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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov/> or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Andrew C. Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6928; e-mail address: [bryceland.andrew@epa.gov](mailto:bryceland.andrew@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

- i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

##### II. Registration Application

EPA received an application as follows to register a pesticide product

containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the applications.

*Products Containing Active Ingredients not Included in any Previously Registered Products*

*File Symbol:* 56336-UI. *Applicant:* Suterra, LLC. 213 SW Columbia Street, Bend, OR 97702. *Product Name:* Checkmate WPCM Technical Phormone. *Type of product:* Phormone/attractant. *Active ingredient:* (E,Z)-3,13-Octadecadien-1-ol and (Z,Z)-3,13-Octadecadien-1-ol at 75.08% and 18.37%, respectively. *Proposed classification/Use:* Manufacturing Use.

**List of Subjects:**

Environmental protection, Pesticides and pest.

Dated: March 24, 2006.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E6-4549 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2006-0177; FRL-7766-9]

**Notice of Filing of Pesticide Petitions for Establishment or Amendment to Regulations for Residues of Pesticide Chemicals in or on Various Commodities**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before April 28, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0177 and pesticide petition numbers (PPs) 4E6878 and 5E6987, by one of the following methods:

- <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.
- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs

(OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP-2006-0177. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2006-0177. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov/) or e-mail. The [regulations.gov](http://www.regulations.gov/) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going at [regulations.gov](http://www.regulations.gov/), your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm/>.

*Docket:* All documents in the docket are listed in the [regulations.gov](http://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, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov/> or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-3194; e-mail: [brothers.shaja@epa.gov](mailto:brothers.shaja@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov/) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

- i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

## II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at <http://www.regulations.gov/>. To locate this

information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

### New Tolerances

*PPs 4E6878 and 5E6987.* Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390, proposes to establish tolerances for residues of the herbicide glyphosate [(N-phosphonomethyl) glycine] sunflower and safflower at 25.0 parts per million (ppm) (PP 4E6878); vegetable, legume, group 6, except soybean at 8.0 ppm (PP 5E6987); and mulberry, Indian at 0.2 ppm (PP 5E6987). IR-4 further proposes to delete the present entire entries for sunflower, seed at 0.1 ppm; safflower, seed at 0.1 ppm; and vegetable, legume, group 6, except soybean at 6.0, as these tolerances are no longer needed.

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant and livestock commodities. These methods include GLC (Method I in Pesticides Analytical Manual (PAM) II; the limit of detection is 0.05 ppm) and HPLC with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL). Thus, adequate analytical methods are available for residue data collection and enforcement of the proposed tolerance changes for glyphosate.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 20, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6-4502 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2006-0269; FRL-7771-2]

### Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 27, 2006 to March 10, 2006, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before April 28, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) no. EPA-HQ-OPPT-2006-0269, by one of the following methods.

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO, EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA-HQ-OPPT-2006-0269. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

- *Instructions:* Direct your comments to docket ID number EPA-HQ-OPPT-

2006-0269. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](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 [regulations.gov](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 docket are listed in the [regulations.gov](http://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 electronically through [regulations.gov](http://www.regulations.gov) or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280.

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division,

Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

- i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

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

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

##### **II. Why is EPA Taking this Action?**

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 27, 2006 to March 10, 2006, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

##### **III. Receipt and Status Report for PMNs and TME**

This status report identifies the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

## I. 23 PREMANUFACTURE NOTICES RECEIVED FROM: 02/27/06 TO 03/10/06

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-06-0323 P-06-0324	02/24/06 02/24/06	05/24/06 05/24/06	CBI Nissan Chemical America Corporation	(S) Ingredient in fragrance compound (S) Flame retardant in plastic resins	(G) Cyclo alkyl methyl ester (S) 1,3,4,6,7,9,9b-heptaazaphenalene-2,5,8-triamine, compound with n-(4,6-diamino-1,3,5-triazin-2-yl)-1,3,5-triazine-2,4,6-triamine and 1,3,5-triazine-2,4,6-triamine, polyphosphate
P-06-0325	02/24/06	05/24/06	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P-06-0328	02/28/06	05/28/06	CBI	(G) Monomer used to make specialty polymers	(G) Isobenzofurandione, (substituted)oxybis-
P-06-0329 P-06-0330	03/01/06 03/01/06	05/29/06 05/29/06	CBI Macdermid, Incorporated	(G) Synthetic lubricant (G) Photocure polymer, open non-dispersive use	(G) Fatty acid glycol ester (G) Oxirane, methyl-, polymer with, .alpha.-hydro.-omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-[isocyanatomethyl]-1,3,3-trimethylcyclohexane and oxirane, poly(akyl)glycol acrylate-blocked
P-06-0331	03/01/06	05/29/06	CBI	(S) Polymeric flattening aid for coatings	(G) Silicone polyether modified polyester polyurethane.
P-06-0332	03/02/06	05/30/06	Cytec Industries Inc.	(S) Bonded flame retardant in plastics, particularly synthetic fibers.	(G) Phosphine oxide
P-06-0333	03/02/06	05/30/06	CBI	(G) Thickener	(G) 2-propenoic acid, 2-methyl-, polymers with acrylic acid, et acrylate, me methacrylate
P-06-0334	03/02/06	05/30/06	CBI	(G) Open non dispersive (use in foams)	(G) Modified polyurethane
P-06-0335	03/02/06	05/30/06	CIBA Specialty Chemicals Corporation	(S) Continuous application to cotton fabrics	(G) Naphthalenesulfonic acid azo substituted naphthalenesulfonic acid amino substituted triazine amino phenyl sulfonyl compound
P-06-0336	03/03/06	05/31/06	CBI	(G) Photocopying chemical	(G) Azo ferric complex
P-06-0337	03/03/06	05/31/06	CBI	(G) Photocopying chemical	(G) Azo ferric complex
P-06-0338	03/07/06	06/04/06	CBI	(G) Corrosion inhibitor for metals paint primer for metals	(G) Condensation polymerized silane functionalized aliphatic amine
P-06-0339	03/07/06	06/04/06	Cytec surface specialties inc.	(G) Intermediate polymer for coatings	(G) Fatty acids, polymers with substituted acrylates, substituted alkanolic acid, substituted polyglycol and substituted carbomoncycle, peroxide intitiated
P-06-0340 P-06-0341	03/07/06 03/07/06	06/04/06 06/04/06	Henkel Corporation 3M Company	(S) Lubricant (G) Film coating additive	(S) Hexanedioic acid, potassium salt (G) Surface modified ceramic materials and wares, chemicals
P-06-0342 P-06-0343	03/08/06 03/09/06	06/05/06 06/06/06	CBI BP Products North America, Inc	(G) Open, non-dispersive use. (S) Recover components for industrial solvent applications	(G) Styrene - acrylic copolymer (G) Dialkyl carbocyclo-, reaction products with alkadiene, cyclized, dehydrogenated, isomerized, by-products from, distn. residues
P-06-0344 P-06-0345	03/08/06 03/09/06	06/05/06 06/06/06	CBI CBI	(G) Coating component (G) Additive, open, non-dispersive use	(G) Mixed metal oxide complex (G) Polymethylalkylsiloxane with reactive alkoxy groups
P-06-0346	03/09/06	06/06/06	CBI	(G) Additive, open, non-dispersive use	(G) Urethane modified polyamide
P-06-0347	03/09/06	06/06/06	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polyamide
P-06-0348	03/10/06	06/07/06	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P-06-0349	03/10/06	06/07/06	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P-06-0350	03/10/06	06/07/06	CBI	(S) Intermediate	(G) Polyoxyalkylene ether

In Table II of this unit, EPA provides the following information (to the extent

that such information is not claimed as CBI) on the TMEs received:

## II. 1 TEST MARKETING EXEMPTIONS NOTICE RECEIVED FROM: 02/27/06 TO 03/10/06

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T-06-0004	03/02/06	04/15/06	Cytec Industries Inc.	(S) Bonded flame retardant in plastics, particularly synthetic fibers.	(G) Phosphine oxide

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

## III. 13 NOTICES OF COMMENCEMENT FROM: 02/27/06 TO 03/10/06

Case No.	Received Date	Commencement Notice End Date	Chemical
P-04-0435	03/03/06	02/09/06	(G) Polyester of adipic acid
P-05-0720	02/24/06	02/03/06	(G) Siloxanes and silicones, di-me, hydroxy alkyl me, me (oxabicyclo alkyl), alkoxyated
P-05-0754	03/02/06	02/23/06	(G) Polyurethane resin
P-05-0821	03/02/06	02/16/06	(G) Methacrylate amine based polymer
P-05-0836	02/27/06	01/20/06	(G) Alkyd resin
P-05-0839	02/24/06	02/15/06	(G) Methyl-ethyl-ketoxime blocked polyisocyanate
P-06-0022	03/02/06	02/17/06	(G) Fluoroelastomer
P-06-0096	03/07/06	02/15/06	(G) Siloxanes and silicones, di-alkyl, 3-hydroxypropyl alkyl, ethers with polyalkylene glycol monocarboxylate
P-06-0097	03/07/06	02/15/06	(G) Siloxanes and silicones, di-alkyl, 3-hydroxypropyl alkyl, ethers with polyalkylene glycol, and polyalkylene glycol mono carboxylate
P-06-0098	03/07/06	02/15/06	(G) Siloxanes and silicones, di-alkyl, 3-hydroxypropyl alkyl, ethers with polyalkylene glycol and polyalkylene glycol mono alkyl ether
P-06-0099	03/07/06	02/15/06	(G) Siloxanes and silicones, di-alkyl, 3-hydroxypropyl alkyl, ethers with polyalkylene glycol and polyalkylene glycol mono alkyl ether
P-06-0100	03/07/06	02/15/06	(G) Siloxanes and silicones, di-alkyl, 3-hydroxypropyl alkyl, ethers with polyalkylene glycol and polyalkylene glycol mono carboxylate
P-06-0147	03/03/06	02/27/06	(G) Cycloalkenyl ethanone

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 20, 2006.

**Vicki A. Simons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E6-4504 Filed 3-28-06; 8:45 am]

BILLING CODE 6560-50-S

**FEDERAL COMMUNICATIONS COMMISSION****Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget**

March 17, 2006.

**SUMMARY:** The Federal Communications Commission, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13, and as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). An

agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 28, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Leslie F. Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov) or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395-3087 or via the Internet at [Kristy\\_L.LaLonde@omb.eop.gov](mailto:Kristy_L.LaLonde@omb.eop.gov).

If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pra>.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418-0217 or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0687.

*Title:* Access to Telecommunications Equipment and Services by Person with Disabilities.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 1,268.

*Estimated Time per Response:* 0.000277 hours (1 second).

*Frequency of Response:* On occasion reporting requirements; Third party disclosure.

*Total Annual Burden:* 6,282 hours.

*Total Annual Cost:* \$267,000.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 68.224—Notice of non-hearing aid compatibility. Every non-hearing aid compatible telephone offered for sale to the public on or after August 17, 1989, whether previously-registered, newly registered or refurbished shall (a) contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid compatible; and (b) be accompanied by instructions.

47 CFR 68.300—Labeling requirements. As of April 1, 1997, all registered telephones, including cordless telephones, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible (HAC) shall have the letters “HAC” permanently affixed.

The information collections for both rules are third party disclosure and labeling requirements. The information is used primarily to inform consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06–2872 Filed 3–28–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 21, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An

agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before April 28, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit your comments by e-mail or U.S. mail. To submit your comments by e-mail send them to [PRA@fcc.gov](mailto:PRA@fcc.gov). To submit your comments by U.S. mail send them to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at [Kristy\\_L.\\_LaLonde@omb.eop.gov](mailto:Kristy_L._LaLonde@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 3060–0250.

*Title:* Sections 74.784 and 74.1284, Rebroadcasts.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; State, Local or Tribal Government.

*Number of Respondents:* 500.

*Estimated Time per Response:* 30 minutes.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 250 hours.

*Total Annual Cost:* None.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 74.784 requires licenses of low power television and TV translator stations to notify the FCC when rebroadcasting programs or signals of another station and to certify that written consent has been obtained from originating station. The FCC staff uses the data to ensure compliance with Section 325(a) of the Communications Act, as amended. 47 CFR 74.1284 requires that the license of a FM translator station obtain prior consent to rebroadcast programs of any FM broadcast station or other FM translator. The licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06–2918 Filed 3–28–06; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 21, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before April 28, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit your comments by e-mail or U.S. mail. To submit your comments by e-mail send them to [PRA@fcc.gov](mailto:PRA@fcc.gov). To submit your comments by U.S. mail send them to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395-3087 or via the Internet at [Kristy.L.\\_LaLonde@omb.eop.gov](mailto:Kristy.L._LaLonde@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams at (202) 418-2918. If you would like to obtain a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0161.  
*Title:* Section 73.61, AM Directional Antenna Field Strength Measurements.  
*Form Number:* Not applicable.  
*Type of Review:* Extension of a currently approved collection.  
*Respondents:* Business or other for-profit entities.  
*Number of Respondents:* 2,268.  
*Estimated Time per Response:* 4-50 hours.  
*Frequency of Response:* Recordkeeping requirement.  
*Total Annual Burden:* 36,020 hours.  
*Total Annual Cost:* None.  
*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 73.61 requires that each AM station using directional antennas to make field strength measurement as often as necessary to ensure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must take field strength measurements as often as necessary. Also, all AM stations using directional signals must take partial proofs of performance as often as necessary. The FCC staff used the data in field inspections/investigations. AM licensees with directional antennas use

the data to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-2923 Filed 3-28-06; 8:45 am]

**BILLING CODE 6712-01-M**

**FEDERAL COMMUNICATIONS COMMISSION**

**Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority**

March 21, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including ether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 30, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to [PRA@fcc.gov](mailto:PRA@fcc.gov). To submit your comments by U.S. mail, mark them

to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0627.  
*Title:* Application for AM Broadcast Station License.

*Form Number:* FCC Form 302-AM.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 380.

*Estimated Time per Response:* 4-20 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 2,800 hours.

*Total Annual Cost:* \$10,074.00.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Licenses and permittees of AM broadcast stations are required to file FCC Form 302-AM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. Additionally, when changes are made to an AM station that alter the resistance of the antenna system, a licensee must initiate a determination of the operating power by the direct method. The results are reported to the Commission using FCC Form 302-AM.

On October 22, 1998, the Commission adopted a Report and Order in MM Docket Nos. 94-43 and 94-149. Among other things, this Report and Order substantially revised the FCC Form 302-AM to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also removed and narrowed overly burdensome questions. These changes reduced the applicant's filing burdens in the preparation and submission of exhibits in support of applications. In addition, these changes streamlined the Commission's processing of FCC 302-AM applications. The Commission also adopted a formal program of pre- and post-application grant random audits to preserve the integrity of our streamlined application process. The data collected is used by FCC staff to confirm that the station has been built to the terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from

FCC 302-AM for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-2924 Filed 3-28-06; 8:45 am]

BILLING CODE 6712-10-M

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

March 21, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 30, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to [PRA@fcc.gov](mailto:PRA@fcc.gov). If you would like to obtain or view a copy of this

information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at 202-418-0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-0710.

*Title:* Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket No. 96-98.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 12,250 respondents; 1,052,693 responses.

*Estimated Time Per Response:* .5-720 hours.

*Frequency of Response:* On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

*Total Annual Burden:* 1,055,150 hours.

*Total Annual Cost:* \$625,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

The information collected under the Submission of Information Necessary to Reach Agreement; Pole Attachment Modifications; Pole Attachment Access Requests and Denials of Access; and Use of Proxies by State Commissions requirements must be provided to third parties. The information collected under the Dispute Resolution Process for Denials of Access; Notification that a State Commission Has Failed to Act; and Petition for Incumbent LEC Status must be submitted to the FCC. The information collected under the Rural and Small Carriers requirement must be provided to the state commission. The Submission of Agreement to the State Commission requirement; the Burden of Proof regarding Interconnection, and Access to Unbundled Network Elements; Collocation; Measurement of Traffic for Purposes of Determining Whether Transport and Termination Traffic Flows are Symmetrical; Filing Regarding Arbitration; Determination of Interconnection and Unbundled Network Element Prices; Determination

of Resale Discount Percentage; Preparation of Forward-Looking Economic Cost Studies to Establish Rates for Transport and Termination for Paging and Radiotelephone Service; Narrowband Personal Communications Services; and Paging Operation in the Private Land Mobile Radio Services; and various cost studies must be provided to third parties, state commissions and/or in some instances, the FCC. All of the requirements are used to ensure that local exchange carriers comply with their obligations under the 1996 Act.

*OMB Control Number:* 3060-0690.

*Title:* Section 101.17, Performance Requirements for the 38.6-40.0 GHz Frequency Band.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; and Federal Government, and State, Local, or Tribal Government.

*Number of Respondents:* 195.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* Reporting requirement at the end of 10 year license term.

*Total Annual Burden:* 390 hours.

*Total Annual Cost:* \$52,000.

*Privacy Impact Assessment:* N/A.

*Needs and Uses:* The Commission is revising this information collection because we have eliminated FCC Forms 415/415T from this collection because the reporting requirements have been incorporated into FCC Form 601 (OMB Control No. 3060-0798). We are also removing Section 101.103 from this collection because it is approved by OMB under a separate OMB Control Number 3060-1023. The only remaining section in this collection is Section 101.17.

All 38.6-40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include but not be limited to, the following information for each channel for which they hold a license, in each EA or portion of EA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial": (1) A description of the 38.6-40.0 GHz band licensee's current service in terms of geographic coverage; (2) a description of the 38.6-40.0 GHz band licensee's current service in terms of population served, as well as any additional service provided during the license term; and (3) a description of the 38.6-40.0 GHz

band licensee's investments in its system(s) (type of facilities constructed and their operational status is required).

Any 38.6–40.0 GHz band licensees adjudged not to be providing substantial service will not have the licenses renewed.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06–2970 Filed 3–28–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–65–D (Auction No. 65); DA 06–588]

### Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006; Additional Default Payment of 20 Percent Will Apply to Auction No. 65

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the additional payment component of default payments for the upcoming auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band.

**FOR FURTHER INFORMATION CONTACT:** *For legal questions:* Howard Davenport at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 65 Supplemental Public Notice* released on March 20, 2006. The complete text of the *Auction No. 65 Supplemental Public Notice*, including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 65 Supplemental Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number, for example, DA 06–588. The *Auction No. 65 Supplemental Public Notice* and related documents are also available on the

Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/65/>.

### I. Additional Default Payments of Twenty Percent Will Apply in Auction No. 65

1. 47 CFR 1.2104(g)(2) of the Commission's rules provides that if, after the close of an auction, a winning bidder defaults on a down payment or final payment obligation or is disqualified (e.g., fails to submit a timely long-form application), the bidder is liable for a default payment. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

2. In the *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, the Commission modified 47 CFR 1.2104(g)(2) by increasing the limit on the additional default payment for non-combinatorial auctions from three to twenty percent. The Commission further indicated that prior to each non-combinatorial auction it will establish an additional default payment of three to twenty percent for that auction and that the specific level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.

3. In the *Auction No. 65 Second Comment Public Notice*, 71 FR 10034, February 28, 2006, the Bureau proposed an additional default payment of twenty percent for Auction No. 65. The Bureau received no comments on its proposal.

4. In Auction No. 65, licenses in three band plans will be available, but the only licenses that will be awarded will be those that comprise the band plan that receives the highest aggregate bid. A bid on a single license therefore may determine not only the winner of that license but also the winning band plan, and thus affect the ability of other bidders to win other licenses in the auction. By contrast, a bid on a license in an auction using the Commission's standard simultaneous multiple round auction format (SMR) may determine only the winner of that license.

5. The Bureau continues to believe, as explained in the *Auction No. 65 Second Comment Public Notice*, that, because of the particular interdependence among bids in Auction No. 65 and the potential effects of one winning bidder's default on bidders for other licenses, the detrimental effects of a default may be significantly greater than in a standard

SMR auction. The Bureau therefore adopts its proposal and will apply an additional default payment of twenty percent to any defaults after the close of Auction No. 65.

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. E6–4606 Filed 3–28–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2763]

### Petition for Reconsideration of Action in Rulemaking Proceeding

March 16, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by April 13, 2006. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Roma, Texas) (San Isidro, Texas) (MB Docket No. 05–142).

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06–2833 Filed 3–28–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2765]

### Petitions for Reconsideration of Action in Rulemaking Proceeding

March 17, 2006.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy

contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160). Oppositions to these petitions must be filed by April 13, 2006. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT No. Docket 05-211).

*Number of Petitions Filed:* 2.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-2922 Filed 3-28-06; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL MARITIME COMMISSION

### Notice of an Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202-523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov)).

*Agreement No.:* 011940-001.

*Title:* CMA CGM/Maruba Cross Space Charter, Sailing, and Cooperative Working Agreement.

*Parties:* CMA CGM, S.A.; China Shipping Container Lines Co., Ltd./China Shipping Container Lines (Hong Kong) Co. Ltd.; and Maruba S.A.

*Filing Party:* Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006-2802.

*Synopsis:* The amendment adds the China Shipping Container Lines companies as parties to the agreement and renames and republishes the agreement.

By Order of the Federal Maritime Commission.

Dated: March 24, 2006.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E6-4577 Filed 3-28-06; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 018442N.  
*Name:* AAC Perishables Logistics, Inc.  
*Address:* 6300 NW 97th Ave., Miami, FL 33178.  
*Date Revoked:* January 6, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 014935N.  
*Name:* A.S.E. Customs & Logistics, Inc. dba Anchor Staff Express.  
*Address:* 2549 W. Golf Road, Ste. 224, Hoffman Estates, IL 60194.  
*Date Revoked:* January 5, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 003042F.  
*Name:* Amco Brokers and Forwarders, Inc.  
*Address:* 120 Dunmar Building North, 2700 Broening Highway, Baltimore, MD 21222.  
*Date Revoked:* January 23, 2006.  
*Reason:* Surrendered license voluntarily.  
*License Number:* 004049NF.  
*Name:* Anthem World Transport, Inc.  
*Address:* Galle Marginal K-2, Office 3, Martinez Nadel Ave., Oasis Gardens, Guaynabo, PR 00969.  
*Date Revoked:* February 24, 2006.  
*Reason:* Failed to maintain valid bonds.  
*License Number:* 000091F.  
*Name:* Atlas Forwarding Company, Inc.  
*Address:* 101 N. Riverside Drive, Pompano Beach, FL 33062.  
*Date Revoked:* February 19, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 013552N.  
*Name:* Boston Shipping Enterprises, Inc.  
*Address:* 506 Decatur Street, Brooklyn, NY 11233.  
*Date Revoked:* January 5, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 002586F.  
*Name:* CBE USA International Inc.  
*Address:* 8451 Market Street, Houston, TX 77029.  
*Date Revoked:* February 19, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 014433N.  
*Name:* Chartwell Navigation, Inc.  
*Address:* 20 Heather Lane, Belle Mead, NJ 08502.  
*Date Revoked:* February 15, 2006.  
*Reason:* Surrendered license voluntarily.  
*License Number:* 017949N.  
*Name:* China Linq, LLC.  
*Address:* 20675 Manhattan Place, Torrance, CA 90501.  
*Date Revoked:* February 9, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 008358N.

*Name:* CUK Lines, Inc.  
*Address:* 575 Sullivan Road, Suite A, Atlanta, GA 30349.  
*Date Revoked:* January 5, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 017126N.  
*Name:* Daily Freight Cargo, Corp.  
*Address:* 8426 NW 70th Street, Miami, FL 33166.  
*Date Revoked:* January 6, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 017852F.  
*Name:* Diaz & Flores, Inc. U.S. Customs Brokers.  
*Address:* Mai Bldg., Suite 210, Kennedy Ave., 2000, San Juan, PR 00920.  
*Date Revoked:* February 7, 2006.  
*Reason:* Surrendered license voluntarily.  
*License Number:* 008333F.  
*Name:* Future Freight Systems Inc.  
*Address:* 48 Third Street, So. Kearny, NJ 07032.  
*Date Revoked:* March 3, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 014996N.  
*Name:* Hal-Mari, Inc.  
*Address:* 3000 Wilcrest Drive, Ste. #110, Houston, TX 77042.  
*Date Revoked:* February 24, 2006.  
*Reason:* Surrendered license voluntarily.  
*License Number:* 001547F.  
*Name:* J.B. Fong & Co., Inc. dba J.B. Fong & Co.  
*Address:* 838 Grant Ave., Ste. 409, San Francisco, CA 94108.  
*Date Revoked:* February 17, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 017698N.  
*Name:* J C Trans (USA), Inc.  
*Address:* 20416 E. Walnut Drive N, Suite 2-D, Walnut, CA 91789-2919.  
*Date Revoked:* March 7, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 018454N.  
*Name:* M.O.T. Intermodal Shipping (NY) Inc.  
*Address:* 1200-A Scottsville Road, Rochester, NY 14624.  
*Date Revoked:* February 5, 2006.  
*Reason:* Surrendered license voluntarily.  
*License Number:* 014059N.  
*Name:* N & A/Willex International.  
*Address:* 1240 Starlite Drive, Milpitas, CA 95035.  
*Date Revoked:* January 5, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 015500N.  
*Name:* Reliance Shipping Group, L.L.C.  
*Address:* 12201 Merit Drive, Ste. 790, Dallas, TX 75251.  
*Date Revoked:* January 6, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 006935N.  
*Name:* Sea Link (U.S.A.) Inc.  
*Address:* 151-02 132nd Ave., Jamaica, NY 11434.  
*Date Revoked:* February 19, 2006.  
*Reason:* Failed to maintain a valid bond.  
*License Number:* 011325N.  
*Name:* Slade Shipping Inc.  
*Address:* 14811 St. Mary's Lane, Ste. 265, Houston, TX 77079.  
*Date Revoked:* January 5, 2006.  
*Reason:* Failed to maintain a valid bond.

License Number: 013491N.  
 Name: Suburban Moving & Storage Company.  
 Address: 2100 Ogden Ave., Lisle, IL 60532.  
 Date Revoked: January 5, 2006.  
 Reason: Failed to maintain a valid bond.  
 License Number: 017853NF.  
 Name: Sun Island Freight, L.C.  
 Address: 7794 NW 46th St., Miami, FL 33166.  
 Date Revoked: November 19, 2005.  
 Reason: Surrendered license voluntarily.  
 License Number: 016105F.  
 Name: Thomas M. McGovern dba Scotia Ocean Services Ltd.  
 Address: 2810 Silver Falls, Kingwood, TX 77339.  
 Date Revoked: January 15, 2006.  
 Reason: Failed to maintain a valid bond.  
 License Number: 006861N.  
 Name: Transconex, Incorporated dba Caribe Best Services.  
 Address: 450 Shattuck Ave., S, #401, Renton, WA 98055.  
 Date Revoked: February 18, 2006.  
 Reason: Failed to maintain a valid bond.  
 License Number: 015574N.  
 Name: WW Messenger & Shipping Co., Inc.  
 Address: 20 Main Street, Orange, NJ 07050.  
 Date Revoked: January 5, 2006.  
 Reason: Failed to maintain a valid bond.

**Peter J. King,**  
 Deputy Director, Bureau of Certification and Licensing.  
 [FR Doc. E6-4575 Filed 3-28-06; 8:45 am]  
 BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION**

**Ocean Transportation Intermediary License Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not

receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants**

Embarques Victoria Multiservices Corp., 3634 Bailey Avenue, 1st Floor, Bronx, NY 10463, Officers: Sergio Castro Espinal, Vice President (Qualifying Individual), Maria Victora Guzman, President.  
 132 Vermilyea Corp. dba Agustin Cargo Express, 225 Bruckner Blvd., Bronx, NY 10454, Officers: Jose Agustin Batista, President (Qualifying Individual), Juan Batista, Vice President.  
 Total Express, Inc. (U.S.A.), 2580 S. 156th Street, Suite A104, Seattle, WA 98168, Officers: Thomas V. Olson, Secretary (Qualifying Individual), David Jung, Director.

**Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Old Dominion Freight Line, Inc., 500 Old Dominion Way, Thomasville, NC 27360, Officer: Gregory B. Plemmons, Vice President (Qualifying Individual).  
 JIF Logistics Inc., 152-31 134th Avenue, Jamaica, NY 11434-3505, Officers: Ruoyu Chen, President (Qualifying Individual), Norman Marchetti, Vice President.  
 Friendship Transport Inc., 6929 Hedgewood Drive, Rancho Palos Verdes, CA 90275, Officers: Ted Ching Yu Wang, President (Qualifying Individual), Bianca Wenbin Teng Wang, Vice President.

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant**

Express Forwarding, Inc., 12738 N. Florida Avenue, Tampa, FL 33612, Officers: Sharlene L. Wallace, Secretary (Qualifying Individual), Marina Y. Scarr, President.

Dated: March 24, 2006.  
**Bryant L. VanBrakle,**  
 Secretary.  
 [FR Doc. E6-4579 Filed 3-28-06; 8:45 am]  
 BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION**

**Ocean Transportation Intermediary License Rescission of Order of Revocation**

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 015795N.  
 Name: Eurocargo Express, LLC dba Eurocargo Express.  
 Address: 5250 West Century Blvd., Suite 620, Los Angeles, CA 90045.

Order Published: FR: 02/23/06 (Volume 71, No. 36, Pg. 9342).

**Peter J. King,**  
 Deputy Director, Bureau of Certification and Licensing.  
 [FR Doc. E6-4578 Filed 3-28-06; 8:45 am]  
 BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION**

**Ocean Transportation Intermediary License Reissuances**

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
001728NF .....	I.M.S., Inc. dba International Moving Service 4412-4414 Wheeler Avenue Alexandria, VA 22304.	February 11, 2006.
002827F .....	Raymond Express Corporation dba Raymond Express International 320 Harbor Way So. San Francisco, CA 94080.	January 16, 2006.
003636F .....	World Connections, Inc. 8380 Isis Avenue Los Angeles, CA 90045 .....	January 5, 2006.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6-4581 Filed 3-28-06; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System

**SUMMARY:** Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

#### Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;
- b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before May 30, 2006.

**ADDRESSES:** You may submit comments, identified by FR 2018, FR 2023, FR 2835, FR 2835a, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- FAX: 202/452-3819 or 202/452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-1), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

### Proposal to approve under OMB delegated authority the extension for three years, without revision of the following reports:

1. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.

*Agency form number:* FR 2018.

*OMB control number:* 7100-0058.

*Frequency:* Up to six times a year.

*Reporters:* Large U.S. commercial banks and large U.S. branches and agencies of foreign banks.

*Annual reporting hours:* 1,008 hours.

*Estimated average hours per response:* 2 hours.

*Number of respondents:* 84.

*General description of report:* This information collection is voluntary (12 U.S.C. §§ 248(a), 324, 335, 3101, 3102, and 3105) and is given confidential treatment (5 U.S.C. § 552 (b)(4)).

*Abstract:* The FR 2018 is conducted with a senior loan officer at each respondent bank, generally through a telephone interview. The purpose of the survey is to provide qualitative information with respect to current price and flow developments and evolving techniques and practices in the U.S. loan markets. Consequently, a significant portion of the questions in each survey consists of unique questions on topics of timely interest. The respondents' answers provide crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets.

2. *Report title:* Senior Financial Officer Survey.

*Agency form number:* FR 2023.

*OMB control number:* 7100-0223.

*Frequency:* Up to four times a year.

*Reporters:* Commercial banks, other depository institutions, corporations or large money-stock holders.

*Annual reporting hours:* 232 hours.

*Estimated average hours per response:* 1 hour.

*Number of respondents:* 58.

*General description of report:* This information collection is voluntary (U.S.C. §§ 225a, 248(a), and 263); confidentiality will be determined on a case-by-case basis.

*Abstract:* The 2023 requests qualitative and limited quantitative information about liability management, the provision of financial services, and the functioning of key financial markets from a selection of up to sixty large commercial banks (or, if appropriate, from other depository institutions or major financial market participants). Responses are obtained from a senior officer at each participating institution through a telephone interview

conducted by Reserve Bank or Board staff. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest.

**Proposal to approve under OMB delegated authority the extension for three years, with minor revision of the following reports:**

1. *Report titles:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans and Quarterly Report of Credit Card Plans. *Agency form numbers:* FR 2835 and FR 2835a.

*OMB control number:* 7100-0085.

*Frequency:* Quarterly.

*Reporters:* Commercial banks.

*Annual reporting hours:* FR 2835: 132 hours; and FR 2835a: 100 hours.

*Estimated average hours per response:* FR 2835: 13 minutes; and FR 2835a: 30 minutes

*Number of respondents:* FR 2835: 150; and FR 2835a: 50.

*General description of report:* These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment.

*Abstract:* The FR 2835 collects information from a sample of commercial banks on interest rates charged on loans for new vehicles and loans for other consumer goods and personal expenses. The FR 2835a collects information on two measures of credit card interest rates from a sample of commercial banks with \$1 billion or more in credit card receivables and a representative of smaller issuers.

*Current Actions:* The Federal Reserve proposes to add a new data item, New automobiles (60-month), to the FR 2835. This item will collect the most common interest rate on 60-month loans for new automobiles. The Federal Reserve also proposes to decrease the authorized sample size for the FR 2835a from 80 to 50 commercial banks.

Board of Governors of the Federal Reserve System, March 24, 2006.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E6-4531 Filed 3-28-06; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 13, 2006.

**A. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Amos Kendall Bass, III*, Wilburton, Oklahoma; to acquire voting shares of Wilburton State Bancshares, Inc., and thereby indirectly control shares of Wilburton State Bank, both in Wilburton, Oklahoma.

Board of Governors of the Federal Reserve System, March 24, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-4529 Filed 3-28-06; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2006.

**A. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *CitizensAda Financial Corporation*; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Ada, both in Ada, Oklahoma.

Board of Governors of the Federal Reserve System, March 23, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-4501 Filed 3-28-06; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 2006.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Cornerstone Holding Company, Inc.*, Fargo, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens, Incorporated, Enderlin, North Dakota, and thereby indirectly acquire Citizens State Bank, Enderlin, North Dakota.

2. *Jag Financial, Inc.*, Saint Paul, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of The EastBank Corporation, Minneapolis, Minnesota, and thereby indirectly acquire EastBank, Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, March 24, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-4530 Filed 3-28-06; 8:45 am]

**BILLING CODE 6210-01-S**

## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0044]

### Public Buildings Service; Information Collection; GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds

**AGENCY:** Public Buildings Service, GSA.

**ACTION:** Notice of request for comments regarding a renewal to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds. A request for public comments was published at 71 FR 3847, January 24, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate,

and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: April 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** Frank Giblin, Public Buildings Service, at telephone (202) 501-1856, or via e-mail to [frank.giblin@gsa.gov](mailto:frank.giblin@gsa.gov).

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090-0044, GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, in all correspondence.

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

The general public uses GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

##### B. Annual Reporting Burden

*Respondents:* 8,000.

*Responses Per Respondent:* 1.

*Hours Per Response:* 0.05.

*Total Burden Hours:* 400.

##### *Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control No. 3090-0044, GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, in all correspondence.

Dated: March 22, 2006.

**Michael W. Carleton,**

*Chief Information Officer.*

[FR Doc. E6-4552 Filed 3-28-06; 8:45 am]

**BILLING CODE 6820-23-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[ATSDR-219]

#### Public Health Assessments Completed October 1, 2005–December 31, 2005

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces those sites for which ATSDR has completed public health assessments during the period from October 1, 2005 through December 31, 2005. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments were prepared in response to requests from the public.

**FOR FURTHER INFORMATION CONTACT:** William Cibulas, Jr., Ph.D., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-32, Atlanta, Georgia 30333, telephone (404) 498-0007.

**SUPPLEMENTARY INFORMATION:** The most recent list of completed public health assessments was published in the **Federal Register** on November 28, 2005 [70 FR 71310]. This announcement is the responsibility of ATSDR under the regulation "Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities" [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

#### Availability

The completed public health assessments are available for public inspection at the ATSDR Records Center, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. Public health assessments are often available for public review at local repositories such as libraries in corresponding areas. Many public health assessments are available through ATSDR's Web site at <http://www.atsdr.cdc.gov/HAC/PHA/>. In

addition, the completed public health assessments are available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553-6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

#### Public Health Assessments Completed or Issued

Between October 1, 2005, and December 31, 2005, public health assessments were issued for the sites listed below:

#### NPL and Proposed NPL Sites

##### Florida

United Metals, Incorporated—  
(PB2006-100865).

##### Georgia

Cedartown Industries, Incorporated—  
(PB2006-102395).

##### Hawaii

Pearl Harbor Naval Complex—  
(PB2006-102414)

##### Massachusetts

Hatheway and Patterson Company—  
(PB2006-100884).

##### Missouri

Madison County Mines Site—  
(PB2006-101990).

##### New York

Lawrence Aviation Industries—  
(PB2006-101529).

Stanton Cleaners Area Groundwater Contamination Site—(PB2006-101530).

##### Tennessee

TSCA Incinerator—U.S. Department of Energy Oak Ridge Reservation—  
(PB2006-103434).

#### Non-NPL Petitioned Sites

##### Florida

The Lincoln Park Complex—  
(PB2006-100864).

##### Georgia

L & B Recycling, Incorporated—  
(PB2006-100885).

##### New York

Norlite Corporation—(PB2006-101989).

Dated: March 16, 2006.

#### Kenneth Rose,

Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health, Agency for Toxic Substances and Disease Registry.

[FR Doc. E6-4554 Filed 3-28-06; 8:45 am]

BILLING CODE 4163-70-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-06-0571]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto: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

Minimum Data Elements (MDEs)/ System for Technical Assistance Reporting (STAR) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The NBCCEDP was established in response to the Congressional Breast and Cervical Cancer Mortality Prevention Act of 1990. This Act mandates a program that will provide early detection and breast and cervical cancer screening services for under-served women.

CDC proposes to aggregate breast and cervical cancer screening, diagnostic, and treatment data from NBCCEDP grantees at the state, territory, and tribal level. These aggregated data will include demographic information about women served through funded programs. The proposed data collection will also include infrastructure data about grantee management, public education and outreach, professional education, and service delivery.

Breast cancer is a leading cause of cancer-related death among American women. The American Cancer Society (ACS) estimated that 211,240 new cases would be diagnosed among women in 2005, and 40,410 women would die of this disease. Mammography is extremely valuable as an early detection tool because it can detect breast cancer well before the woman can feel the lump, when it is still in an early and more treatable stage. Women older than age 40 that receive annual mammography screening reduce their probability of breast cancer mortality and increase their treatment options.

Although early detection efforts have greatly decreased the incidence of invasive cervical cancer in recent decades, ACS estimated that 10,370 new cases would be diagnosed in 2005 and 3,710 women would die of this disease. Papanicolaou (Pap) tests effectively detect precancerous lesions in addition to invasive cervical cancer. The detection and treatment of precancerous lesions can prevent nearly all cervical cancer-related deaths.

Because breast and cervical cancer screening, diagnostic and treatment data are already collected and aggregated at the state, territory and tribal level, the additional burden on the grantees will be small. Continuation of this program will require grantees to report a minimum data set (MDE) on screening and follow-up activities electronically to the CDC on a semi-annual basis. The program will require grantees to report infrastructure data (STAR) to the CDC annually using a web-based system. Information collected will be used to obtain more complete breast and cervical cancer data, promote public education of cancer incidence and risk, improve the availability of screening and diagnostic services for under-served

women, ensure the quality of services provided to women, and develop outreach strategies for women that are never or rarely screened for breast and

cervical cancer. Data collection will continue for the next three years. The average annual burden for this effort is 1,972 hours. There are no costs to

respondents except their time to participate in the survey.

**ESTIMATED ANNUALIZED BURDEN TABLE**

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
*Infrastructure Report (STAR) .....	68	1	25	1700
*Screening and Follow-up .....	68	1	4	272
Total .....				1972

\*Respondents include State, Territorial and Tribal grantees.

Dated: March 22, 2006.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E6-4550 Filed 3-28-06; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-06-0263]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Requirement for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (0920-0263)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

A registered importer must request a special permit to import Cynomolgus, African Green, or Rhesus Monkeys. To receive a special permit to import nonhuman primates the importer must submit to the Director of CDC, a written plan which specifies the steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for the importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures

for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and to determine whether the measures being taken to prevent exposure of persons and animals during importation are adequate. Once CDC is assured, through the monitoring of shipments (normally no more than 2), that the provisions of a special permit plan are being followed by a new permit holder and that the use of adequate disease control practices is being demonstrated, the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed upon request. This eliminates the burden on importers to repeatedly report identical information, requiring only that specific shipment itineraries and information on changes to the plan which require approval be submitted.

Respondents are commercial or not-for-profit importers of nonhuman primates. The burden represents full submission of information and itinerary/change information respectively. There are no costs to respondents except for their time to complete the requisition process. The total estimated annual burden hours are 20.

**ESTIMATED ANNUALIZED BURDEN**

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Businesses (limited permit) .....	2	5	30/60
Businesses (extended permit) .....	3	5	10/60
Organizations (extended permit) .....	15	5	10/60

Dated: March 12, 2006.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E6-4551 Filed 3-28-06; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Amendment of February 4, 2004, Order To Embargo Birds and Bird Products Imported From Israel

**SUMMARY:** On February 4, 2004, the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services issued an order to ban immediately the import of all birds (Class: *Aves*) from specified countries, subject to limited exemptions for returning pet birds of U.S. origin and certain processed bird-derived products. HHS/CDC took this step because birds from these countries potentially can infect humans with avian influenza (influenza A/ [H5N1]). The February 4, 2004, order complemented a similar action taken at the same time by the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA).

On March 10, 2004, HHS/CDC lifted the embargo of birds and bird products from the Hong Kong Special Administrative Region (HKSAR) because of the documented public-health and animal health measures taken by Hong Kong officials to prevent spread of the outbreak within the HKSAR, and the absence of highly pathogenic avian influenza H5N1 cases in Hong Kong's domestic and wild bird populations. USDA/APHIS took a similar action. On September 28, 2004, HHS/CDC extended the embargo on birds and bird products to include Malaysia because of the documented cases of highly pathogenic avian influenza A H5N1 in poultry in Malaysia. On July 20, 2005, USDA/APHIS adopted as a final rule the interim rule that became effective on February 4, 2004, which amended its regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. (See 70 FR 41608 [July 20, 2005].) As the United Nations Food and Agriculture Organization and the World Organization for Animal Health (OIE)

have confirmed additional cases of highly pathogenic avian influenza (H5N1), USDA/APHIS has added additional countries to its ban. Because of the documentation of highly pathogenic avian influenza H5N1 in poultry, HHS/CDC added the following countries to its embargo: Kazakhstan, Romania, Russia, Turkey, and Ukraine on December 29, 2005; Nigeria on February 8, 2006; India on February 22, 2006; Egypt on February 27, 2006; Niger on March 2, 2006; Albania, Azerbaijan, Cameroon, and Burma (Myanmar) on March 15, 2006.

On March 17, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Israel. At this time, HHS/CDC is adding Israel to its current embargo. This action is effective on March 20, 2006, and will remain in effect until further notice.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 17, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in turkeys in farms in the Beer-Sheva, Ashkelon, and Jerusalem districts, Israel.

Introduction of birds infected with highly pathogenic avian influenza H5N1 into the United States could lead to outbreaks of disease among birds and among the human population, a significant public health threat. Banning the importation of all avian species from affected countries is an effective means of limiting this threat. HHS/CDC is therefore taking this action to reduce the likelihood of introduction or spread of influenza A H5N1 into the United States.

##### Immediate Action

Therefore, pursuant to 42 CFR 71.32(b), HHS/CDC is amending the February 4, 2004, order to add Israel to the list of countries subject to the order's embargo of birds and products derived from birds. All other portions of the February 4, 2004, order, as further amended on March 10, 2004, September 28, 2004, December 29, 2005, February 8, 2006, February 22, 2006, February 27, 2006, March 2, 2006, and March 15, 2006 shall remain in effect until further notice.

Dated: March 23, 2006.

**Julie Louise Gerberding,**

*Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.*

[FR Doc. E6-4513 Filed 3-28-06; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Amendment of February 4, 2004, Order To Embargo Birds and Bird Products Imported From Afghanistan

**SUMMARY:** On February 4, 2004, the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services issued an order to ban immediately the import of all birds (Class: *Aves*) from specified countries, subject to limited exemptions for returning pet birds of U.S. origin and certain processed bird-derived products. HHS/CDC took this step because birds from these countries potentially can infect humans with avian influenza (influenza A/ [H5N1]). The February 4, 2004, order complemented a similar action taken at the same time by the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA).

On March 10, 2004, HHS/CDC lifted the embargo of birds and bird products from the Hong Kong Special Administrative Region (HKSAR) because of the documented public-health and animal health measures taken by Hong Kong officials to prevent spread of the outbreak within the HKSAR, and the absence of highly pathogenic avian influenza H5N1 cases in Hong Kong's domestic and wild bird populations. USDA/APHIS took a similar action. On September 28, 2004, HHS/CDC extended the embargo on birds and bird products to include Malaysia because of the documented cases of highly pathogenic avian influenza A H5N1 in poultry in Malaysia. On July 20, 2005, USDA/APHIS adopted as a final rule the interim rule that became effective on February 4, 2004, which amended its regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. (See 70 FR 41608 [July 20, 2005].) As the United Nations Food and Agriculture Organization and the World Organization for Animal Health (OIE) have confirmed additional cases of highly pathogenic avian influenza (H5N1), USDA/APHIS has added additional countries to its ban. Because of the documentation of highly pathogenic avian influenza H5N1 in poultry, HHS/CDC added the following countries to its embargo: Kazakhstan,

Romania, Russia, Turkey, and Ukraine on December 29, 2005; Nigeria on February 8, 2006; India on February 22, 2006; Egypt on February 27, 2006; Niger on March 2, 2006; Albania, Azerbaijan, Cameroon, and Burma (Myanmar) on March 15, 2006; and Israel on March 20, 2006.

On March 15, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Afghanistan. At this time, HHS/CDC is adding Afghanistan to its current embargo. This action is effective on March 21, 2006, and will remain in effect until further notice.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 15, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in chickens and turkeys in five provinces of Afghanistan, including Jalalabad, Kabul, Laghman, Vardak and Kunar.

Introduction of birds infected with highly pathogenic avian influenza H5N1 into the United States could lead to outbreaks of disease among birds and among the human population, a significant public health threat. Banning the importation of all avian species from affected countries is an effective means of limiting this threat. HHS/CDC is therefore taking this action to reduce the likelihood of introduction or spread of influenza A H5N1 into the United States.

**Immediate Action**

Therefore, pursuant to 42 CFR 71.32(b), HHS/CDC is amending the February 4, 2004, order to add Afghanistan to the list of countries subject to the order's embargo of birds and products derived from birds. All other portions of the February 4, 2004, order, as further amended on March 10, 2004, September 28, 2004, December 29, 2005, February 8, 2006, February 22, 2006, February 27, 2006, March 2, 2006, March 15, 2006, and March 20, 2006, shall remain in effect until further notice.

Dated: March 23, 2006.

**Julie Louise Gerberding,**

*Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.*

[FR Doc. E6-4514 Filed 3-28-06; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

**Proposed Projects**

*Title:* Evaluation to Determine the Effectiveness of the Public Assistance Reporting Information System (PARIS). *OMB No.* New Collection.

*Description:* The PARIS program is a voluntary information exchange system that allows States and other entities (counties or jurisdictions like the District of Columbia) to submit Medical Assistance, Medicaid, Food Stamp, and Temporary Assistance for Needy Families (TANF) participant data to the Administration for Children and Families (ACF) to be matched with Federal and participating States' databases to detect potential dual participation and improper payments. Launched by ACF in 1997, the PARIS project was developed to provide States with usable data by which they could identify and correct erroneous payments and to promote State partnerships and matching of cross-state data to improve program integrity. There are currently 36 entities participating in the PARIS project (Member States). ACF is encouraging the expansion of PARIS via a grantee program by providing funds to Member States to partner with nonparticipating States to develop the internal organization and mechanisms needed for PARIS participation. An implementation and outcome evaluation of the PARIS program will determine the effectiveness of the program and the

resulting impact on reducing improper payments. Data collected will determine factors affecting program participation, relevant PARIS administrative and implementation information, challenges in implementation, cost of program participation and estimated savings through identified and resolved participant matches.

Health Systems Research, an ACF Contractor conducting the research, will send State-level PARIS Administrators surveys regarding the organization and administration of PARIS, processes used for submitting data, and follow-up protocols. Information obtained through key-informant interviews of Medicaid, TANF, and Food Stamp program officials will provide information regarding relationships among the various stakeholders, opinions on effectiveness of PARIS, and the rationale behind decisions. E-mails sent to States will contain cost-accounting forms, providing cost information on program start-up, submission of data, follow-up of potential participant matches, and will then be verified through telephone interviews with program and fiscal administrators. As part of the final PARIS evaluation, a prospective and retrospective analysis is planned. Collections of prospective information from a sample of States that are not yet committed to permanent participation in PARIS and prospective and retrospective information from States already participating in the program are planned.

Two current PARIS sites and one non-PARIS grantee site will comprise a pilot of the data collection instruments to ensure evaluation questions are clear and elicit salient responses. Findings from the pilot study will inform the final PARIS evaluation tool development.

*Respondents:* Approximately sixteen States will comprise the sample, with an estimated twelve respondents from each State, county or jurisdiction.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Numer of responses per respondent	Average burden hours per response	Total burden hours
State-Level PARIS Administrator Survey .....	16	1	1	16
Medicaid, Food Stamp and TANF Program Officials Key-Informant Interviews .....	160	1	1	160
State Cost-Accounting Forms .....	16	1	1.5	24
Fiscal Administrator Telephone Interviews .....	32	1	1.5	48

*Estimated Total Annual Burden Hours: 248.*

In compliance with the requirements of Section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Administration for Children and

Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 22, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06-2997 Filed 3-28-06; 8:45am]

BILLING CODE 4184-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2006N-0104]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements contained in the requirements for submission of labeling for human prescription drugs and biologics in electronic format.

**DATES:** Submit written or electronic comments on the collection of information by May 30, 2006.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

Karen Nelson, Office Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format (OMB Control Number 0910-0530)—Extension

FDA is requesting that OMB extend approval under the PRA for the information collection contained in the final rule entitled "Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format" (68 FR 69009, December 11, 2003) (the final rule). The final rule amended FDA regulations governing the format in which certain labeling is required to be submitted for FDA review with new drug applications (NDAs), certain biological license applications (BLAs), abbreviated new drug applications (ANDAs), supplements, and annual reports. The final rule required that the content of labeling for prescription drug and biological products required under 21 CFR 201.100(d)(3) be submitted to FDA electronically in a form that FDA can process, review, and archive. Copies of product labeling have been required to be submitted to FDA for review in NDAs, certain BLAs, ANDAs, certain supplements, and annual reports under §§ 314.50, 314.70, 314.81, 314.94, 314.97, 314.98, 601.2, and 601.12 (21 CFR 314.50, 314.70, 314.81, 314.94, 314.97, 314.98, 601.2, and 601.12). Under these regulations, copies of labeling may be submitted electronically or on paper. The final rule added the requirement to submit the content of labeling in electronic format to simplify the drug labeling review process and speed up the approval of labeling changes.

The reporting burden for submitting labeling under §§ 314.50, 314.70, 314.81, 314.94, 314.97, and 314.98 has been estimated by FDA and the collection of information has been approved by OMB under OMB control number 0910-0001, most recently until May 31, 2008. The reporting burden associated with current §§ 601.2 and 601.12 has also been estimated and that collection of information has been approved by OMB under OMB control number 0910-0338, most recently until September 30, 2008. We are not re-estimating these approved burdens in this action. Only the additional reoccurring reporting burdens associated with the electronic submission of the content of labeling in the final rule are estimated in this action.

*New NDAs (§ 314.50), ANDAs (§ 314.94), and BLAs (§ 601.2):* Based on the number of submissions during 2005 under the approved collections of information for §§ 314.50, 314.94, and 601.2, we estimate that approximately 75 NDA applicants, 160 ANDA applicants, and 6 BLA applicants (respondents) submit applications to us annually. We estimate that these applicants (respondents) submit approximately 111 NDAs, 766 ANDAs, and 21 BLAs each year that are subject to the requirements of the final rule. As explained in section V of the final rule, we estimate that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format for these applications, will be less than 15 minutes.

*Supplements to NDAs (§ 314.70), ANDAs (§ 314.97), and BLAs (§ 601.12(f)(1) and (f)(2)):* Based on the

number of submissions during 2005 under the approved collections of information for §§ 314.70, 314.97, and § 601.12(f)(1) and (f)(2), we estimate that approximately 272 NDA applicants, 189 ANDA applicants, and 35 BLA applicants (respondents) submit supplements to approved applications to us annually. We estimate that these applicants (respondents) submit approximately 1,839 NDA supplements, 3,208 ANDA supplements, and 82 BLA supplements each year that are subject to the requirements of the final rule. As explained in section V of the final rule, we estimate that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format for these applications, will be less than 15 minutes.

*Annual Reports for NDAs (§ 314.81), ANDAs (§ 314.98), and BLAs (§ 601.12(f)(3)):* Based on the number of

submissions during 2005 under the approved collections of information for §§ 314.81, 314.98, and 601.12(f)(3), we estimate that approximately 306 NDA applicants, 333 ANDA applicants, and 4 BLA applicants (respondents) submit annual reports to us annually. We estimate that NDA applicants submit to us approximately 2,617 annual reports, ANDA applicants submit approximately 6,054 annual reports, and BLA applicants submit approximately 16 annual reports each year that are subject to the requirements of the final rule. As explained in section V of the final rule, we estimate that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format for these submissions, will be less than 15 minutes.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
<b>New Applications</b>					
314.50	75	1.48	111	.25	27.75
314.94	160	4.79	766	.25	191.50
601.14 <sup>2</sup>	6	3.50	21	.25	5.25
<b>Supplements</b>					
314.70	272	6.76	1,839	.25	459.75
314.97	189	16.98	3,208	.25	802
601.14 <sup>3</sup>	35	2.34	82	.25	20.5
<b>Annual Reports</b>					
314.81	306	8.55	2,617	.25	654.25
314.98	333	18.18	6,054	.25	1,513.50
601.14 <sup>4</sup>	4	4	16	.25	4
<b>Total</b>					<b>3,678.50</b>

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup>Applications submitted under § 601.2.

<sup>3</sup>Supplements submitted under § 601.12(f)(1) and (f)(2).

<sup>4</sup>Annual reports submitted under § 601.12(f)(3).

Dated: March 20, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6-4506 Filed 3-28-06; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2006N-0105]

**Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental Impact Considerations**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in FDA regulations entitled "Environmental Impact Considerations."

**DATES:** Submit written or electronic comments on the collection of information by May 30, 2006.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Environmental Impact Considerations—Part 25 (21 CFR Part 25) (OMB Control Number 0910-0322)—Extension**

FDA is requesting OMB approval for the reporting requirements contained in the FDA regulation "Environmental Impact Considerations."

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347), states national environmental objectives and imposes upon each Federal agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

The FDA NEPA regulations are at part 25. All applications or petitions requesting agency action require the submission of a claim for a categorical exclusion or an environmental assessment (EA). A categorical exclusion applies to certain classes of FDA-regulated actions that usually have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS. Section 25.15(a) and (d) specifies the procedures for submitting to FDA a claim for a categorical exclusion. Extraordinary circumstances (§ 25.21), which may result in significant environmental impacts, may exist for some actions that are usually categorically excluded. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Sections 25.40(a) and (c) specifies the content requirements for EAs for nonexcluded actions.

This collection of information is used by FDA to assess the environmental impact of agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statutes for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications

for the purpose of determining whether the proposed action may have a significant impact on the environment. Where significant adverse effects cannot be avoided, the agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a **Federal Register** document also filed for comment at the Environmental Protection Agency (EPA). The final EIS, including the comments received, is reviewed by the agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact. Any final EIS would contain additional information gathered by the agency after the publication of the draft EIS, a copy of or a summary of the comments received on the draft EIS, and the agency's responses to the comments, including any revisions resulting from the comments or other information. When the agency finds that no significant environmental effects are expected, the agency prepares a finding of no significant impact (FONSI).

*Estimated Annual Reporting Burden for Human Drugs*

Under 21 CFR 312.23(a)(7)(iv)(e), 314.50(d)(1)(iii), and 314.94(a)(9)(i), each investigational new drug application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 2005, FDA received 1,933 INDs from 1,517 sponsors, 114 NDAs from 94 applicants, 2,682 supplements to NDAs from 293 applicants, 777 ANDAs from 161 applicants, and 4,318 supplements to ANDAs from 219 applicants. FDA estimates that it receives approximately 9,813 claims for categorical exclusions as required under § 25.15(a) and (d), and 11 EAs as required under § 25.40(a) and (c). Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Estimated Annual Reporting Burden for Human Drugs					
21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15(a) and (d)	2,284	4.32	9,813	8	78,504
25.40(a) and (c)	11	1	11	3,400	37,400
Total					115,904

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

*Estimated Annual Reporting Burden for Human Foods*

Under 21 CFR 71.1, 171.1, 170.39, and 170.100, food additive petitions, color additive petitions, requests for exemption from regulation as a food additive, and submission of a food contact notification (FCN) for a food

contact substance must contain either a claim of categorical exclusion under § 25.30 or § 25.32, or an EA under § 25.40. From 2003 to 2005, FDA received an annual average of 88 industry submissions. FDA estimates that it received an annual average of 57 claims of categorical exclusions as

required under § 25.15(a) and (d), and 31 EAs as required under § 25.40(a) and (c). FDA estimates that, on average, it takes petitioners, notifiers, or requestors approximately 3 hours to prepare a claim of categorical exclusion and approximately 210 hours to prepare an EA.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Estimated Annual Reporting Burden for Human Foods					
21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15(a) and (d)	57	1.4	80	3	240
25.40(a) and (c)	31	1.3	39	210	8,190
Total					8,430

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

*Estimated Annual Reporting Burden for Medical Devices*

Under 21 CFR 814.20(b)(11), premarket approvals (original premarket approval applications (PMAs) and supplements) must contain a claim for

categorical exclusion under § 25.30 or § 25.34 or an EA under § 25.40. In 2005, FDA received 282 claims (original PMAs and supplements) for categorical exclusions as required under § 25.15(a) and (d), and 0 EAs as required under

§ 25.40(a) and (c). Based on information provided by less than 10 sponsors, FDA estimates that it takes approximately less than 1 hour to prepare a claim for a categorical exclusion and an unknown number of hours to prepare an EA.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Estimated Annual Reporting Burden for Medical Devices					
21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15(a) and (d)	47	6	282	1	282
25.40(a) and (c)	0	0	0	0	0
Total					282

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

*Estimated Annual Reporting Burden for Biological Products*

Under 21 CFR 312.23(a)(7)(iv)(e) and 601.2(a), IND and biologics license applications (BLAs) must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 2005, FDA received 565 INDs from 426 sponsors, 27 BLAs from 12

applicants, and 737 BLA supplements to license applications from 205 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA. FDA estimates that it received approximately 666 claims for categorical exclusion as required under § 25.15(a)

and (d), and 2 EAs as required under § 25.40(a) and (c). Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim for categorical exclusion and approximately 3,400 hours to prepare an EA for a biological product.

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Estimated Annual Reporting Burden for Biological Products					
21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15(a) and (d)	459	1.45	666	8	5,328
25.40(a) and (c)	2	1	2	3,400	6,800
Total					12,128

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

#### Estimated Annual Reporting Burden for Animal Drugs

Under 21 CFR 514.1(b)(14), new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs), § 514.8(a)(1) supplemental NADAs and ANADAs, § 511.1 (b)(10) investigational new animal drug applications (INADs),

§ 570.35 (c)(1)(viii) generally recognized as safe (GRAS) affirmation petitions, and § 571.1(c) food additive petitions must contain a claim for categorical exclusion under § 25.30 or § 25.33 or an EA under § 25.40. In 2005, FDA's Center for Veterinary Medicine (CVM) has received approximately 421 claims for categorical exclusion as required under

§ 25.15(a) and (d), and 14 EAs as required under § 25.40(a) and (c). Based on information provided by industry, FDA estimates that it takes sponsors/applicants approximately 8 hours to prepare a claim for a categorical exclusion and an average of 2,160 hours to prepare an EA.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Estimated Annual Reporting Burden for Animal Drugs					
21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Burden Hours
25.15(a) and (d)	135	3.9	421	8	3,368
25.40(a) and (c)	12	1.6	14	2,160	30,240
Total					33,608

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on information provided by industry, FDA estimates that the combined annual total burden hours for all Centers is 170,352.

Dated: March 20, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6-4507 Filed 3-28-06; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### Automated Commercial Environment (ACE): Ability of Truck Carriers To Use Third Parties To Submit Manifest Information in the Test of the ACE Truck Manifest System

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces that the Bureau of Customs and Border Protection (CBP) will permit truck carriers who are not Automated

Commercial Environment (ACE) Truck Carrier Accounts to use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system, via electronic data interchange (EDI) messaging. Truck carriers electing to use a third party to submit manifest information to CBP must possess a valid Standard Carrier Alpha Code (SCAC) from the National Motor Freight Traffic Association. Truck carriers who elect to use this transmission method will not have access to operational data and will not receive status messages on ACE transactions, nor will they have access to integrated Account data from multiple system sources. These truck carriers will be able to obtain release of their cargo, crew, conveyances, and equipment via EDI messaging back to the transmitter of the information. By making these changes, CBP is opening the test to parties previously ineligible to participate.

**DATES:** *Effective Date:* Truck carriers will be able to participate in ACE through the use of a third party transmitter starting on March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Swanson, via e-mail at [james.d.swanson@dhs.gov](mailto:james.d.swanson@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 4, 2004 and September 13, 2004, CBP published General Notices in the **Federal Register** (69 FR 55167 and 69 FR 5360) announcing a test, in conjunction with the Federal Motor Carrier Safety Administration (FMCSA), allowing participating truck carriers to transmit electronic manifest data in ACE, including advance cargo information as required by section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002 (see 68 FR 68140). The advance cargo information requirements are detailed in the final rule published in the **Federal Register** at 68 FR 68140 on December 5, 2003. Truck carriers participating in the test opened up Truck Carrier Accounts which provided them with the ability to electronically transmit truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

In the September 13, 2004 notice, CBP stated that, in order to be eligible for participation in this test, a carrier must have:

1. Submitted an application (*i.e.*, statement of intent to establish an ACE Account and to participate in the testing of electronic truck manifest functionality) as set forth in the February 4, 2004, **Federal Register** notice (69 FR 5360);

2. Provided a Standard Carrier Alpha Code(s) (SCAC);

3. Provided the name, address, and e-mail of a point of contact to receive further information.

In addition, participants intending to use the ACE Secure Data Portal as the means to file the manifest must submit a statement certifying the ability to connect to the Internet. Participants intending to use an EDI interface are required to first test their ability to send and receive electronic messages in either American National Standards Institute (ANSI) X12 or United Nations / Directories for Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) format with CBP. The September 13, 2004 notice indicated that acceptance into this test does not guarantee eligibility for, or acceptance into, future technical tests.

#### Implementation

Through this notice, CBP announces a change whereby truck carriers no longer have to open ACE Truck Carrier Accounts to participate in the ACE test. Specifically, truck carriers may elect to use a third party to submit electronic manifest information via EDI to CBP. Truck carriers participating in this fashion will not have access to operational data and will not receive status messages on ACE Accounts, nor will they have access to integrated Account data from multiple system sources. These truck carriers will be able to obtain release of their cargo, crew, conveyances, and equipment via EDI messaging back to the transmitter of the information.

If the third party transmitting the truck manifest information to CBP does not use EDI, but instead wishes to use the ACE portal, the truck carrier who is submitting that information to the third party (for transmission to CBP) must have an ACE Truck Carrier Account as described in the February 4, 2004, General Notice (69 FR 5360).

A truck carrier using a third party to transmit via EDI cargo, crew, conveyance and equipment information to CBP must have a Standard Carrier Alpha Code (SCAC). Any truck carrier with a SCAC may arrange to have a

third party transmit manifest information to CBP via EDI consistent with the requirements of the ACE Truck Manifest Test.

#### Previous Notices Continue To Be Applicable

All of the other aspects of the ACE Truck Manifest Test as set forth in the September 13, 2004, notice (69 FR 55167), as modified by the General Notice published in the **Federal Register** (70 FR 13514) on March 21, 2005, continue to be applicable. (The March 21, 2005 notice clarified that all relevant data elements are required to be submitted in the automated truck manifest submission.) All of the aspects of the February 4, 2004, notice (69 FR 5360) also continue to be applicable, except as revised in this notice.

Dated: March 22, 2006.

**Jayson P. Ahern,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. E6-4571 Filed 3-28-06; 8:45 am]

**BILLING CODE 9111-14-P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Waccamaw National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Waccamaw National Wildlife Refuge in Horry, Georgetown, and Marion Counties, South Carolina.

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management

direction on conserving wildlife and their habitat, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

**DATES:** To ensure consideration, written comments must be received no later than April 28, 2006.

**ADDRESSES:** Comments, questions, and requests for more information regarding the Waccamaw National Wildlife Refuge planning process should be sent to: M. Craig Sasser, Refuge Manager, 1601 North Fraser Street, Georgetown, South Carolina 29440; Telephone: 843/527-8069 or 843-509-1514; E-mail: [marshall\\_sasser@fws.gov](mailto:marshall_sasser@fws.gov).

**SUPPLEMENTARY INFORMATION:** The Service has initiated comprehensive conservation planning for Waccamaw National Wildlife Refuge for the management of its natural resources. This planning will result in the development of goals, objectives, and strategies to carry out the refuge's purposes and to comply with laws and policies governing management and public use of refuges. Opportunities will be provided for public input at open houses to be held in both Georgetown and Conway, South Carolina. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1505.6(f)].

The refuge has an acquisition boundary that spans more than 55,000 acres and includes large sections of the Waccamaw and Great Pee Dee rivers and a small section of the Little Pee Dee River. The wetland diversity of this refuge is what sets it apart from most other found along the east coast. Wetland habitats range from historic, broken and actively managed tidal rice fields, to black water and alluvial flood plain forested wetlands. These tidal freshwater wetlands are some of the most diverse freshwater wetland system found in North America and they offer many important habitats for migratory birds, fish, and resident wildlife.

**Authority:** This notice is published under the authority of the National Wildlife Refuge

System Improvement Act of 1997, Public Law 105-57.

Dated: March 8, 2006.

**Cynthia K. Dohner,**  
*Acting Regional Director.*

[FR Doc. 06-2985 Filed 3-28-06; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NMMN-030-1430-ET; NMMN 0554274]

#### Public Land Order No. 7659; Revocation of Public Land Order No. 3685; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes Public Land Order No. 3685 in its entirety as it affects 2,789 acres of public land withdrawn and reserved for use by the National Aeronautics and Space Administration for protection of facilities. The land is no longer needed for the purpose for which it was withdrawn. The land will remain closed to surface entry and mining until a planning review and analysis is completed to determine the best use of the land.

**DATES:** *Effective Date:* March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Angel Mayes, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005, (505) 525-4376.

#### Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order 3685 (30 FR 7622, June 17, 1965), which withdrew public land for use by the National Aeronautics and Space Administration, is hereby revoked in its entirety as it affects the following described land:

#### New Mexico Principal Meridian

T. 23 S., R. 2 E., sec. 13; sec. 14, N $\frac{1}{2}$  and SE $\frac{1}{4}$ ; sec. 15, lots 15 to 169, inclusive; secs. 24 and 25.

The area described contains approximately 2,789 acres in Dona Ana County.

Dated: March 10, 2006.

**Mark Limbaugh,**

*Assistant Secretary of the Interior.*

[FR Doc. E6-4534 Filed 3-28-06; 8:45 am]

BILLING CODE 4310-FB-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Submission to Office of Management and Budget; Opportunity for Public Comment

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under provisions of the Paperwork Reduction Act of 1995 and 36 CFR part 51, subpart J, regarding the Assignment or Encumbrance of Concession Contracts, the National Park Service (NPS) invites comments on a currently approved collection of information (OMB Control # 1024-0126).

The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the NPS request to renew this information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days of the date on which this notice is published in the **Federal Register**.

**DATES:** Please submit your comments on the proposed Information Collection Request (ICR) by April 28, 2006.

**ADDRESSES:** Please submit your comments directly to the Desk Officer for the Department of the Interior, (OMB #1024-0126) Office of Information and Regulatory Affairs, OMB, by fax at 202/395-6566, or by e-mail at [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov). Please also send a copy of your comments to Ms. Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or by e-mail to [jo\\_pendry@nps.gov](mailto:jo_pendry@nps.gov).

**FOR FURTHER INFORMATION CONTACT:** J. A. Pendry, Phone: 202-513-7156, fax: 202-371-6662, or at the address above. You are entitled to a copy of the entire ICR package free-of-charge.

#### SUPPLEMENTARY INFORMATION:

*Title:* Proposed Sale of Concession Operations.

*OMB Control Number:* 1024-0126.

*Expiration Date of Approval:* February 28, 2006.

*Type of Request:* Extension of a currently approved information collection.

*Description of Need:* The National Park Service (NPS) authorizes private business known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. Concession authorizations may be assigned, sold,

transferred, or encumbered by the concessioner subject to prior written approval of the NPS. The NPS requires that certain information be submitted for review prior to the consummation of any sale, transfer, assignment, or encumbrance. 16 U.S.C. 5957 provides that no concession contract or leasehold surrender interest may be transferred, assigned, sold or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary. Regulations at 36 CFR part 51, subpart J, regarding the Assignment or Encumbrance of Concession Contracts, require that certain information be submitted for review by the NPS prior to the consummation of any sale, transfer, assignment, or encumbrance. The information requested is used to determine whether or not the proposed transaction will result in an adverse impact on the protection, conservation, or preservation of the resources of the unit of the National Park System, decreased services to the public, the lack of a reasonable opportunity for profit over the remaining term of the authorization, or rates in excess of approved rates to the public. In addition, pursuant to the regulations at 36 CFR part 51, the value of rights for intangible assets such as the concession contract, right of preference in renewal, user days, or low fees, belongs to the Government.

If any portion of the purchase price is attributable either directly or indirectly to such assets, the transaction may not be approved. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Without such information, the NPS would be unable to determine whether approval of the proposed transaction would be adequate.

NPS has submitted a request to OMB to renew approval of the collection of information in 36 CFR part 51, subpart J, regarding the Assignment or Encumbrance of Concession Contracts. NPS is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is 1024-0126, and is identified in 36 CFR 51.104.

The National Park Service published the 60-day **Federal Register** notice to solicit comments on this proposed information collection on December 13, 2005 on pages 73793-73794. There were no public comments received.

*Estimate of Burden:* Approximately 80 hours per response.

*Estimated Number of Respondents:* Approximately 20.

*Estimated Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 1600 hours.

*Non-Hour Cost Burden:* Approximately \$250 per response for copying costs.

A list of information required to be submitted with a request for sale, assignment, transfer or encumbrance of a concession authorization is set forth at 36 CFR part 51, subpart J.

Send comments on (1) the need for this collection; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the collection; and (4) ways to minimize the burden, including the use of automated collection techniques or other forms of information technology; or any other aspect of this collection to the Office of Management and Budget at the above address. Please also send a copy of your comments to the NPS. Please refer to OMB control number 1024-0126 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 28, 2006.

**Leonard E. Stowe,**  
NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 06-3017 Filed 3-28-06; 8:45 am]

**BILLING CODE 4312-53-M**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment**

**AGENCY:** National Park Service, The Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C., Chapter 3507) and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on the reinstatement, with change, of a previously approved collection for which approval has expired (OMB #1024-0226).

**DATES:** Public comments on this notice will be accepted on or before May 30, 2006 to be assured of consideration.

**ADDRESSES:** Send comments to: Cyndi Szymanski, Outdoor Recreation Planner, Rivers, Trails and Conservation Assistance Program, National Park Service, 1849 "C" Street, NW. (org code 2220), Washington, DC 20240. E-mail: *Cynthia\_szymanski@nps.gov*. Phone: (202) 354-6912, Fax, (202) 371-5179.

**FOR FURTHER INFORMATION CONTACT:** Cyndi Szymanski, Outdoor Recreation Planner, Rivers, Trails and Conservation Assistance Program, National Park Service, 1849 "C" Street, NW. (org code 2220), Washington, DC 20240. E-mail: *Cynthia\_szymanski@nps.gov*.

**SUPPLEMENTARY INFORMATION:**  
*Title:* National Park Service Partnership Assistance Programs' GPRA Information Collection.

*OMB Number:* 1024-0226.

*Expiration Date:* To be requested.

*Type of Request:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Description of Need:* The Government Performance and Results Act requires Federal agencies to prepare annual performance reports documenting the progress made toward achieving long-term goals. The National Park Service needs the information in the proposed collections to assess the annual progress being made toward meeting Long-term Goal IIIb2 of the National Park Service Strategic Plan. The information sought is not collected elsewhere by the Federal Government. The proposed information collections impose no data collection or record keeping burden on the potential respondents. Responding to the proposed collections is voluntary and is based on data that the respondents already collect and/or personal opinion. The National Park Service needs information to help evaluate and improve its partnership assistance programs.

Public comments are invited on this reinstatement. Specifically two information collections will be carried out pursuant to the Government Performance and Results Act and the NPS Strategic Plan. Both of the proposed information collections are surveys of customer satisfaction of certain NPS programs and types of assistance. NPS' Rivers, Trails and Conservation Assistance Program and Federal Lands to Parks Program will conduct surveys to assess client satisfaction with the services received and to identify needed program improvements. The NPS goal in conducting these surveys is to use the information to identify areas of strength and weakness in its recreation and conservation assistance programs, to provide an information base for improving those programs, and to provide a required performance measurement (Goal IIIb2 of the National Park Service Strategic Plan) under the Government Performance and Results Act.

*Estimated number of:*

	Responses	Burden hours
NPS Partnership Assistance Programs GPRA Information Collections .....	150	25

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for the two information collections. The NPS also is asking for comments on the

practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information

collection techniques or other forms of information technology.

*Description of Respondents:* This is a census survey of all principal cooperating organizations and agencies which have received substantial assistance from the Rivers, Trails and

Conservation Assistance Program or the Federal Lands to Parks Program during the prior Fiscal year (October 1 through September 30).

*Estimated Average Number of Respondents:* 255. See the chart below for a breakdown by each information collection.

*Estimated Average Number of Responses:* 150. See the chart below for a breakdown by each information collection.

*Estimated Average Burden Hours per Response:* 10 minutes. See the chart below for a breakdown by each information collection.

*Frequency of Response:* One time per technical assistance event.

*Estimated Annual Reporting Burden:* 25 hours. See the chart below for a breakdown by each information collection.

*Estimated number of:*

Information collection	Respondents	Responses	Avg. Time per response (min.)	Hours
Rivers, Trails and Conservation Assistance Program .....	200	120	10	20
Federal Lands to Parks Program .....	55	30	10	5
Subtotal .....	255	150	.....	25

Dated: March 14, 2006.

**Leonard E. Stowe,**

*National Park Service Information and Collection Clearance Officer.*

[FR Doc. 06-3018 Filed 3-28-06; 8:45 am]

**BILLING CODE 4310-70-M**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Availability of the Final General Management Plan and Final Environmental Impact Statement for the First Ladies National Historic Site, Ohio**

**AGENCY:** National Park Service, Interior.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Final General Management Plan and Final Environmental Impact Statement (GMP/EIS) for the First Ladies National Historic Site.

**DATES:** The Final GMP/EIS will be available for public review for 30 days following the publishing of a notice of availability in the **Federal Register** by the Environmental Protection Agency.

**ADDRESSES:** Copies of the Final GMP/EIS are available by request by writing c/o Site Manager, 8095 Mentor Avenue, Mentor, Ohio 44060, by telephoning 440-974-2993 or by e-mail [carol\\_j\\_spears@nps.gov](mailto:carol_j_spears@nps.gov). The document is also available to be picked up in person at 331 Market Avenue South, Canton, Ohio 44702. The document is also available on the Internet at: <http://parkplanning.nps.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol J. Spears, Site Manager, 8095 Mentor Avenue, Mentor, Ohio 44060, telephone 440-974-2993.

**SUPPLEMENTARY INFORMATION:** The NPS prepared a Draft GMP/EIS for the First Ladies National Historic Site and made it available for public review for 60 days

(September–November 2005), during which time the NPS distributed over 100 copies of the draft. The draft was available at the First Ladies National Historic Site, on the Internet, and at area libraries. A total of four written comments were received, and five participants attended two open houses. The consensus from the public comment period is that the correct path to pursue for future management of the First Ladies National Historic Site is the preferred alternative, Alternative B. Comments from individuals and public agencies did not require the addition of other alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative.

Dated: February 16, 2006.

**Ernest Quintana,**

*Regional Director, Midwest Region.*

[FR Doc. E6-4546 Filed 3-28-06; 8:45 am]

**BILLING CODE 4312-86-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Dog Management Plan and Environmental Impact Statement, Golden Gate National Recreation Area, Marin, San Francisco and San Mateo Counties, CA; Notice of Extension of Scoping Period**

**SUMMARY:** In accordance with section 102(2)(C) of the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is undertaking concurrent negotiated rulemaking and conservation planning–environmental impact analysis efforts to identify and evaluate alternatives for clear and enforceable guidelines to determine the manner and extent of dog-walking use in appropriate areas of the Golden Gate National Recreation Area (GGNRA). As announced February

22, 2006 in the **Federal Register** (V71N35\PP9147-48), the NPS is preparing an environmental impact statement for a GGNRA Dog Management Plan (plan/EIS) and has initiated a public scoping process to aid preparation of the plan/EIS.

The public scoping period is being extended from the original March 24, 2006 deadline to April 24, 2006.

**DATES:** Comments on issues and concerns and any environmental information relevant to the preparation of an Environmental Impact Statement for a Dog Management Plan will be accepted through April 24, 2006. All written comments must be transmitted or postmarked not later than 11:59 p.m. Mountain Time on Monday, April 24, 2006. Respondents to the original Notice need not re-submit their comments.

**SUPPLEMENTARY INFORMATION:** Interested individuals, organizations, and agencies that wish to comment on the scope of this plan/EIS should submit written comments via one of the two following options: (1) Online through the Planning, Environment and Public Comment Web site (<http://parkplanning.nps.gov>); select Golden Gate National Recreation Area, click on “EIS/Dog Management Plan for GGNRA” and follow the instructions on the website; or (2) mail written comments directly to Superintendent, GGNRA, Fort Mason, Building 201, San Francisco, CA 94123.

Please note that names and addresses of people who comment become part of the public record. If individuals commenting request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold from the record a respondent’s identity, as allowable by law. As always: The NPS will make

available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

A public scoping Newsletter, providing a preliminary synopsis of the project status, will be distributed in early March. In addition, two public scoping meetings are scheduled to be held on April 4 (in Sausalito) and April 5 (in San Francisco); both will occur from 4–7:30 pm. For details on meeting location, to request being added to the project mailing list, or for other current information updates, please contact the GGNRA Negotiated Rulemaking Information Line at (415) 561–4728.

As a delegated EIS, the official responsible for approval of the Record of Decision is the NPS Regional Director, Pacific West Region; subsequently the official who will be responsible for implementation is the Superintendent, Golden Gate National Recreation Area.

Dated: February 23, 2006.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. E6–4544 Filed 3–28–06; 8:45 am]

BILLING CODE 4312–FN–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Final Environmental Impact Statement/ Fire Management Plan; Golden Gate National Recreation Area; Marin, San Francisco and San Mateo Counties, CA; Notice of Approval of Record of Decision**

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved the Record of Decision for the updated Fire Management Plan for Golden Gate National Recreation Area. The formal no-action waiting period was officially initiated December 23, 2005, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

*Decision:* As soon as practicable the park will begin to implement as its updated Fire Management Plan the "Hazard Reduction and Resource

Enhancement through Multiple Treatments" alternative (also identified and analyzed as the *Preferred Alternative C* in the Draft and Final EIS). The selected plan update allows for the greatest number of acres to be treated annually while minimizing potential adverse resource effects of fire management activities. Alternative C utilizes prescribed burning and mechanical treatment strategies deemed to be appropriate for reducing fuel loads near developed areas. Expanded research will examine the role of these strategies in enhancing natural resource conditions, and will also be used to adaptively guide the fire management program and maximize the benefits to park cultural and natural resources. As documented in the EIS, this plan was also deemed to be the "environmentally preferred" alternative.

This course of action and two alternatives were initially identified and analyzed in the Draft EIS (distributed in March 2005); minor modifications were made based on public and agency review. The Final EIS was released in December 2005. The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified. Beginning with early scoping, through the preparation of the Draft and Final EIS, numerous public meetings and agency consultations were conducted, and newsletter updates were regularly provided. Approximately one dozen written responses to the Draft EIS were received and duly considered. Key consultations which aided in preparing the Draft and Final EIS involved (but were not limited to) the California State Historic Preservation Office, California Coastal Commission, local air quality management districts, adjoining land managing agencies, U.S. Fish and Wildlife Service, and National Marine Fisheries Service. Area residents, county and city officials, and interested organizations were contacted extensively during initial scoping and throughout the fire planning process.

*Copies:* Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Golden Gate National Recreation Area, Bldg. 201, Ft. Mason, San Francisco, CA 94123 or via telephone request at (415) 331–6374.

Dated: February 24, 2006.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. E6–4545 Filed 3–28–06; 8:45 am]

BILLING CODE 4312–FN–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **General Management Plan for Golden Gate National Recreation Area; Marin, San Francisco, and San Mateo Counties, CA; Notice of Intent To Prepare a Draft Environmental Impact Statement**

**SUMMARY:** Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service is initiating the scoping process for preparation of an Environmental Impact Statement on the General Management Plan (GMP) for Golden Gate National Recreation Area (GGNRA), including Muir Woods National Monument and Fort Point National Historical Monument, in the San Francisco Bay area of California. The GMP will provide a well-grounded, clearly defined direction for resource protection and visitor management throughout the area managed by GGNRA, including Muir Woods National Monument and Fort Point National Historic Site, and lands acquired since approval of the 1980 GMP.

Consistent with NPS Planning Program Standards and the Secretary of the Interior's "Four C's" (Consultation through Consultation, Cooperation, and Communication) the GMP will: (1) Describe the purposes, significance, and primary interpretive themes of the park; (2) identify the fundamental resources and values of the park, its other important resources and values, and describe the condition of these resources; (3) describe desired conditions for cultural and natural resources and visitor experiences throughout the park and for each management unit in the park; (4) develop management zoning to support these desired conditions; (5) develop alternative applications of these management zones to the park landscape (i.e., zoning alternatives); (6) address carrying capacity; (7) analyze potential boundary modifications; (8) ensure that the GMP recommendations are developed in consultation with interested stakeholders and the public and adopted by the NPS leadership after an adequate analysis of the benefits, environmental impacts, and economic costs of alternative courses of action; and (9) identify and prioritize subsequent detailed studies, plans and actions that may be needed to implement the GMP.

In addition, the GMP will: (1) Articulate park management

philosophy; (2) provide the foundation for managing park partnerships (which are critical to the successful future operation of GGNRA) and for coordinating and collaborating with adjacent public land managers; (3) provide a framework for continued public and partner stewardship of the park's resources; and (4) strive to foster an engaged constituency that will remain active in supporting the park in the future.

**Scoping:** Through the scoping process, the National Park Service (NPS) welcomes suggestions from the public regarding resource protection, visitor use, and management of the lands administered by GGNRA. This notice formally initiates the public scoping comment phase for the EIS process for the GMP update. All scoping comments must be postmarked or transmitted not later than 60 days after the publication of this notice—immediately upon confirmation of this date it will be announced on the park's GMP Web site (noted below). All written comments should be submitted to the following address: Brian O'Neill, Superintendent, GGNRA (Attn: GMP Team), Fort Mason, Bldg. 201, San Francisco, CA 94123 (or may be transmitted by electronic mail to [goga\\_gmp@nps.gov](mailto:goga_gmp@nps.gov) or via Facsimile to (415) 561-4710).

A key purpose of the scoping process is to elicit early public comment on the GMP proposal in order to inform the development of the Draft EIS. In addition, the scoping process will help define issues or problems to be addressed in the GMP. The public is encouraged to provide comments and pertinent information on issues and concerns, goals and objectives, alternatives, and potential environmental impacts or mitigation strategies. At this time it is expected that 4 public meetings will be hosted during April 19-27, 2006. Detailed information regarding these meetings will be posted on the GMP Web site (see below). Following a short presentation regarding the project, all attendees will be given the opportunity to ask questions and provide comments to the planning team. The GMP Web site will provide the most up-to-date information regarding the project, including project description, planning process updates, meeting notices, reports and documents, and useful links associated with the project. The URL for the GMP Web site is: <http://parkplanning.nps.gov/goga> (once at the site, click on project name and follow the instructions). Informational messages may also be accessed at (415) 561-4965.

It is the practice of the NPS to make all comments, including names and

addresses of respondents who provide that information, available for public review following the conclusion of the NEPA process. Individuals may request that the NPS withhold their name and/or address from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comments. Commentators using the Web site can make such a request by checking the box "keep my contact information private".

NPS will honor such requests to the extent allowable by law, but you should be aware that the NPS may still be required to disclose your name and address pursuant to the Freedom of Information Act.

**SUPPLEMENTARY INFORMATION:**

Established in 1972, GGNRA is one of the largest urban national park areas in the world and one of the most highly visited units in the National Park System. GGNRA encompasses approximately 59 miles of bay and ocean shoreline in San Francisco, Marin, and San Mateo Counties, California, consisting of hay and ocean beaches, redwood forests, lagoons, control streams, marshes, military properties, and such well known sites as Alcatraz Island, Marin Headlands, Fort Mason, and two separately designated units of the National Park System—Muir Woods National Monument (established in 1908) and Fort Point National Historic Site (established in 1970). The current GMP for GGNRA was approved in 1980. In 1988, lands administered by GGNRA were included as part of the Man and the Biosphere Program which designated the Golden Gate Biosphere Reserve, a partnership of 13 protected areas within the greater San Francisco Bay area.

The total area within the boundary includes over 79,000 acres of land—approximately 47,000 acres are included in the GMP planning area. Other areas within the authorized boundary include lands and waters that are not administered by GGNR but have joint management concerns (for example, Mount Tamalpais State Park), those Federal lands within GGNRA that are managed by Point Reyes National Seashore (the area north of Bolinas-Fairfax Road), and those non-Federal public lands for which GGNRA holds an easement with certain rights and responsibilities (23,000 acres of City of San Francisco Watershed lands), as well as non-Federal lands for which GGNRA has no jurisdiction or management responsibility (private lands) but monitors development and use.

During the 25 years since the GMP for GGNRA was approved, GGNRA has

been subjected to many boundary, land ownership, and management changes. The park's authorized acreage has expanded from 35,000 to over 79,000 acres, and management responsibilities for some areas have been transferred to other units in the National Park System (i.e., San Francisco Maritime National Historical Park, northern district lands, etc.). Other lands have been acquired by the National Park Service, and are now managed by GGNRA (i.e., Presidio, Fort Baker, San Mateo and Marin County lands, etc.). In addition, the park has been assigned new management responsibilities for areas such as easements over the 23,000 acre San Francisco Peninsula Watershed, former military lands, and leased tidelands. An updated GMP is needed to address these new land management responsibilities.

New planning is also needed to address changed conditions and better understanding of park resources and values. Since 1980, significant changes have occurred in public and National Park Service understanding and attitudes toward natural, cultural, and recreational resources that are managed by GGNRA. In 1980, the park was viewed primarily as an urban recreation area, and the emphasis of natural resource management was to preserve open space and natural character for the purpose of enhancing recreational opportunities within an aesthetic setting. Lands and water bodies that are within GGNRA are now highly regarded for their ecological and scientific values. Since 1980, 32 species known to occur in the park have been listed as threatened or endangered under provisions of the Endangered species Act.

Similarly, awareness of the park's cultural resources has expended significantly since 1980. Some structures that were initially proposed for demolition in the 1980 GMP have now been listed in the National Register of Historic Places (NRHP). In addition, the NPS better understands and recognizes the importance of the park's cultural landscapes. Cultural landscape inventories have identified 44 potential cultural landscapes within park boundaries that were not addressed in the 1980 GMP, and 11 cultural landscapes are now listed or have been determined eligible for listing in the NRHP.

**Decision Process:** At this time it is anticipated that the DEIS\GMP will be available for public review in 2009. Availability of the Draft EIS document will be formally announced through the publication of a Notice of Availability in the **Federal Register**, as well as through local and regional news media, direct

mailing to the project mailing list, and via the Internet at <http://parkplanning.nps.gov/goga>. Following consideration of all agency and public comment, a Final EIS will be prepared. As a delegated EIS the official responsible for the final decision on the proposed plan is the Regional Director, Pacific West Region, subsequently the official responsible for implementation of the approved plan is the Superintendent, Golden Gate National Recreation Area.

Dated: March 20, 2006

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. 06-3016 Filed 3-28-06; 8:45 am]

BILLING CODE 4312-FN-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Extension of San Francisco Municipal Railway Historic Streetcar Service; Golden Gate National Recreation Area and San Francisco Maritime National Historical Park; County of San Francisco; Notice of Intent To Prepare an Environmental Impact Statement**

**SUMMARY:** In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, and pursuant to the Council on Environmental Quality's regulations (40 CFR parts 1500-08), the National Park Service is initiating the conservation planning and environmental impact analysis process for the proposed extension of the northern waterfront Municipal Railway Historic Streetcar Service. Beginning at Fisherman's Wharf, this proposed railway extension would serve visitors to two popular units of the National Park System—San Francisco Maritime National Historical Park and the Fort Mason area of Golden Gate National Recreation Area. This project is being developed in close coordination with San Francisco Municipal Railway and other City and County of San Francisco planning and transportation agencies.

*Background:* A congressionally-mandated Travel Study completed in 1977 recommended restoring the historic rail link between the Hyde Street Pier and Fort Mason to improve access to various National Park Service (NPS) sites. The rail line was subsequently abandoned (1980), and the area between Hyde Street Pier and the Fort Mason tunnel entrance was designated a National Historic Landmark District in 1987 (which is now encompassed in the San Francisco Maritime National Historical Park created in 1988). Also, in the late 1980s

Federal highway funds originally intended for extending Interstate 280 were reallocated to a number of alternative transportation facilities along the Embarcadero including creation of an historic streetcar line along Market Street and the Embarcadero to Fisherman's Wharf. In 2000 this service was extended to Fisherman's Wharf, only .85 miles from the public-serving facilities at Fort Mason Center. The popularity of the historic streetcars, which currently serve more than 20,000 passengers a day, has resulted in public and private interest in extending the service, with the creation of the E-Line to Fort Mason.

The Municipal Railway (MUNI) currently operates historic streetcar service on Market Street and along the San Francisco waterfront (F-Line) to the line's existing terminus at Jones Street and Beach (in the Fisherman's Wharf area). The E-Line extension would begin at the terminus of the F-line and extend west to San Francisco Maritime National Historical Park (NHP) and on to Fort Mason. The exact route has yet to be determined but would utilize either existing rail right-of-way routes confined to city streets or pass through NHP's Aquatic Park (at the core of the National Historic Landmark District) in order to reach the Fort Mason tunnel. It is anticipated that under all alternatives the railway line would extend through the tunnel and end in the area of lower Fort Mason.

The NHP is visited by approximately 4 million people annually and is currently served by very popular cable cars (often crowded at peak tourist times) as well as streetcar and bus lines. Fort Mason, home to the Fort Mason Center, houses more than 40 non-profit organizations offering more than 15,000 events a year and attracting upwards of 1.6 million visitors. The Fort Mason area is underserved by mass transit access, and as a result automobile-based visitation causes massive parking problems that affect surrounding neighborhoods. Furthermore, inadequate mass transit access makes it difficult for transit-dependent San Franciscans to enjoy the cultural and educational events offered at Fort Mason Center.

*Development of Alternatives:* At this time a full range of alternatives has not been confirmed. However, in order to be successful, any project selected would:

- Increase alternative transportation options for visitors to the NHP and Fort Mason;
- Serve a new cohesive recreation and cultural corridor along the northern waterfront;

- Enhance links for the City's lower-income population with all NPS sites and other northern waterfront attractions;

- Improve local and regional transit connectivity and decrease the need for automobile use and parking in historic and environmentally sensitive areas;

- Facilitate efforts to reduce the need for automobile-based trips to the National Historic Landmark District destinations by providing park visitors an attractive, non-polluting mass transit access;

- Avoid or minimize adverse effects on the National Historic Landmark District and related cultural and historic resources and waterfront values.

*Scoping:* This notice serves to formally open the public scoping comment phase for this planning process. The purpose of the scoping process is to elicit public comment on the proposed extension in order to inform the development of the Draft EIS. The public and interested organizations are encouraged to provide comment on issues and concerns, feasible alternatives, potential environmental effects and appropriate mitigation measures that would reduce project impacts. The public will have an initial opportunity to comment on the proposal by attending a public scoping meeting or providing written comments electronically via the internet or sending letters through the mail. All scoping comments must be postmarked or transmitted not later than 60 days after the publication of this Notice in the **Federal Register**—as soon as this ending date is confirmed, it will be announced on the project Web site (noted below).

The NPS anticipates hosting a public meeting in late March 2006 (complete information regarding this meeting will be posted on the project Web site). Following a short presentation regarding the project, the public will be given the opportunity to ask questions and provide comments to the planning team. The project Web site will provide the most up-to-date information regarding the project, including project description, planning process updates, meeting notices, reports and documents, and useful links associated with the project (the Web site is: <http://parkplanning.nps.gov/goga>; once at the site, click on project name and follow Web site instructions). Written comments should be mailed to the following address: Superintendent—GGNRA, Attn: Rick Foster, MUNI Railway Extension Project Manager, Fort Mason, Bldg. 201, San Francisco, CA 94123. In addition to the project Web site, project updates or requests to be included on the Draft EIS mailing list

can be accommodated by contacting the MUNI Railway Extension Project Manager at (415) 561-4472.

It is the practice of the NPS to make all comments, including names and addresses of respondents who provide that information, available for public review following the conclusion of the NEPA process. Individuals may request that the NPS withhold their name and/or address from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. Commenters using the Web site can make such a request by checking the box "keep my contact information private". NPS will honor such requests to the extent allowable by law, but you should be aware that the NPS may still be required to disclose your name and address pursuant to the Freedom of Information Act.

**Decision Process:** At this time it is anticipated that the Draft EIS will be available for public review in early 2007. Availability of the Draft EIS document will be formally announced through the publication of a Notice of Availability in the **Federal Register**, through local and regional news media, via the project Web site, and direct mailing to the project mailing list. As a delegated EIS, the official responsible for the final decision regarding the proposed extension is the Regional Director, Pacific West Region. Subsequently the officials responsible for implementation will be the Superintendents of Golden Gate National Recreation Area and San Francisco Maritime National Historical Park.

Dated: March 20, 2006.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. E6-4548 Filed 3-28-06; 8:45 am]

BILLING CODE 4312-FN-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Pursuant to 28 CFR 507 notice is hereby given that on January 12, 2006, a proposed Consent Decree in the case *United States v. Adeline R. Bennett, MD Living Trust and Pitts Grandchildren's Trust*, Civil Action No. LACV 06-0238 DDP (AJWx), was lodged with the United States District Court for the Central District of California. This is the second public notice and comment period for this Consent Decree. The first notice was published in the **Federal**

**Register** on February 1, 2006, Volume 71, Number 21, Page 5379.

In this action, under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the "Site" or "WDI Site.").

The defendants in this action own a portion of the WDI Site, and the purpose of the settlement is to provide to the United States the access and institutional controls or environmental restriction covenants which are required to perform the remedial action at the Site. In addition, the defendants have agreed to sell their land parcels within a two year period of time after Decree entry, and pay a portion of the sale proceeds to the United States in reimbursements of its response costs. In return, the United States has provided covenants not to sue and contribution protection to each defendant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States v. Adeline R. Bennett, MD Living Trust and Pitts Grandchildren's Trust*, D.J. Ref. 90-11-2-1000/2.

The proposed Consent Decree may be examined at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94107. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>.

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing Tonia Fleetwood at fax No. (202) 514-0097 (phone confirmation number (202) 514-1547) or by e-mailing Tonia Fleetwood at [tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov). In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of \$69.50 (25 cents per page reproduction cost x 278 pages) payable to the U.S. Treasury. In requesting a copy of the Consent Decree, exclusive of exhibits, please enclose a check in the amount of \$15.25

(25 cents per page reproduction cost x 61 pages) payable to the U.S. Treasury.

**Henry S. Friedman,**

*Assistant Section Chief, Environmental Enforcement Section.*

[FR Doc. 06-3027 Filed 3-28-06; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Judgment Pursuant to Resource Conservation and Recovery Act

Notice is hereby given that on March 16, 2006, a proposed Consent Judgment in *United States v. Citygas Gasoline Corporation, et al.*, Civil Action No. CV-03-6374, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will resolve the United States' claims under Section 9006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6991e, on behalf of the U.S. Environmental Protection Agency against defendant Leggett Land Ltd. ("Leggett") in connection with alleged violations of the regulations governing underground storage tanks ("USTs") set forth at 40 CFR part 280 at a gas station owned by Leggett at 1081 Leggett Avenue, Bronx, New York. The Consent Judgment requires Leggett Land Ltd. to pay a civil penalty of \$100,000, to comply with the UST regulations within specified deadlines, and to perform a ground-penetrating radar study to locate out-of-service waste oil USTs at its facility, and, if found, to permanently close them.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Citygas Gasoline Corp., et al.*, DJ No. 90-7-1-07464.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York, 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007-1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed Consent Judgment may

be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of \$3.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Ronald G. Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06-3025 Filed 3-28-06; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on March 8, 2006, a proposed Second Modified Consent Decree ("proposed Decree") in *United States v. Puerto Rico Administration of Corrections*, Civil Action No. 90-2119, was lodged with the United States District Court for the District of Puerto Rico.

In this action the United States sought penalties and injunctive relief for violations by the Puerto Rico Administration of Corrections ("PRAC") of a Supplemental Consent Decree entered on February 14, 1997 ("1997 Decree"). The 1997 Decree resolved claims for violations by PRAC of a Consent Decree entered in this action on June 3, 1992, of National Pollutant Discharge Elimination System permits, and of Sections 301, 309 and 402 of the Clean Water Act, 33 U.S.C. 1311, 1319 and 1342. The proposed Decree requires PRAC to: (1) Pay \$500,000 in stipulated penalties for violations of the 1997 Decree; (2) complete a previously required safe drinking water supply system for a rural Puerto Rican community; and (3) conduct inspections of a component of a wastewater pump station.

For a period of thirty (30) days following the date of this publication, the U.S. Department of Justice will accept comments relating to the proposed Decree. Comments should be addressed to the Assistant General, c/o David Weigert, Environmental and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044-7611, and should refer to *United States v. Puerto Rico Administration of*

*Corrections*, Civil Action No. 90-2119, D.J. Ref. No. 90-5-1-1-3364/1.

The proposed Decree may be examined at the Office of the United States Attorney, c/o Isabel Muñoz, Torre Chardón, Suite 1201, 350 Carlos Chardón Avenue, San Juan, Puerto Rico, and at the office of the U.S. Environmental Protection Agency Region 2, Caribbean Environmental Protection Division, c/o José A. Rivera, 1492 Ponce de Leon Avenue, Centro Europa Building, Suite 417, San Juan, Puerto Rico. During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. Copies of the proposed Decree may also be obtained by mail from the U.S. Department of Justice, Consent Decree Library; P.O. Box 7611, Ben Franklin Station, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$16.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail of fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Ronald G. Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 06-3026 Filed 3-28-06; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review: Comment Request

March 23, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: [Mills.Ira@dol.gov](mailto:Mills.Ira@dol.gov). You can also access these documents through clicking on this link: <http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm>.

[www.doleta.gov/Performance/guidance/OMBControlNumber.cfm](http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration (ETA).

*Type of Review:* Extension.

*Title:* Characteristics of the Insured Unemployed.

*OMB Number:* 1205-0009.

*Frequency:* Monthly.

*Affected Public:* State, Local, or Tribal gov't.

*Type of Response:* Reporting.

*Number of Respondents:* 53.

*Annual Responses:* 636.

*Average Response time:* 1/3 hour.

*Total Annual Burden Hours:* 212.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* 0.

*Description:* This report is the only source of current, consistent demographic information (age, race/ethnic, sex, occupation, industry) on the Unemployment Insurance (UI) claimant population. These characteristics identify important claimant cohorts for legislative, economic and social planning purposes, and evaluation of the UI program on the Federal and State levels.

**Ira L. Mills,**

*Departmental Clearance Officer/Team Leader*

[FR Doc. E6-4532 Filed 3-28-06; 8:45 am]

**BILLING CODE 4510-30-P**

**DEPARTMENT OF LABOR****Office of the Secretary****Submission for OMB Review:  
Comment Request**

March 22, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: [Mills.Ira@dol.gov](mailto:Mills.Ira@dol.gov). These documents can be accessed online at: <http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm>. Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision.

Title: Claims and Payments Activities.

OMB Number: 1205-0010.

Frequency: Monthly.

Affected Public: State, local, or tribal gov't.

Type of Response: Reporting.

Number of Respondents: 53.

Annual Responses: 720.

Average Response time: 2 hours per regular monthly report; additionally 3 states complete 6 EB reports at 1.74 hours each and 11 states complete 6 STC reports at 1 hour each.

Total Annual Burden Hours: 1359.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Data measures workload and provides quantitative information for budget estimates, administrative planning and program evaluation. This is the major vehicle for accounting to the public.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E6-4533 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-58,970]

**ADC, Shakopee, MN; Notice of  
Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 7, 2006 in response to a worker petition filed by a state agency representative on behalf of workers at ADC, Shakopee, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-4602 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-58,413]

**Badger Paper Mills, Currently Known  
as BPM, Inc., Flexible Packaging  
Division, Oconto Falls, WI; Notice of  
Termination of Investigation**

On February 24, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and

former workers of the subject firm. The Department's notice will soon be published in the **Federal Register**.

The subject workers are covered by an active certification, TA-W-54,242, which expires on March 22, 2006. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 8th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-4595 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-58,540]

**Cytech Hardwood, Inc., Amsterdam,  
NY; Notice of Affirmative  
Determination Regarding Application  
for Reconsideration**

By application of February 19, 2006, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Notice of determination was signed on January 24, 2006 and published in the **Federal Register** on February 10, 2006 (71 FR 7077).

The Department has carefully reviewed the request for reconsideration and previously submitted information, and has determined that the Department will conduct further investigation based on new information provided by the company official.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-4598 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-58,914]

**Eaton Corporation, Powertrain Controls Division, Marshall, MI; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2006 in response to a worker petition filed by a company official on behalf of workers at Eaton Corporation, Powertrain Controls Division, Marshall, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2006.

**Richard Church,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-4601 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-58,982]

**Guildcraft of California, Rancho Dominguez, CA; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 10, 2006 in response to a petition filed by a company official on behalf of workers at Guildcraft of California, Rancho Dominguez, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March, 2006.

**Elliott S. Kushner,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-4605 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-55,262]

**JDS Uniphase Corporation, Including On-Site Leased Workers of Manpower, Ciber and Spherion, Rochester, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 16, 2004, applicable to workers of JDS Uniphase Corporation, including leased workers of Manpower and Ciber, Rochester, Minnesota. The notice was published in the **Federal Register** on September 8, 2004 (69 FR 54321).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of optical transceivers.

New information shows that leased workers of Spherion were employed on-site at the Rochester, Minnesota location of JDS Uniphase Corporation.

Based on these findings, the Department is amending this certification to include leased workers of Spherion working on-site at JDS Uniphase Corporation, Rochester, Minnesota.

The intent of the Department's certification is to include all workers employed at JDS Uniphase Corporation, Rochester, Minnesota who were adversely affected by a shift in production to Mexico and Thailand.

The amended notice applicable to TA-W-55,262 is hereby issued as follows:

All workers of JDS Uniphase Corporation, Rochester, Minnesota, including on-site leased workers of Manpower, Ciber and Spherion, who became totally or partially separated from employment on or after June 25, 2003, through August 16, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of March 2006.

**Richard Church,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-4587 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-58,995]

**Moore Wallace Inc., Nacogdoches, TX; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 10, 2006 in response to a petition filed by a company official on behalf of workers at Moore Wallace Inc., Nacogdoches, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of March, 2006.

**Linda G. Poole,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-4603 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-58,670]

**SLM Electronics, St. Louis Music Inc. Division, Yellville, AR; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 19, 2006 in response to a worker petition filed by a state agency representative on behalf of workers at SLM Electronics Division of St. Louis Music Inc., Yellville, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of March 2006.

**Linda G. Poole,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-4599 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-59,006]

**Spherion Leased Workers Working On-Site at JDS Uniphase Corporation, Rochester, MN; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 13, 2006 in response to a petition filed by a state workforce agent on behalf of leased Spherion workers working on-site at JDS Uniphase Corporation; Rochester, Minnesota.

The petitioning group of workers is covered by an active certification, TA-W-55,262 (amended March 21, 2006), which expires on August 16, 2006. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of March, 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-4607 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-58,848]

**Volvo Construction Equipment, North America Industrial Hub, Skyland, NC; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 15, 2006 in response to a worker petition filed by a company official on behalf of workers at Volvo Construction Equipment, North America, Industrial Hub, Skyland, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 6th day of March, 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-4600 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[SGA/DFA-PY 05-06]

**Solicitation for Grant Applications (SGA); Older Americans Act—Senior Community Service Employment Program National Grants for Program Year 2006**

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice; amendment.

**SUMMARY:** The Employment and Training Administration published a document in the **Federal Register** of March 2, 2006, concerning the availability of funds and solicitation for grant applications for the national grants portion of the Senior Community Service Employment Program. The document is hereby amended.

**FOR FURTHER INFORMATION CONTACT:** James W. Stockton, Grant Officer, Division of Federal Assistance, Telephone (202) 693-3335.

Amendment in the **Federal Register** of March 2, 2006, in FR Doc. 06-1959, on page 10820, in the first column, amended to read: Prospective applicants are advised that Appendix K has been updated to accurately reflect the correct locations of National Grantee positions.

Signed at Washington, DC, this 23rd day of March, 2006.

**James W. Stockton,**

*Grant Officer.*

[FR Doc. E6-4584 Filed 3-28-06; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Bureau of Labor Statistics****Business Research Advisory Council; Notice of Meetings and Agenda**

The regular Spring meetings of the Business Research Advisory Council and its committees will be held on April 19 and 20, 2006. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

**Wednesday—April 19 (Conference Rooms 1 & 2)**

*10-11:30 a.m.—Committee on Productivity and Foreign Labor Statistics*

1. The new NAICS-based major sector multifactor productivity measures.
2. Productivity and cost measures for two new service industries.
3. Chartbook of international labor comparisons.
4. Update on country expansion in compensation comparisons (China, India, and ILO collaboration).
5. Discussion of agenda items for the Fall 2006 meeting.

*1-2:30 p.m.—Committee on Compensation and Working Conditions*

1. Benefits outputs—a summary of recent research.
2. Change is coming to the ECI—a preview of the April Monthly Labor Review.
3. Defining wages—a comparison of BLS programs.
4. Program developments—short reports on recent and up-coming changes.
5. Discussion of agenda items for the Fall 2006 meeting.

*3-4:30 p.m.—Committee on Prices Indexes*

1. CPI: Medical Care and Prescription Drugs.
2. PPI: Classification of Firms as Manufacturing or Wholesale Trade.
3. Discussion of agenda items for the Fall 2006 meeting.

**Thursday—April 20 (Conference Rooms 1 & 2)**

*8:30-10 a.m.—Committee on Employment and Unemployment Statistics*

1. Report on the Federal Economic Statistics Advisory Committee (FESAC) recommendations on the CPS-CES discrepancy.
2. Discussion of planned changes to the Mass Layoff Statistics employer interview: (a) Revisions to the reasons for separations; and (b) addition of business functions of separated employees.
3. Review and discussion of preliminary plans for integrating Current Employment Statistics and Quarterly Census of Employment and Wages data.
4. Discussion of agenda items for the Fall 2006 meeting.

*10:30 a.m.—12 p.m.—Council Meeting*

1. Chairperson's opening remarks.
2. Commissioner's address and discussion.

1:30–3 p.m.—Committee on Occupational Safety and Health Statistics

1. Election of Vice-Chair for the Committee.
2. Brief Recap of Results from the 2004 Survey of Occupational Injuries and Illnesses—Summary and Case & Demographics.
3. Internet collection and Mail Tests.
4. Research Results to date—Injury, Illness, and Fatality Rates.
5. Potential Undercount.
6. Updates—Future plans; schedule of next news releases; budget status.
7. Discussion of agenda items for the Fall 2006 meeting.

The meetings are open to the public. Persons wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at 202–691–5869.

Signed at Washington, DC, the 22nd day of March, 2006.

**Philip L. Rowes,**

*Acting Commissioner.*

[FR Doc. E6–4536 Filed 3–28–06; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before April 28, 2006 to be assured of consideration.

**ADDRESSES:** Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995

(Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on January 4, 2006 (71 FR 369 and 370). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* National Archives Public Research Facility Customer Satisfaction Survey.

*OMB number:* 3095–00XX.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Individuals who visit the National Archives Research Facility in Washington, DC.

*Estimated number of respondents:* 1,000.

*Estimated time per response:* 10 minutes.

*Frequency of response:* Once per respondent.

*Estimated total annual burden hours:* 167 hours.

*Abstract:* The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this voluntary data collection is to (1) provide baseline data concerning the effectiveness of the National Archives Research Center's program which is aimed largely at genealogists and family historians, (2) measure customer satisfaction with the National Archives Research Center, and (3) identify additional opportunities for improving the customers' experience.

2. *Title:* Forms Relating to Civilian Service Records.

*OMB number:* 3095–0037.

*Agency form number:* NA Forms 13022, 13064, 13068.

*Type of review:* Regular.

*Affected public:* Former Federal civilian employees, their authorized

representatives, state and local governments, and businesses.

*Estimated number of respondents:* 32,060.

*Estimated time per response:* 5 Minutes.

*Frequency of response:* On occasion, when individuals desire to acquire information from Federal civilian employee personnel or medical records.

*Estimated total annual burden hours:* 2,671 hours.

*Abstract:* In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF or EMF, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

3. *Title:* National Personnel Records Center (NPRC) Survey of Customer Satisfaction.

*OMB number:* 3095–0042.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Federal, state and local government agencies, veterans, and individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

*Estimated number of respondents:* 1,000.

*Estimated time per response:* 10 minutes.

*Frequency of response:* On occasion (when respondent writes to MPR requesting information from official military personnel files).

*Estimated total annual burden hours:* 167 hours.

*Abstract:* The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to provide MPR management with an ongoing

mechanism for monitoring customer satisfaction. In particular, the purpose of the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction is to (1) determine customer satisfaction with MPR's reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: March 9, 2006.

**Martha Morphy,**

*Acting Assistant Archivist for Information Services.*

[FR Doc. E6-4535 Filed 3-28-06; 8:45 am]

BILLING CODE 7515-01-P

**NATIONAL TRANSPORTATION SAFETY BOARD**

**Notice of Sunshine Act Meeting**

**TIME AND DATE:** 9:30 a.m., Tuesday, April 4, 2006.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTERS TO BE CONSIDERED:** 7770, *Marine Accident Report—Fire On Board U.S. Small Passenger Vessel Express Shuttle II, Pithlachascotee River, near Port Richey, Florida, October 17, 2004.*

**NEW MEDIA CONTACT:** Telephone: (202) 314-6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314-6305 by Friday, March 31, 2006.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at <http://www.nts.gov>.

**FOR MORE INFORMATION CONTACT:** Vicky D'Onofrio, (202) 314-6410.

Dated: March 24, 2006.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. 06-3058 Filed 3-24-06; 4:37 pm]

BILLING CODE 7533-01-M

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-348]

**Southern Nuclear Operating Company; Joseph M. Farley Nuclear Power Plant, Unit 1; Exemption**

**1.0 Background**

The Southern Nuclear Operating Company (SNC, the licensee) is the holder of Renewed Facility Operating License No. NPF-2 which authorizes operation of Joseph M. Farley Nuclear Power Plant (FNP), Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Houston County, Alabama.

**2.0 Request/Action**

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," establishes fire protection features required to satisfy General Design Criterion 3, "Fire protection," of Appendix A to 10 CFR Part 50 with respect to certain generic issues for nuclear power plants licensed to operate prior to January 1, 1979. FNP, Unit 1 was licensed to operate prior to January 1, 1979. Therefore, FNP, Unit 1 is directly subject to Appendix R.

By letter dated January 19, 2005, as supplemented by letters dated June 9 (two letters) and November 18, 2005, SNC, the licensee for FNP, Unit 1, submitted a request for a permanent exemption from 10 CFR Appendix R, Section III.G.2, pertaining to FNP, Unit 1 (SNC letters NL-04-2357, NL-05-0937, NL-05-0960 and NL-05-1975, respectively). Specifically, 10 CFR Appendix R, Section III.G.2, would require the use of a 1-hour rated fire barrier for protection of certain safe shutdown control circuits located in Fire Areas 1-013 and 1-042. In lieu of providing such 1-hour rated fire barriers, the licensee proposes the use of fire-rated electrical cable produced by Meggitt Safety System, Inc., (previously known as Whittaker Electronic Resources Unit of Whittaker Electronic Systems) for several cables in Fire Areas 1-013 and 1-042 associated with safe shutdown control circuits.

**3.0 Discussion**

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own

initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These special circumstances are described in 10 CFR 50.12(a)(2)(ii), in that the application of these regulations is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of Appendix R, Section III.G, is to provide features capable of limiting fire damage so that: (1) One train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage; and (2) systems necessary to achieve and maintain cold shutdown from either the control room or emergency control station(s) can be repaired within 72 hours.

**3.1 Overview of Approach Used by Licensee**

For this specific fire protection application, SNC proposes plant modifications to use 1-hour fire-rated electrical cable in lieu of a 1-hour rated fire barrier as required by 10 CFR Part 50, Appendix R, Section III.G.2. Section III.G.2 of 10 CFR Part 50, Appendix R, provides fire protection requirements for electrical cables located within the same fire area whose failure could cause the maloperation of redundant trains of systems necessary to achieve and maintain hot shutdown conditions. These areas are required to have protection features such that one of the redundant trains will be free of fire damage in the event of a fire. One method, described in Section III.G.2, for ensuring compliance with this requirement is to enclose the cable and equipment and associated non-safety circuits of one redundant train in a 1-hour rated fire barrier. In addition, an area-wide automatic fire suppression and detection system shall be installed in the fire area.

A postulated fire in Fire Area 1-013 or 1-042 could cause loss of offsite power; both fire areas contain cable bus ducts from the startup transformers to both redundant trains of the 4 kilovolt (KV) Appendix R safe shutdown (SSD) busses. A postulated fire in either of these fire areas could also potentially impact the function of the Train B 4 KV Emergency Diesel Generator (EDG) 1B control circuitry. The majority of the Train A onsite electrical power system components required for Appendix R SSD are not located in Fire Area 1-013 or 1-042. The following Train A onsite power system related SSD circuits

located in Fire Areas 1-013 and 1-042 will be protected by a 1-hour fire-rated electrical cable along with area-wide automatic fire suppression and detection:

1. Protection of control circuitry that could potentially disable the supply of the onsite power from the Train A 4KV EDGs 1-2A and 1-C, or disable supply of 7 Train A onsite power due to inadvertent loading of electronic switching system (ESS) loads onto EDG 1-C:

(a) The control interlocks for the automatic alignment of the Train A Swing EDG 1C Incoming Breaker 1-DH07 or 2-DH07 to provide onsite AC power due to loss of offsite power to the shutdown buses.

(b) The control interlocks for the automatic alignment of the Train A Swing EDG 1-2A Incoming Breaker 1-DF08 or 2-DF08 to provide onsite AC power due to loss of offsite power to the shutdown buses.

(c) The control interlocks for the automatic alignment of Unit 1 600V Load Center 1D Breaker 1-ED13 or Unit 2 600V Load Center 2D Breaker 2-ED13 to MCC 1S (power to the Train A Swing EDG 1-2A auxiliaries) so that the MCC is aligned to the same DG 1-2A.

(d) The control interlocks from Unit 2 ESS Sequencer that blocks Unit 1 ESS Sequencer on a Unit 2 safety injection actuation signal (This signal is to prevent inadvertent loading of ESS loads on smaller DG 1C).

(e) The control interlock from Unit 1 ESS Sequencer that blocks Unit 2 ESS Sequencer on a Unit 1 safety injection actuation signal (This signal is to prevent inadvertent loading of ESS loads on smaller DG 1C).

2. Protection of the control circuitry that could potentially disable the operation of the 4KV power supply breakers to the Train A Component Cooling Water Pump 1C, Train A Charging Pump 1A, and Train A Motor-Driven Auxiliary Feed-Water Pump 1A.

3. Protection of the control circuitry that could potentially disable the operation of the 600V load center power supply breaker to Train A Pressurizer Heater Group 1A.

A 1-hour rated fire barrier as described in Section III.G.2 of 10 CFR Part 50, Appendix R is not provided. Instead, these credited Train A components will utilize fire-rated electrical cables (Mineral Insulated (MI) cables). This fire-rated electrical cable has been tested in accordance with American Society for Testing Materials (ASTM) E-119, "Standard Test Methods for Fire Tests of Building Construction Materials."

## 3.2 Technical Evaluation

### 3.2.1 Test Results

The NRC staff reviewed this issue with respect to determining that the fire-rated electrical cables would be capable of providing an equivalent level of

protection as would be provided by a 1-hour rated fire barrier as required by 10 CFR part 50, Appendix R, Section III.G.2.

The licensee provided copies of the test report, "Appendix R, One-Hour Fire Resistive Control Cable Test," dated August 11, 2004, in its submittal. The cables in Farley, Unit 1 are used as control circuit applications and are rated at 125 volts direct-current (VDC). The licensee's report, listed above, includes the fire test performance results for 8 Conductor #12 AWG Meggitt Safety Systems electrical cable with factory splices and several support systems and attachment methods, when exposed to the ASTM E-119 time-temperature heating curve for a period of 1 hour.

### 3.2.2 Megger Testing

The fire-rated electrical cables at FNP were tested for use in low voltage control circuits. Megger Testing was conducted at 500 VDC, to obtain conductor-to-conductor and conductor-to-ground insulation resistance values, before the fire test, during the fire test, and after the hose stream test. To ensure that the conductor-to-conductor and conductor-to-ground insulation resistance (IR) readings were obtained for all conductor combinations at the peak ASTM E-119 1-hour test temperature, the first test was extended for an additional 38 minutes and 12 seconds with the furnace temperature held as close as possible to 1700 degrees Fahrenheit until all IR values were recorded. Obtaining insulation resistance values during the fire test by the test method applied provided conservative test results that meet the fire Megger Testing requirements of GL 86-10, Supplement 1, for the FNP specific 1-hour rated control cable application. The NRC staff finds, based on the Megger Testing, that the insulation resistance values are acceptable for the specific application at FNP, Unit 1.

### 3.2.3 Minimum Insulation Resistance Value

The licensee completed a plant circuit-specific analysis and concluded that the control circuit protective devices will not trip during a fire event with an IR value of 5.7 mega-ohms/foot ( $M'\Omega/\text{ft}$ ). The minimum IR value recorded during the fire test was 0.8  $M'\Omega$ , and with 24.176 feet of cable inside the furnace, that equated to 19.3  $M'\Omega/\text{ft}$ . This far exceeds the FNP-specific minimum acceptance value of 5.7  $M'\Omega/\text{ft}$ .

The NRC staff concludes that, based on the information provided, the

minimum IR value recorded during testing is acceptable for the specific application at FNP, Unit 1.

### 3.2.4 Mechanical Damage Protection

Rated 1-hour electrical cable raceway fire barriers are tested in a furnace and subject to a hose stream test that ensures the raceway and the barriers will stay in place following a fire exposure. The fire-rated electrical cables were tested in a furnace and subjected to a hose stream. Since the fire-rated electrical cables themselves are the barriers, any mechanical damage that occurs to the cables may cause the cables to fail. The licensee's letter dated June 9, 2005, stated that the areas where the fire-rated electrical cables are routed are protected with area-wide automatic fire suppression and detection systems, as required by Appendix R Section III.G.2.c. In addition, the routing for each fire-rated electrical cable was established by plant walk-downs to protect against potential physical hazards. The licensee stated that the fire-rated electrical cables are also safety-related and will be installed to meet the FNP routing requirements for Class 1E cable protection from physical hazards. The fire-rated electrical cables are only routed in safety-related Class 1 structures, and all safety-related and nonsafety-related equipment and components in these structures are seismically supported.

The NRC staff concludes, based on the information provided, that there is adequate protection from mechanical damage to demonstrate equivalence to a raceway fire barrier system for the specific application at FNP, Unit 1.

### 3.2.5 Galvanized Supports

When in contact with galvanized supports, fire-resistive electrical cable produced by Meggitt Safety Systems, Inc. has been reported to experience degradation due to liquid metal embrittlement. This degradation occurs at the positions where the galvanized supports are in direct contact with the stainless steel cable jacket. Section 4, subsection j of Meggitt Safety Systems engineering document, "Unpacking, Inspection, Installation and Standard Practices for 8/C #12 AWG Si 2400 Fire-Rated Cable For J.M. Farley Nuclear Plant, Revision D," states that "Si Fire Cable may be routed in cable trays; Stainless steel trays are recommended. Cable should not be installed in galvanized trays and should NOT be in direct contact with galvanized or aluminum trays or structures."

The NRC staff concludes, based on the information provided in the engineering document, that the installation standard

will adequately address the concern with galvanized supports for the specific application at FNP, Unit 1.

### 3.2.6 Defense-in-Depth

The following are the fire protection defense-in-depth objectives: (1) To prevent fires from starting; (2) to detect rapidly, control, and extinguish promptly those fires that do occur; and (3) to provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant. The licensee stated that Fire Areas 1-013 and 1-042 are provided with area-wide automatic fire suppression and detection systems. The use of fire-rated electrical cables is a substitute for 1-hour rated fire barriers that are required by 10 CFR Part 50, Appendix R, and supports the third defense-in-depth objective. For this specific application, the licensee has demonstrated that the fire-rated electrical cables used are a suitable alternative to the 1-hour rated fire barrier as required by 10 CFR part 50, Appendix R.

### 4.0 Conclusion

The NRC staff concludes that, on the bases of the discussions in the sections above, for the specific application of this material, the licensee has adequately demonstrated that this fire-rated electrical cable will perform in an equivalent manner when compared to a rated barrier for this use. The NRC staff also concludes that the use of the MI cable for these purposes, meets the underlying purpose of Appendix R and, that, therefore special circumstances are present. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants Southern Nuclear Operating Company an exemption from the requirements to 10 CFR Part 50, Appendix R, Section III.G.2, to the extent that it requires protection of cables of one redundant train of safe shutdown equipment by a 1-hour rated fire barrier, for Fire Areas 1-013 and 1-042. The fire-rated electrical cables provide an equivalent level of protection necessary to achieve the underlying purpose of the rule for Joseph M. Farley Nuclear Plant, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the

human environment (71 FR 12219, March 9, 2006).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of March 2006.

For the Nuclear Regulatory Commission.

**Edwin M. Hackett,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6-4586 Filed 3-28-06; 8:45 am]

**BILLING CODE 7590-01-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meeting Notice

**TIME AND DATE:** 2 p.m., Thursday, April 20, 2006.

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Hearing Open to the Public at 2 p.m.

**PURPOSE:** Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

*Procedures:* Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, April 14, 2006. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Friday, April 14, 2006. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

### FOR FURTHER INFORMATION CONTACT:

Information on the hearing may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at [cdown@opic.gov](mailto:cdown@opic.gov).

Dated: March 27, 2006.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 06-3073 Filed 3-27-06; 11:09 am]

**BILLING CODE 3210-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27265; 812-13199]

### OppenheimerFunds, Inc., et al.; Notice of Application

March 22, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

*Summary of Application:* Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

*Applicants:* OppenheimerFunds, Inc. ("OFI"), Centennial Asset Management Corp. ("CAMC," and OFI, together, the "Adviser"), Bond Fund Series, Oppenheimer AMT-Free Municipals, Oppenheimer Fund AMT-Free New York Municipals, Oppenheimer Balanced Fund, Oppenheimer California Municipal Fund, Oppenheimer Capital Appreciation Fund, Oppenheimer Capital Income Fund, Oppenheimer Cash Reserves, Oppenheimer Champion Income Fund, Oppenheimer Developing Markets Fund, Oppenheimer Discovery Fund, Oppenheimer Dividend Growth Fund, Oppenheimer Equity Fund, Inc., Oppenheimer Emerging Growth Fund, Oppenheimer Emerging Technologies Fund, Oppenheimer Enterprise Fund, Oppenheimer Global Fund, Oppenheimer Global Opportunities Fund, Oppenheimer Gold & Special Minerals Fund, Oppenheimer Growth Fund, Oppenheimer High Yield Fund, Oppenheimer Integrity Funds, Oppenheimer International Bond Fund,

Oppenheimer International Diversified Fund, Oppenheimer International Growth Fund, Oppenheimer International Large-Cap Core Trust, Oppenheimer International Growth Fund, Oppenheimer International Small Company Fund, Oppenheimer International Value Trust, Oppenheimer Limited Term California Municipal Fund, Oppenheimer Limited-Term Government Fund, Oppenheimer Main Street Funds, Inc., Oppenheimer Main Street Opportunity Fund, Oppenheimer Main Street Small Cap Fund, Oppenheimer Midcap Fund, Oppenheimer Money Market Fund, Inc., Oppenheimer Multi-State Municipal Trust, Oppenheimer Municipal Fund, Oppenheimer Portfolio Series, Oppenheimer Principal Protected Trust, Oppenheimer Principal Protected Trust II, Oppenheimer Principal Protected Trust III, Oppenheimer Quest Capital Value Fund, Inc., Oppenheimer Quest International Value Fund, Inc., Oppenheimer Quest For Value Funds, Oppenheimer Quest Value Fund, Inc., Oppenheimer Real Asset Fund, Oppenheimer Real Estate Fund, Oppenheimer Select Value Fund, Oppenheimer Series Fund, Inc., Oppenheimer Strategic Income Fund, Oppenheimer Total Return Bond Fund, Oppenheimer U.S. Government Trust, Oppenheimer Variable Account Funds, Rochester Fund Municipals, Rochester Portfolio Series, and Panorama Series Fund, Inc. (collectively, the "Oppenheimer Funds,"), Centennial California Tax Exempt Trust, Centennial Government Trust, Centennial Money Market Trust, Centennial New York Exempt Trust and Centennial Tax Exempt Trust (collectively, the "Centennial Funds," together with the Oppenheimer Funds, the "Funds"), and any other registered open-end management investment companies or series thereof that are currently, or in the future may be advised or, provided the Adviser manages the Cash Balances (as defined herein), subadvised by the Adviser (included in the term "Funds").

**Filing Dates:** The application was filed on June 9, 2005. Applicants have agreed to file a final amendment during the notice period, the substance of which is reflected in this notice.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 17, 2006, and should be accompanied by proof of

service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, R. William Hawkins, Esq., OppenheimerFunds, Inc., Two World Financial Center, 225 Liberty Street, 11th Floor, New York, NY 10281.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 551-6868, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (tel. 202-551-5850).

#### Applicants' Representations

1. Each Fund, organized as a Massachusetts business trust or Maryland corporation, is registered under the Act as an open-end management investment company.<sup>1</sup> Certain Funds operate as money market funds that comply with rule 2a-7 under the Act ("Cash Management Funds"). OFI, a Colorado corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and serves as investment adviser to each of the Oppenheimer Funds. CAMC, an investment adviser registered under the Advisers Act, is a wholly-owned subsidiary of OFI and serves as investment adviser to each of the Centennial Funds.

2. Each Fund has, and may be expected to have, uninvested cash in an account at its custodian ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, such as dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment purposes, scheduled maturity of investments, proceeds from liquidation of investment securities, dividend payments, or money received

<sup>1</sup> All Funds that currently intend to rely on the requested relief have been named as applicants and any existing or future Fund that relies on the requested relief in the future will do so only in accordance with the terms and conditions of the application.

from investors. Certain Funds may participate in a securities lending program under which a Fund will lend its portfolio securities to registered broker-dealers or other institutional investors (the "Securities Lending Program"). The loans will be continuously secured by collateral, which may include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances"). The Securities Lending Program, including the investment of any Cash Collateral, will comply with all present and future Commission or staff positions regarding securities lending arrangements.

3. Applicants request relief to permit: (a) Certain Funds ("Investing Funds") to use Cash Balances to purchase shares of one or more of the Cash Management Funds, (b) the Cash Management Funds to sell their shares to, and redeem their shares from, each of the Investing Funds and (c) the Adviser to effect the above transactions. Investment of Cash Balances in shares of the Cash Management Funds will be made only to the extent consistent with an Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions will result in higher yields, increased investment opportunities, reduced transaction costs, increased returns, reduced administrative burdens, enhanced liquidity, and increased diversification.

#### Applicants' Legal Analysis

##### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act authorizes the Commission to exempt any person, security or transaction (or classes thereof) from any provision of section 12(d)(1) if, and to the extent

that, the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use their Cash Balances to acquire shares of the Cash Management Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases an Investing Fund's aggregate investment of Uninvested Cash in shares of the Cash Management Funds will not exceed 25% of the Investing Fund's total assets. Applicants also request relief to permit the Cash Management Funds to sell their shares to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Cash Management Fund will maintain a highly liquid portfolio, a Cash Management Fund would not need to maintain a special reserve or balances to meet redemptions by an Investing Fund. Applicants state that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Cash Management Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD Conduct Rules")) or, if such shares are subject to any such fees, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Cash Management Fund offers more than one class of securities, each Investing Fund will invest only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Fund's investment) at the time of the investment. Before the next meeting of the board of trustees/directors ("Board") of an Investing Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee attributable to managing the Uninvested Cash of the Investing Fund, that can be expected to be invested in the Cash Management Funds. In connection with approving any advisory contract for an Investing

Fund, the Board, including a majority of the trustees/directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees/Directors"), will consider to what extent, if any, the advisory fee charged to each Investing Fund by the Adviser should be reduced to account for reduced services provided by the Adviser as a result of Uninvested Cash being invested in a Cash Management Fund. Applicants represent that no Cash Management Fund whose shares are held by an Investing Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limitations contained in section 12(d)(1)(A) of the Act.

#### *B. Section 17(a) of the Act*

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Control is defined in section 2(a)(9) of the Act as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company." Applicants state that the Investing Funds and the Cash Management Funds may be deemed to be under common control, and therefore affiliated persons of each other, because they have a common Board, a common investment adviser or their investment advisers may be under common control. In addition, applicants submit that because an Investing Fund could acquire 5% or more of the outstanding voting shares of a Cash Management Fund, such Investing Fund might be deemed an affiliated person of the Cash Management Fund. Accordingly, applicants state that the sale of shares of the Cash Management Fund to the Investing Funds, and the redemption of such shares by the Investing Funds, may be prohibited under section 17(a).

2. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part

of any person concerned, and the proposed transaction is consistent with the policies of each registered investment company involved and with the general purposes of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief to permit the purchase and redemption of Cash Management Fund shares by the Investing Funds satisfies the standards of sections 17(b) and 6(c) of the Act. Applicants state that the Investing Funds will purchase and redeem shares of the Cash Management Funds at net asset value, which is the same consideration paid and received for such shares by other shareholders. In addition, the Investing Funds will retain their ability to invest their Cash Balances directly into money market instruments or short-term instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that each of the Cash Management Funds reserves the right to discontinue selling shares to any of the Investing Funds if the management or Board of the Cash Management Fund determines that such sales would adversely affect its portfolio management and operations.

#### *C. Section 17(d) of the Act and Rule 17d-1 Under the Act*

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Applicants state that each Investing Fund (by purchasing shares of the Cash Management Funds), each Adviser of an Investing Fund (by managing the assets of the Investing Funds invested in the Cash Management Funds), and each Cash Management Fund (by selling shares to and redeeming them from the Investing Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d-1 thereunder.

2. In determining whether to approve a joint transaction under rule 17d-1 under the Act, the Commission will consider whether the participation by the investment company in the joint transaction or arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Investing Funds in shares of the Cash Management Funds will be on the same basis and will be indistinguishable from any other shareholder account maintained by the same class of the Cash Management Funds, and the proposed transactions satisfy the standards of rule 17d-1 under the Act.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Shares of the Cash Management Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of an Investing Funds held for purposes of voting on an advisory contract under Section 15 the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Cash Management Funds. Before approving any advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Independent Trustees/Directors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced or duplicative services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Cash Management Funds. The minutes of the meeting of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Cash Management Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Cash Management Funds does not exceed 25% of the Investing Fund's total assets.

4. Investment of Cash Balances in shares of the Cash Management Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. No Cash Management Fund shall acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Investing Fund and Cash Management Fund that may rely on the requested order shall be advised by the Adviser.

7. Before an Investing Fund may participate in a Securities Lending Program, a majority of the Fund's Board, including a majority of the Independent Trustees/Directors, will approve the Fund's participation in the Securities Lending Program. The Board will evaluate the Securities Lending Program and its results no less frequently than annually and determine that any investment of Cash Collateral in the Cash Management Funds is in the best interests of the shareholders of the Investing Fund.

8. The Board of any Investing Fund will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Nancy M. Morris,**

*Secretary,*

[FR Doc. E6-4518 Filed 3-28-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53540; File No. SR-Amex-2006-14]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Specialists' Transactions With Public Customers

March 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 7, 2006, the American Stock Exchange LLC ("Amex" 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 prepared by Amex. On March 16, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 17, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 190 and Section 910 of the Amex Company Guide to permit business transactions between a specialist or his member organization, or any member, officer, employee or approved person therein and the sponsor of any exchange traded fund ("ETF") in which the specialist is registered. The text of the proposed rule

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Exchange revised proposed Amex Rule 190, Commentary .07 (iv), to require that a specialist represent to the Amex that neither the specialist nor his affiliates are making a market in any of the underlying component securities, currencies, or commodities of any ETF issued by the sponsor with which the specialist has entered into a business transaction.

<sup>4</sup> In Amendment No. 2, the Exchange made further changes to proposed Amex Rule 190, Commentary .07 (iv), to apply the requirement therein to transactions entered into by either specialist or his member organization or any member, officer, employee or approved person therein.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

change, as amended, is attached hereto as Exhibit A and is also available on the Amex Web site <http://www.amex.com>, at the principal office of Amex, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Amex Rule 190 (Specialist's Transactions with Public Customers) and Section 910 (Relationship with Specialists) of the Amex Company Guide generally restrict business transactions between a specialist or his member organization, or any member, officer, employee or approved person therein (collectively, "affiliates") and any company or any officer, director, or 10% stockholder of a company in whose stock the specialist is registered. The restriction is intended to ensure that a specialist or his affiliates do not enter into a material business relationship with a company in whose security the specialist is registered, such that the specialist's or his affiliates' status creates conflicts of interest with respect to the specialist's affirmative and negative obligations to maintain a fair and orderly market in the security.

Currently, Amex Rule 193 provides exemptions from Amex Rule 190(a) and (b) to an approved person or member organization that is affiliated with a specialist member organization with respect to business transactions with issuers. This is due to the fact that the functional separation required by Amex Rule 193 eliminates conflict of interest concerns. The Exchange proposes to add an exemption to Amex Rule 190 and Section 910 of the Amex Company Guide that would apply to business transactions between a specialist or his affiliates and the sponsor of any ETF in which the specialist is registered. The Commission previously approved a

similar rule filing by the New York Stock Exchange, Inc. ("NYSE").<sup>7</sup>

For the purposes of the proposed rule change, ETFs are Portfolio Depository Receipts (as defined in Rule 1000), Index Fund Shares (as defined in Rule 1000A), Trust Issued Receipts (as defined in Rule 1200) and derivative instruments based on one or more securities, currencies or commodities. The Exchange believes that potential conflicts of interest will be reduced due to the nature of how ETFs are traded. Since the trading price of an ETF is generally based on the price(s) of one or more security, commodity, currency or related futures contract (collectively, "underlying assets"), the Exchange believes that the potential for conflicts of interest that might have an undue influence or impact on the trading price of an ETF will be minimal. The Exchange also believes that conflict of interest or undue influence concerns will be further minimized by the fact that the underlying assets of an ETF are typically traded on a different exchange or market than Amex or in a different location within Amex.

The Exchange also believes that the potential for conflicts of interest that might arise between a specialist or his affiliates and a sponsor of an ETF will be negligible because the responsibilities of a sponsor of an ETF are limited to establishing the trust that issues ETF shares, registering the ETF shares with the SEC, and filing required periodic reports. Thus, while the ETF sponsor generally oversees the performance of the trustee of the ETF and the trust's principal service providers, the trustee is responsible for the day-to-day administration of the trust.

The proposed rule change would provide that in order to take advantage of the exemption the following conditions must be met: (i) The business transaction may only be entered into with the sponsor of the ETF and the sponsor may not be involved in the day-to-day administration of the ETF; (ii) any fee or other compensation paid in connection with the business transaction to a specialist or his affiliates must not have any relationship to the trading price or daily trading volume of the ETF; (iii) the specialist or his affiliate must notify and provide a full description to the Exchange of any business transaction or relationship it may have with any sponsor of an ETF in which the specialist or any of its affiliates is registered; and (iv) the

specialist or his affiliate must make a representation to the Exchange indicating that the neither the specialist nor his affiliates are making a market in any of the underlying component securities, currencies or commodities of any ETF issued by the sponsor with which such specialist or affiliate has entered into a business transaction.

The Exchange believes that the above-listed conditions will serve as an additional layer of protection against conflicts of interest by diminishing any potential ability for a specialist or his affiliates to unduly influence trading for their own benefit and any incentive for such specialist to compromise his specialist obligations in maintaining fair and orderly markets. The Exchange also believes that such conditions will help to ensure that the ETF sponsor does not unduly influence its specialist or his affiliates.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposed rule change, as amended.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and

<sup>7</sup> See Securities Exchange Act Release No. 52838 (November 28, 2005); 70 FR 72320 (December 2, 2005) (SR-NYSE-2005-66).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(6) thereunder<sup>11</sup> in that the proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change, as amended, effective and operative upon filing. The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.<sup>12</sup> The Commission notes that the proposed rule change imposes conditions for specialist transactions with sponsors of ETFs that are substantially identical to those contained in NYSE Rule 460, Commentary .25 and NYSE Rule 103B.VIII.

Therefore, the foregoing rule change, as amended, has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>15</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-14 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-14. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-14 and should be submitted on or before April 19, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris,  
Secretary.

#### Exhibit A—American Stock Exchange LLC

#### Proposed Rule Change

*Italicized text indicates material to be added. [Bracketed] text indicates material to be deleted.*

#### Specialist's Transactions With Public Customers

Rule 190. (a) through (e) No change.  
\* \* \* Commentary  
.01 through .06 No change.  
.07 *The restrictions in paragraph (a) above relating to business transactions between a specialist or his member organization or any member, officer, employee or approved person therein and a company in which stock the specialist is registered shall not apply to Portfolio Depository Receipts (as defined in Rule 1000), Index Fund Shares (as defined in Rule 1000A), Trust Issued Receipts (as defined in Rule 1200) and derivative instruments based on one or more securities, currencies or commodities (all of the foregoing collectively referred to in this Commentary .07 as "ETFs"), if the following conditions are met:*  
(i) *the specialist or his member organization or any member, officer, employee or approved person therein only enters into the business transaction with the sponsor of the ETF and the sponsor is not involved in the day-to-day administration of the ETF; and*  
(ii) *any fee or other compensation in connection with the business transaction paid to the specialist or his member organization or any member, officer, employee or approved person therein must not be dependent on the trading price or daily trading volume of the ETF;*  
(iii) *the specialist or his member organization or any member, officer, employee or approved person therein must notify and provide a full description to the Exchange of any business transaction or relationship it may have with any sponsor of an ETF that he or it is registered as specialist in;*  
*and*  
(iv) *the specialist or his member organization or any member, officer, employee or approved person therein represents to the Exchange that the specialist, member organization or any member, officer, employee or approved person therein are not making a market in any of the underlying component*

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> The effective date of the original proposed rule change is February 7, 2006, the date of the original filing, and the effective dates of Amendment Nos. 1 and 2 are, respectively, March 16, 2006 and March 17, 2006, the filing dates of the amendments. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 17, 2006, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

securities, currencies or commodities of any ETF issued by the sponsor with which such specialist, member organization or any member, officer, employee or approved person therein has entered into a business transaction.

#### AMEX Company Guide Relationship With Specialist Procedures, Rules and Regulations

Sec. 910. Introduction and (a) through (c) No change.

(d) *Exchange Rules Governing Specialist's Activities*—In addition to certain provisions of the Securities Exchange Act of 1934, a number of Exchange regulations place clearly defined limits on a specialist's activities. An awareness of both the intent and spirit of Exchange rules, and the responsibilities the Exchange places on the specialist, will help ensure that contacts between company officials and the specialist are conducted within the framework provided for above.

With respect to any security in which a specialist is registered, Exchange rules prohibit specialists (and, with respect to paragraphs iii through ix, the member firm or member corporation of which the specialist is a member) from:

(i) through (v) No change.

(vi) effecting, directly or indirectly, any business transaction with the issuer of any such security or any officer, director or 10% stockholder of any such issuer, *except as provided in Commentary .07 to Rule 190 with respect to business transactions, under certain conditions, between a specialist or his member organization or any member, officer, employee or approved person therein and the sponsor of an ETF (as defined therein) that he or it is registered as specialist in;*

(vii) through (ix) No change.

With respect to any security in which a specialist is registered, Exchange rules require the specialist to report to the Exchange:

(i) through (iii) No change.

(iv) any unusual transaction in which the specialist participates as a broker or dealer; [and]

(v) each purchase and sale for the specialists' own account[.]; and

(vi) *a full description of any business transaction or relationship that a specialist or his member organization or any member, officer, employee or approved person therein may have, under certain conditions as provided in Commentary .07 to Rule 190, with any sponsor of an ETF (as defined therein) that he or it is registered as specialist in.*

(e) No change.

[FR Doc. E6-4537 Filed 3-28-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53537; File No. SR-CBOE-2006-15]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Reflect Committee Revisions

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 13, 2006, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The CBOE has designated the proposed rule change as concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,<sup>4</sup> and Rule 19b-4(f)(3) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to delete or modify specific references to certain committees that have been eliminated and to modify

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaces the original filing in its entirety. In Amendment No. 1, the Exchange: (i) revised the rule text to reflect revisions that had become effective through separate, unrelated rule change filings and to correct typographical errors; and (ii) made certain clarifications in the text of CBOE Rule 4.11, Interpretation and Policy .05(b) regarding the Exchange's procedures in the event that a Market-Maker's position limit exemption request is denied and in the event that the Exchange subsequently reviews a position limit exemption request that it had granted.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(3).

<sup>6</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 13, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

specific references to other committees whose titles or authorities have changed. All references that currently relate to committees that are being eliminated will be replaced with terms such as the "appropriate Exchange committee" or the "Exchange." All references to committees that have changed titles or authorities will be amended accordingly. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change, as amended, is to delete from the CBOE Rules any specific references to the Clearing Procedures Committee, Exemption Committee, Modified Trading System Appointments ("MTS") Committee, appropriate Screen-Based Trading ("SBT") Trading Committee, appropriate SBT DPM Appointments Committee, and Special Product Assignment Committee. The Exchange is proposing to make these changes at this time because it recently determined to eliminate these committees and reassign their respective authorities to other committees and/or to Exchange staff.<sup>7</sup> The Exchange is also deleting all references to the Allocation Committee in the CBOE Rules in order to simplify the rule text and avoid confusion over the division of authorities among that

<sup>7</sup> For example, the authorities of the former MTS Committee have been reassigned to the Allocation Committee and the appropriate Market Performance Committees. There were also other committees that the Exchange eliminated for which there are no specific references in the CBOE rules that need to be updated. For example, the Market Fee Oversight Committee was eliminated and its specific authorities have been reassigned to the appropriate Market Performance Committees.

committee and other appropriate Exchange committees that are assuming the authorities of the former Special Product Assignment Committee. In addition, a reference to the Securities Committee in CBOE Rule 6.41 is being deleted to avoid confusion, because this committee is a committee of the Options Clearing Corporation and not of the Exchange. References to the "appropriate Floor Procedure Committee," the "appropriate FPC" and the like are also being amended to say the "appropriate Procedure Committee" to reflect a change in the names of those committees.<sup>8</sup>

The Exchange also proposes to make certain clarifications in the text of CBOE Rule 4.11, Interpretation and Policy .05(b) regarding the procedures following denial of a Market-Maker's position limit exemption request and subsequent Exchange review of a granted position limit exemption request.<sup>9</sup>

Finally, various miscellaneous changes to the rule text to accommodate the above-described changes are also being made.

<sup>8</sup> Specifically, the Exchange has changed the titles of its Floor Procedure Committees to simply "Procedure Committees" (e.g., the Equity Floor Procedure Committee is now the Equity Option Procedure Committee and the Index Floor Procedure Committee is now the Index Option Procedure Committee).

<sup>9</sup> With respect to an initial request, ordinarily a first exemption request application will be considered without the presence of the Market-Maker. If a Market-Maker's first application request for an exemption is denied and he wishes to reapply, he may make a brief personal appearance before the Exchange. The proposed rule change deletes language that had limited a Market-Maker's appearance to presenting only those issues not previously considered as part of the first application. Under the proposed rule change, no such restriction will apply. With respect to review of a granted request, which may be revoked or modified by the Exchange, the proposed rule change clarifies that such reviews may be considered by the Exchange without the presence of the Market-Maker that originally received the exemption. The proposed rule change also clarifies that, if a granted exemption that is reviewed by the Exchange without the presence of a Market-Maker is revoked or modified and the Market-Maker wishes to reapply for the exemption or a modified exemption, the Market-Maker may make a brief scheduled personal appearance before the Exchange. The Exchange notes that CBOE Rule 4.11, Interpretation and Policy .05 applies only to Market-Makers seeking an exemption to the standard position limits in all options traded on the Exchange for the purpose of assuring that there is sufficient depth and liquidity in the marketplace, and not to confer a right upon the Market-Maker applying for an exemption. As such and in light of the procedural safeguards described herein, as well as other procedural safeguards set out in Rule 4.11, Interpretation and Policy .05, the purpose of the exemption process, and the prohibition against the granting of retroactive exemptions, decisions granting or denying exemptions are not subject to review under Chapter XIX of the Exchange Rules regarding Hearings and Review.

In trying to accommodate the reassignments, the Exchange believes a better approach than making a specific reference to a committee is to make reference to the "appropriate Exchange committee" in the instances where the reassignment is to another committee and to the "Exchange" in instances where the reassignment is to Exchange staff and/or a committee. In this way, the Exchange will have the flexibility to delegate the authorities under the rules to the appropriate committee (or appropriate Exchange staff) and will not have to make a rule change merely, for instance, to accommodate a future change in the title of a committee or to accommodate the reassignment of an authority to another committee. As the authority exercised by committees (and by Exchange staff) is delegated pursuant to Exchange rules, the Exchange believes that the title of the committees exercising their authority should not be relevant.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>10</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, foster cooperation among persons engaged in facilitating securities transactions, and protect investors and the public interest. The CBOE believes that this proposal complies with the Act because the CBOE is amending its rules to update and/or generalize certain committee references to facilitate compliance.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this proposal as concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,<sup>11</sup> and

Rule 19b-4(f)(3) thereunder,<sup>12</sup> which renders the proposal effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2006-15 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-CBOE-2006-15. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(3).

<sup>13</sup> See *supra* note 6.

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2006-15 and should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53543; File No. SR-CBOE-2006-21]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Provisions of the Exchange's Crossing Rule

March 23, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 prepared by CBOE. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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

CBOE proposes certain changes to provisions of its rule that governs the participation rights of firms crossing orders in open outcry. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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

Paragraphs (d) and (e) of CBOE Rule 6.74 currently provide guaranteed participation rights to floor brokers in trades that are crossed in open outcry in certain circumstances. Generally, these provisions provide that if the trade takes place at the market provided by the crowd then, after all public customer orders in the book and represented in the trading crowd at the time the market was established are satisfied, the floor broker representing the order will be entitled to cross a certain percentage of the contracts remaining in the original order. The percentage could be 40% or 20%, depending upon the particular type of option. For example, transactions in equity options are generally subject to a 40% participation guarantee under paragraph (d) and broad-based index options (where the option class is not traded at an equity option trading post) are generally subject to a 20% participation guarantee under paragraph (e).

In order to clarify and simplify the crossing provisions related to the 40% and 20% participation entitlements, the Exchange is deleting the current crossing entitlement provisions in paragraphs (d) and (e) of CBOE Rule 6.74 and creating a new crossing entitlement provision (proposed new paragraph (d) of CBOE Rule 6.74), which combines aspects of current paragraphs (d) and (e) of the current rule. The new paragraph (d) would provide a crossing entitlement for all option classes traded on the Exchange,<sup>5</sup> and set forth applicable parameters that

would be set by the appropriate Exchange Procedure Committee on a class-by-class basis.<sup>6</sup> In addition, proposed CBOE Rule 6.74(d)(viii) would provide that the appropriate Procedure Committee would have the authority to exempt an option class from the section of the rule that provides for the crossing guarantee.<sup>7</sup> For each class that is subject to the crossing entitlement provisions, the appropriate Procedure Committee would determine the following: (i) Whether the crossing guarantee applies to facilitations and/or solicitations;<sup>8</sup> (ii) a crossing guarantee percentage of either 20% or 40% (after public customer orders are satisfied);<sup>9</sup> and (iii) the eligible size for an order that may be subject to the guaranteed crossing entitlement, although the eligible order size may not be less than 50 contracts.<sup>10</sup>

<sup>6</sup> The particular open outcry trading procedures applicable to the crossing guarantee will continue to apply unchanged. Generally, a floor broker representing an order eligible for crossing must request bids and offers and make all persons in the trading crowd aware of the request. When the cross involves a facilitation of a public customer order, the floor broker must make certain disclosures on the order ticket for the public customer and must disclose all securities that are components of the public customer order before requesting bids and offers for the execution of all components of the order. Once the trading crowd has provided a quote, the floor broker is entitled to cross a certain percentage of the order after all public customer orders that were on the limit order book and represented in the trading crowd at the time the market was established have been satisfied. The current provisions describing the Designated Primary Market-Maker's ("DPM") guaranteed participation level (the guaranteed participation level will be a percentage that when combined with the percentage the originating firm crossed, does not exceed 40% of the order that remains after satisfying those public customer orders which trade ahead of the cross transaction) and priority of members of the trading crowd who established the market also apply unchanged under the proposed rule change. As is also provided in the existing procedures, nothing prohibits a floor broker or DPM from trading more than their applicable participation entitlements if the other members of the trading crowd do not choose to trade the remaining portion of the order. The proposed rule change also includes references to Lead Market-Makers, since that category of Exchange market participant may be entitled to a participation entitlement pursuant to CBOE Rule 8.15B.

<sup>7</sup> This exemptive provision is identical to what is currently provided in subparagraph (e)(viii) of CBOE Rule 6.74 with respect to broad-based index options. Telephone conversation of March 15, 2006.

<sup>8</sup> Currently, CBOE Rule 6.74(d) and Commentary .08 to CBOE Rule 6.74 provide for a crossing guarantee for both facilitation and solicitation orders in the case of equity options, and CBOE Rule 6.74(e) provides a crossing guarantee for facilitation orders only in the case of broad-based index options. Telephone conversation of March 15, 2006.

<sup>9</sup> As described above, the current rules provide a 20% crossing guarantee in the case of broad-based index options and a 40% crossing guarantee in the case of equity options. Telephone conversation of March 15, 2006.

<sup>10</sup> The proposed rule change also would establish that, in determining whether an order satisfies the eligible order size requirement, any multi-part or complex order (including a spread, straddle,

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Currently, the crossing entitlements of CBOE Rule 6.74(d) and (e) apply only to trading in equity and broad-based index options. See Telephone conversation between David Doherty, Attorney, CBOE, and Jan Woo, Attorney, Division of Market Regulation, Commission, March 15, 2006 ("Telephone conversation of March 15, 2006").

The Exchange is also revising CBOE Rule 6.9.04 to make that provision consistent with the first paragraph of proposed CBOE Rule 6.74(d).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received comments on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>15</sup> and

combination, or ratio order (or a stock-option order or security future-option order, as defined in CBOE Rules 1.1(ii)(b) and 1.1(zz)(b), respectively) or any other complex order defined in CBOE Rule 6.53C) must contain one leg alone which is for the eligible order size or greater. Telephone conversation of March 15, 2006.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). The Exchange provided the Commission with written notice of its intention to file the proposed rule change on February 13, 2006. The Commission received the Exchange's submission, and asked the Exchange to file the instant proposed rule change, pursuant to Rule 19b-4(f)(6) under the Act.

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

designate the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change establishes a uniform set of rules with respect to facilitation and solicitation orders for all options based on principles already approved by the Commission, while setting forth parameters by which the appropriate Exchange Procedure Committee may apply these rules flexibly on a class-by-class basis.<sup>16</sup> Waiving the 30-day pre-operative period will allow the Exchange to implement these changes without delay.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2006-21 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

<sup>16</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2006-21 and should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4539 Filed 3-28-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53534; File No. SR-FICC-2005-18]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Enhance the Repo Collateral Substitution Process of FICC's Government Securities Division

March 21, 2006.

## I. Introduction

On September 30, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on December 20, 2005, amended proposed rule change SR-FICC-2005-18 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on January 5, 2006.<sup>2</sup> No comment letters were received. On March 20, 2006, FICC filed an amendment to the proposed rule

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 53036 (December 29, 2005), 71 FR 629.

change.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change as amended.

## II. Description

In general, FICC is enhancing the repo collateral substitution process of its Government Securities Division ("GSD"). The rule change: (i) Permits the repo dealer or repo broker, as appropriate, to submit a substitution notification to FICC without information about the replacement collateral, (ii) revises the repo collateral substitution process deadline and fee schedule, and (iii) implements certain risk management measures and technical changes.

### A. Initial Substitution Notification Without Replacement Collateral Information

The GSD's repo collateral substitution process provides a mechanism for a repo dealer to process its right to substitute the original collateral it provided as part of a repo transaction with replacement collateral. With respect to a brokered transaction, typically the repo dealer notifies the broker that it wishes to substitute the repo collateral before it specifically identifies the replacement collateral.<sup>4</sup> The repo broker then contacts the reverse repo dealer and informs it that a repo collateral substitution process is being initiated. The reverse repo dealer then sends the original repo collateral to FICC. However, since under FICC's current system the repo dealer's substitution notification that it must send to FICC must contain information about the replacement collateral, often the substitution notification is not delivered to FICC by the time FICC receives the returned original repo collateral from the reverse repo dealer. When the repo dealer does determine what securities will constitute the replacement collateral, it often delivers the replacement collateral to FICC before sending the repo collateral substitution notification. Thus the original and replacement collateral frequently are delivered to FICC before FICC is able to forward the collateral to the appropriate party. This leaves FICC in an overdraft position at the clearing bank, which can cause expense and risk to FICC and to its members and can cause settlement processing delays.

<sup>3</sup> The amendment, as noted below, is not substantive and did not require republication of the notice.

<sup>4</sup> With respect to a non-brokered repo transaction, the repo dealer would contact the reverse repo dealer directly about the repo collateral substitution.

The rule change permits the repo dealer or repo broker, as appropriate, to submit a substitution notification to FICC without information about the replacement collateral. FICC will deliver the original collateral to the repo party's account at its clearing bank upon receipt of the substitution notification so the original collateral will no longer linger in FICC's account.<sup>5</sup>

### B. Revised Repo Collateral Substitution Process Deadline and Fee Schedule

The rule change in repo processing requires a revision to GSD's schedule of time frames. Currently, there is a two-tiered deadline for a repo party to submit a substitution notification and associated late-fee.<sup>6</sup> The rule change establishes: (i) An 11 a.m. Eastern Time deadline<sup>7</sup> for a repo party to submit a substitution notification and (ii) a late-fee of \$100 for each substitution notification that is received after the deadline. The rule change also establishes a two-tiered deadline for a repo party to submit replacement collateral information and an associated late-fee schedule. The deadlines for submission of replacement collateral information are: (i) 12 p.m. Eastern Time and (ii) 12:30 p.m. Eastern Time. The late-fee assessments are: (i) \$100 for each submission of replacement collateral information that is received after the first deadline but before the second deadline and (ii) \$250 for each submission of replacement collateral information that is received after the second deadline.<sup>8</sup>

In order to accommodate members' preparations to comply with the time frames contained herein, the proposed

<sup>5</sup> The changes necessary to reflect this part of the rule change are contained in GSD Rule 18, sections 3(a), (b), (c), and (d) and in the Schedule of Required and Accepted Data Submission Items for a Right of Substitution. A new schedule, titled Schedule of Required and Accepted Data Submission Items for New Securities Collateral, is being added to the rules to reflect that information on the replacement collateral will be contained in a separate submission to FICC.

<sup>6</sup> The current deadlines are 12 p.m. Eastern Time and 12:30 p.m. Eastern Time. The deadlines are extended by one hour on days that: (i) FICC determines are high-volume days or (ii) The Bond Market Association announces in advance will be high-volume days. FICC assesses a late-fee of: (i) \$100 for each substitution notification that is received after the first deadline but before the second deadline and (ii) \$250 for each substitution notification that is received after the second deadline.

<sup>7</sup> The proposed 11 a.m. Eastern Time deadline will not be extended on high-volume days.

<sup>8</sup> The allocation of collateral deadlines will be extended by one hour on days that: (i) FICC determines are high-volume days or (ii) The Bond Market Association announces in advance will be high-volume days. The rule changes necessary to affect this part of the proposed rule are contained in the Schedule of Timeframes and in the Fee Structure under "Late Fees."

changes to the schedule of time frames and applicable late-fees will be implemented at a later date than the other rule changes contained in this filing. FICC will announce the implementation of the proposed schedule of time frames by Important Notice at least thirty calendar days prior to implementation. Until such implementation, currently existing time frames and late-fees applied to repo collateral substitutions shall remain in effect.

### C. Risk Management Measures and Technical Changes

Generally, FICC is implementing certain measures to address the risk presented to it by the failure of a party to submit in a timely manner information regarding the replacement collateral to FICC. Specifically, FICC is: (i) Increasing the clearing fund calculation of the repo dealer and allowing margining with respect to replacement collateral based on applicable generic CUSIP numbers only<sup>9</sup> and (ii) imposing mark-to-market consequences on both the repo dealer and the reverse dealer with respect to unknown replacement collateral.

#### 1. Clearing Fund Calculation and Permissible Margin Offsets

With respect to the calculation of the repo dealer's clearing fund requirement, FICC is assigning a value of 150 percent of the contract value of the original securities collateral to a repo transaction where FICC has not received information regarding the replacement collateral.<sup>10</sup> FICC also is applying the highest applicable margin factor in its rules in connection with the repo transaction. In GSD's rules, the highest margin factor is the factor for securities with a remaining maturity of 15 years and 16 days or greater. Therefore, if the generic CUSIP number that is assigned to the unknown replacement collateral is the generic CUSIP number for Treasury securities with a remaining maturity of 15 years and 16 days or greater, FICC will use the existing margin factor of 1.450 (applicable to

<sup>9</sup> Generic CUSIP numbers represent the range of permissible securities that can constitute the replacement collateral. For example, there is a generic CUSIP number which represents Treasury securities with remaining maturity of fewer than thirty years.

<sup>10</sup> New subsection 3(f) is being added to Rule 18 in order to effect this change. It should be noted that the application of the 150 percent for clearing fund purposes applies to both the receive/deliver and repo volatility components of the clearing fund calculation.

category 1 members with positions in non-zeros).<sup>11</sup>

The proposed risk management measures applicable to non-timely allocation of replacement collateral will further affect the clearing fund calculation of the repo dealer by limiting permissible offsets. A regular part of the GSD's margining system is to permit offsets between resulting margin amounts of long and short net settlement positions. The GSD's rules contain disallowance factor tables that set forth specific limits on these permissible offsets. For example, where a short net settlement position in Treasury Offset Class A is to be offset against a long net settlement position in Treasury Offset Class B, the applicable disallowance factor table provides that 30 percent of this offset will be disallowed.<sup>12</sup> For offset purposes under the proposed rule change, FICC is defining two new offset classes to capture the generic CUSIP numbers that can be assigned to unknown replacement collateral. These new offset classes are identified as "H" for Treasury securities and "h" for non-mortgage-backed Agency securities. Under the proposed rule change, as a further risk management measure, FICC will not permit offsets between Offset Classes H and h or between Offset Classes H or h and any other existing GSD Offset Class.

## 2. Modified Mark-to-Market Calculation

FICC also is calculating a modified mark-to-market obligation with respect to the replacement collateral and imposing this on both the repo dealer and the reverse repo dealer in the case where a generic CUSIP number is used for underlying collateral. In a typical scenario where the replacement collateral is identified, FICC reverses any previous mark-to-market calculation for the old collateral and recalculates, collects, and passes through a mark-to-market associated with the actual replacement collateral. This computation is defined as the Forward Mark Adjustment Payment.<sup>13</sup> In the

<sup>11</sup> The GSD's margin factor schedules apply different margin factors to category 1 and category 2 dealers. In this example, if the member were a category 2 member electing to receive credit forward mark adjustment payments, the applicable margin factor under the proposed rule change would be 2.0.

<sup>12</sup> As originally filed, FICC mistakenly stated that 20 percent of the offset would be disallowed. In its March 20, 2006, amendment, FICC changed this to 30 percent to accurately reflect the disallowance factor for such securities.

<sup>13</sup> The Forward Mark Adjustment Payment is the sum of two components: the Collateral Mark and the Financing Mark. The Collateral Mark is the absolute value of the difference between the trade's contract value and market value. The Financing

scenario where the replacement collateral has not been identified, FICC will calculate a modified Forward Mark Adjustment Payment to protect FICC against market risk. Specifically, the definition of Forward Mark Adjustment Payment is amended by noting that with respect to a repo transaction for which a substitution request has been made but for which replacement collateral information has not been provided to FICC, a new Forward Unallocated Sub Mark will be applied. This new mark will take into account repo interest that has accrued with respect to the repo transaction to date, as well as changes in the repo rate (to reflect the difference between the contract rate and the market rate for the remaining term of the repo transaction).<sup>14</sup>

## 3. Technical Changes

Additionally, FICC is making certain technical changes to its GSD rules relating to repo collateral substitutions and repo transactions generally.

a. *Section 3(a) of Rule 18*: Delete the requirement that details regarding the rights of substitution match between counterparties. Details regarding rights of substitution are not a required trade reporting item and thus will not be a required match item in GSD's system. References in this respect are deleted to reflect actual operating practice.

b. *Sections 3(e) and 3(f) of Rule 18*: Delete the requirement that upon receipt of either the original or the replacement collateral, FICC will promptly redeliver the securities to the appropriate party. As stated in the narrative above, FICC may receive securities that are the subject of a repo collateral substitution request but may not yet have the requisite information for delivery of those securities. These provisions are deleted to reflect actual operating practice and also to make the rule consistent with the proposed changes.

c. *Section 3(h) of Rule 18*: Delete the provision regarding implications of repo collateral substitutions on margin and mark-to-market requirements. This provision is redundant because the effects of repo substitutions on such requirements are covered in the rules governing these items and the rules to be modified by the proposed rule change.

d. *Section 4 of Rule 18*: Make optional a requirement that for general collateral,

Mark reflects the financing cost that would be incurred by FICC if it replaced the reverse side of the repo by buying securities and putting them out on repo.

<sup>14</sup> The following new definitions effect this change: Accrued Repo Interest-to-Date, Repo Interest Rate Differential, and Forward Unallocated Sub Mark.

forward-starting repos, the specific CUSIP and par value be submitted prior to the repo start date. FICC typically does not receive such allocations from its members prior to the repo start date and thus the proposed change aligns the rule with industry practice. The proposed change further reflects operating practice as well as industry expectations that a general collateral, forward-starting repo will be removed from the GSD's books if FICC does not receive the specific CUSIP by the time noted in the rule. Members typically submit new transactions with the specific CUSIPs and expect that the general collateral transaction will be removed from the GSD's books.

e. *Section 5 of Rule 18*: Amend the provision that addresses repo transactions with maturing collateral. The proposed rule change provides that the repo party in such a repo transaction must make the required substitution of collateral by the time noted in the rule or FICC will remove the transaction from its books. This is because the underlying contract terminates if the collateral is not replaced in time, and therefore, the proposed rule change reflects industry practice. The proposed rule change further reflects industry practice by deleting the requirement that the replacement collateral meet certain specific criteria and by replacing that requirement with a requirement that the replacement collateral be "in accordance with the terms of the transaction." This change also reflects industry practice.

## III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>15</sup> Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>16</sup> The Commission finds that FICC's rule change is consistent with these requirements. By revising its repo substitution rules to more accurately reflect industry practice, FICC's proposed rule change should result in repo substitution transactions being completed in a more timely

<sup>15</sup> 15 U.S.C. 78s(b).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

manner. FICC's proposed rule change also includes revised risk management measures (e.g., revised clearing fund calculation and margin offsets) to address potential risk resulting from the revised repo substitution rules. As such, FICC's proposed rule change also should result in FICC being able to safeguard securities and funds which are in its possession and control or for which it is responsible.

**IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (File No. SR-FICC-2005-18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-4527 Filed 3-28-06; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53536; File No. SR-NASD-2006-026]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Establishing CTCl Station-Based Pricing for Members**

March 21, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on March 10, 2006.<sup>3</sup> Nasdaq

has designated this proposal as establishing or changing a due, fee, or other charge of a self-regulatory organization, pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

Nasdaq proposes to modify fees for Nasdaq access through the Computer to Computer Interface ("CTCI") protocol.<sup>6</sup> The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>7</sup>

**Rule 7010. System Services**

- (a)-(e) No Change
- (f)(1)-(2) No Change
- (3) [Computer to computer interface (CTCI) and] Financial Information Exchange (FIX)

Options	Price
[Option 1: Dual 56kb lines (one for redundancy) single hub and router, and optional single FIX port.]	[\$1275/month].
[Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy), and optional single FIX port.]	[\$1600/month].

period to have commenced on March 10, 2006, the date Nasdaq filed Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> The instant proposed rule change establishes fees for NASD members. The identical fees for non-members were established in SR-NASD-2006-027. See Securities Exchange Act Release No. 53535 (March 21, 2006).

<sup>7</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasdaq.com>. Prior to the date when The NASDAQ Stock Market LLC ("NASDAQ LLC") commences operations, NASDAQ LLC will file a confirming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

Options	Price
[Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), dual routers (one for redundancy), and optional single FIX port. Includes base bandwidth of 128kb.]	[\$8000/month (CTCI or CTCl/FIX lines) \$4000/month (FIX-only lines)].
FIX Trading Port (NMC and Brut).	\$400/port/month.
FIX Port for Services Other than Trading.	\$500/port/month.
Dedicated FIX server	\$1,000/server/month.
Dedicated FIX server (Brut).	\$3,000/server/month; initial term of not less than 12 months is required.
[Option 1, 2, or 3 with Message Queue software enhancement].	[Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%].
[Disaster Recovery Option: Single 56kb line with single hub and router and optional single FIX port. (For remote disaster recovery sites only).]	[\$975/month].
[Bandwidth Enhancement Fee (for T1 subscribers only)].	[\$600/month per 64kb increase above 128kb T1 base].
[Installation Fee] .....	[\$2000 per site for dual hubs and routers \$1000 per site for single hub and router].
[Relocation Fee (for the movement of TCP/IP-capable lines within a single location)].	[\$1700 per relocation].

[FIX connectivity through Options 1, 2, or 3 or the Disaster Recovery Option will not be available to new subscribers that are (i) NASD members after January 1, 2004, or (ii) not NASD members after the effective date of SR-NASD-2003-196.]

*(4) Computer to Computer Interface (CTCI).*

The fees in the table below are applicable to NASD members that have transitioned off of Nasdaq-supported circuits, and as of July 1, 2006, also apply to NASD members that have not transitioned.

**Stations**

Fee component	Fee
1st Station .....	\$200/Station/month
Each Additional Station.	\$600/Station/month

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the

The bandwidth-based fees in the table below apply to NASD members that have not transitioned off of Nasdaq-supported circuits, and, pending approval of SR-NASD-2006-027, to non-members as indicated.

<b>Bandwidth</b>	
<i>Fee component</i>	<i>Fee</i>
Single 56kb line with single hub and router (for remote disaster recovery sites only).	\$900/month for members \$975/month for non-members
<b>Option 1</b>	
Dual 56kb lines (one for redundancy) and single hub and router.	\$1,000/month for members \$1,275/month for non-members
<b>Option 2</b>	
Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual router (one for redundancy).	\$1,200/month for members \$1,600/month for non-members
<b>Option 3</b>	
Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	\$2,500/month for members \$8,000/month for non-members
<b>Bandwidth Enhancement Fee (for T1 subscribers only)</b>	
Per 64kb increase above 128kb T1 base.	\$200/month for members \$600/month for non-members
Option 1, 2, or 3 with Message Queue software enhancement.	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%
Installation Fee .....	\$2,000 per site for dual hubs and routers \$1,000 per site for single hub and router
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	\$1,700 per relocation

[(4)] (5) New Nasdaq Workstation.  
(g)-(w) No Change.

\* \* \* \* \*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is modifying fees for member access to Nasdaq through the CTCI protocol. Through the implementation of FIX and QIX and the sunset of the SDP/API, Nasdaq has continued towards its goal of allowing firms and service bureaus to choose their own circuit connectivity provider for access to Nasdaq's products and services. CTCI is the only remaining Nasdaq protocol that requires the firm to choose a Nasdaq-provided circuit for connectivity. In order for Nasdaq to complete its strategy, Nasdaq seeks to modify the CTCI pricing structure in order to transition from circuit-based fee components based on bandwidth to "Station" fee components that are more synonymous with logical access ports.

CTCI Stations are logical channels used to manage the flow of data to and from the firm user. Stations are synonymous with the logical access ports used for FIX and QIX as they have the same characteristics, including a one-to-one relationship between the firm and Station and throughput limits. For this reason, Nasdaq chose a Station-based fee component for its new pricing. In order to facilitate the transition, Nasdaq seeks to modify the current bandwidth based fees to Nasdaq's circuit cost imposed by its carrier plus an administration cost. Firms that decide not to transition off of Nasdaq supported circuits will pay the new bandwidth-based fees in addition to Station fees.

Nasdaq expects almost all firms to transition to new circuit connections but that the transition date will be different for each firm. As a result, Nasdaq intends to implement the new pricing structure once a firm has transitioned to a different circuit connection. However, the new pricing will be applied to all firms on July 1,

2006 regardless of the firm's transition plan. Thus, a firm that transitions will pay only the station fee. A firm that does not transition will pay only the bandwidth fee prior to July 1, but will pay both the station and the bandwidth fee between July 1 and the date when it does transition.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>8</sup> in general, and sections 15A(b)(5)<sup>9</sup> of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change will modify the current CTCI pricing structure in order to transition from circuit-based fee components based on bandwidth to "Station" fee components that are more synonymous with logical access ports.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes or changes a due, fee, or other charge imposed by NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-026 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number NASD-2006-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NASD-2006-026 and should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Nancy M. Morris,**

Secretary.

[FR Doc. E6-4515 Filed 3-28-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53538; File No. SR-NASD-2006-037]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Effective Date of the Uniform Branch Office Definition and Related Interpretive Material and Extending the Transition Deadline for Compliance With Form BR and Form U4 Filing Requirements

March 22, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 14, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing with the Commission an extension of the effective date of amendments to NASD Rule 3010(g)(2)(A) which defines the term "branch office," and related IM-3010-1 which provides guidance on factors to be considered by members when conducting internal inspections of offices ("Uniform Branch Office Definition"), from May 1, 2006 to July 3, 2006.<sup>5</sup> Further, NASD is extending from May 1, 2006 to July 3, 2006 the transition deadline for compliance with Form BR (Uniform Branch Office Registration Form) and Form U4 (Uniform Application for Securities Industry Registration or Transfer) filing

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR-NASD-2003-104) ("Uniform Branch Office Definition Approval Order").

requirements for firms with branch offices in existence before the close of business on October 14, 2005.<sup>6</sup> NASD is not proposing any textual changes to NASD's rules.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

On September 9, 2005, the SEC approved: (1) amendments to NASD Rule 3010(g)(2) which defines the term "branch office" and (2) the adoption of IM-3010-1 to provide interpretive guidance on factors to be considered by members in conducting internal inspections of offices.<sup>7</sup> In the rule filing, NASD stated that the effective date of the Uniform Branch Office Definition would follow deployment of the new branch office registration system on the Central Registration Depository (CRD®), and that members would have sufficient time to transition to the new Form BR (Uniform Branch Office Registration Form) and associated filing protocols.<sup>8</sup> Following SEC approval of the Uniform Branch Office Definition, NASD announced in a *Notice to Members* that the effective date of the amendments would be May 1, 2006.<sup>9</sup>

In addition, on September 30, 2005, the SEC approved the Form BR and conforming and technical changes to Form U4 (Uniform Application for Securities Industry Registration or Transfer) and Form U5 (Uniform Termination Notice for Securities Industry Registration).<sup>10</sup> In the rule

<sup>6</sup> See Securities Exchange Act Release No. 52544 (September 30, 2005), 70 FR 58764 (October 7, 2005) (SR-NASD-2005-030) ("Form BR Approval Order").

<sup>7</sup> See Uniform Branch Office Definition Approval Order.

<sup>8</sup> See Form BR Approval Order. See also NASD *Notice to Members* 05-66 (October 2005).

<sup>9</sup> See NASD *Notice to Members* 05-67 (October 2005).

<sup>10</sup> See Form BR Approval Order. See also NASD *Notice to Members* 05-66 (October 2005).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

filing and subsequent *Notice to Members*, NASD announced May 1, 2006 as the transition deadline for compliance with Form BR and Form U4 filing requirements for firms with branch offices in existence before the close of business on October 14, 2005. Such firms currently have until May 1, 2006 to: (1) Complete and file the "conversion" Form BR for each such branch and (2) with respect to the registered persons employed by such branches, amend all applicable Forms U4 to assign these registered persons to the branch office(s) (or other locations) from which they work.<sup>11</sup>

Numerous members have requested an extension of the May 1, 2006 deadlines, as the process for transitioning existing and new branch offices into the new centralized branch office registration system on CRD has been more time consuming than originally anticipated. In particular, members with the largest number of associated persons have stated that the process of completing a Form BR for each branch office location, which requires more detailed information on each branch location (both existing and new locations) than previously required under Schedule E to Form BD, has been resource and labor intensive. Such members have expressed concern that, despite the allocation of significant resources to meet the May 1, 2006 deadlines, they do not believe they will be able to complete the necessary Forms BR and Forms U4 linking each associated person to a registered office location by such deadline. As a result, NASD believes this one-time extension of the deadlines to July 3, 2006 of: (1) the effective date of the Uniform Branch Office Definition and (2) the transition deadline for compliance with Form BR and Form U4 filing requirements for firms with branch offices in existence before the close of business on October 14, 2005 will allow for a more orderly transition by members to the new Uniform Branch Office Definition and the new centralized branch office registration system on CRD.

NASD is filing the proposed rule change for immediate effectiveness. The proposed rule change will become effective upon the date of this filing, thereby extending to July 3, 2006: (1) the effective date of the Uniform Branch Office Definition and (2) the transition deadline for compliance with Form BR and Form U4 filing requirements for firms with branch offices in existence before the close of business on October 14, 2005.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>12</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the extension to July 3, 2006 will allow for a more orderly transition by members to the Uniform Branch Office Definition and the new centralized branch office registration system on CRD. The extension will allow members to comply with the Uniform Branch Office Definition and the new Form BR without unduly burdening members.

### B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)<sup>13</sup> of the Act and paragraph (f) of Rule 19b-4 thereunder,<sup>14</sup> in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-037 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-037 and should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>15</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-4528 Filed 3-28-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>11</sup> See NASD *Notice to Members* 05-66 (October 2005).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53535; File No. SR-NASD-2006-027]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Establishing CTCI Station-Based Pricing for Non-Members**

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 2006, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the

proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 on March 10, 2006, and Amendment No. 2 on March 14, 2006. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons, and simultaneously granting accelerated approval of the proposed rule change, as amended.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to modify fees for Nasdaq access through the Computer to Computer Interface (“CTCI”) protocol for non-members. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

Rule 7010. System Services

(a)–(e) No Change

(f)(1)–(3) No Change

(4) Computer to Computer Interface (CTCI)

The fees in the table below are applicable to *CTCI subscribers* [NASD members] that have transitioned off of Nasdaq-supported circuits, and as of the July 1, 2006, also apply to *CTCI subscribers* [NASD members] that have not transitioned.

**STATIONS**

Fee component	Fee Station/month
1st Station .....	\$200
Each Additional Station .....	600

The bandwidth fees in the table below apply to [NASD members] *CTCI subscribers* that have not transitioned off of Nasdaq-supported circuits[, and, pending approval of SR-NASD-2006-027, to non-members as indicated].

**BANDWIDTH**

Fee component	Fee
Single 56kb line with single hub and router (for remote disaster recovery sites only).	\$900/month [for members \$975/month for non-members].
<i>Option 1</i> Dual 56kb lines (one for redundancy) and single hub and router.	\$1,000/month [for members \$1,275/month for non-members].
<i>Option 2</i> Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual router (one for redundancy).	\$1,200/month [for members \$1,600/month for non-members].
<i>Option 3</i> Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	\$2,500/month [for members \$8,000/month for non-members].
Bandwidth Enhancement Fee (for T1 subscribers only) Per 64kb increase above 128kb T1 base.	\$200/month [for members \$600/month for non-members]
Option 1, 2, or 3 with Message Queue software enhancement .....	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%
Installation Fee .....	\$2,000 per site for dual hubs and routers. \$1,000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP—capable lines within a single location).	\$1,700 per relocation.

(5) New Nasdaq Workstation No Change

(g)–(w) No Change

\* \* \* \* \*

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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**

On February 22, 2006, Nasdaq filed SR-NASD-2006-026, to modify fees for members to establish access to Nasdaq through the CTCI protocol (effective February 22, 2006). The instant proposed rule change will apply to non-

members a pricing schedule identical to that schedule Nasdaq instituted for members in SR-NASD-2006-026.<sup>4</sup>

Through the implementation of FIX and QIX and the sunset of the SDP/API, Nasdaq has continued towards its goal of allowing firms and service bureaus to choose their own circuit connectivity provider for access to Nasdaq’s products and services. CTCI is the only remaining Nasdaq protocol that requires the firm to choose a Nasdaq-provided circuit for connectivity. In order for Nasdaq to complete its strategy, Nasdaq seeks to modify the CTCI pricing structure in

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasd.com>, as amended on an immediately

effective basis by SR-NASD-2006-026. See footnote 3 *supra*. Prior to the date when The NASDAQ Stock Market LLC (“NASDAQ LLC”) commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC

approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

<sup>4</sup> See Securities Exchange Act Release No. 53536 (March 21, 2006).

order to transition from circuit-based fee components based on bandwidth to "Station" fee components that are more synonymous with logical access ports.

CTCI Stations are logical channels used to manage the flow of data to and from the firm user. Stations are synonymous with the logical access ports used for FIX and QIX as they have the same characteristics, including a one to one relationship between the firm and Station and throughput limits. For this reason, Nasdaq chose a Station-based fee component for its new pricing. In order to facilitate the transition, Nasdaq seeks to modify the current bandwidth based fees to Nasdaq's circuit cost imposed by its carrier plus an administration cost. Firms that decide not to transition off of Nasdaq supported circuits will pay the new bandwidth-based fees in addition to Station fees. Nasdaq expects almost all firms to transition to new circuit connections but that the transition date will be different for each firm. As a result, Nasdaq intends to implement the new pricing structure once a firm has transitioned to a different circuit connection. However, the new pricing will be applied to all firms on July 1, 2006 regardless of the firm's transition plan. Thus, a firm that transitions will pay only the station fee. A firm that does not transition will pay only the bandwidth fee prior to July 1, but will pay both the station and the bandwidth fee between July 1 and the date when it does transition.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>5</sup> in general, and with Section 15A(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. The proposed rule change applies to non-members and will modify the current CTCI pricing structure in order to transition from circuit-based fee components based on bandwidth to "Station" fee components that are more synonymous with logical access ports.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act, as amended.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

## III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-027 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number NASD-2006-027. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NASD-2006-027 and should be submitted on or before April 19, 2006.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.<sup>7</sup> Specifically, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,<sup>8</sup> which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective on February 22, 2006, pursuant to SR-NASD-2006-026.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The proposed fees for non-NASD members are identical to those in SR-NASD-2006-026, which implemented those fees for NASD members and which became effective as of February 22, 2006. The Commission notes that the instant proposed rule change will promote consistency in Nasdaq's fee schedule by applying simultaneously the same pricing schedule for NASD members and non-NASD members alike. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR-NASD-2006-027), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Nancy M. Morris**,  
Secretary.

[FR Doc. E6-4538 Filed 3-28-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>7</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53542; File No. SR-NASD-2006-029]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Rule 6530 To Clarify the Removal Process for Securities of OTCBB Issuers That Fail To Remain Current With OTCBB Reporting Requirements

March 23, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by 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

NASD is proposing to amend NASD Rule 6530 to clarify the removal process for the securities of issuers quoted on the Over-the-Counter Bulletin Board ("OTCBB") that fail to remain current with reporting their financial information to the Commission or other appropriate regulator. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at the principal office of NASD, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

In January 1999, the Commission approved amendments to NASD Rules 6530 and 6540 that limit quotations on the OTCBB to securities of issuers that are current in their periodic filings with the Commission or other applicable regulator.<sup>5</sup> In November 2005, the Commission approved amendments to NASD Rule 6530 that limit the eligibility for quotation on the OTCBB of the securities of issuers that are repeatedly late or otherwise delinquent in filing periodic reports.<sup>6</sup> Specifically, NASD Rule 6530(e) provides that OTCBB issuers that fail to file a complete periodic report with the Commission or other respective regulator, even if they file within the grace period allowed by NASD Rule 6530, three times in a two-year period and those issuers that have been removed from the OTCBB for failure to file two times in a two-year period, are ineligible for quotation on the OTCBB by an NASD member.<sup>7</sup> Following removal pursuant to NASD Rule 6530(e), the securities of an issuer would only become eligible for quotation on the OTCBB again if the issuer has timely filed complete required periodic reports for a one-year period.

NASD is filing the proposed rule change to clarify the removal process and grace periods for securities of OTCBB issuers that fail to remain current in their reporting requirements. Specifically, when an issuer does not comply with the reporting requirements in NASD Rule 6530, either because a filing was not made<sup>8</sup> or because a filing

was incomplete,<sup>9</sup> a fifth character "E" is appended to the trading symbol of that issuer's security.<sup>10</sup> Notice of the pending symbol change to append the "E" modifier is publicly reported on the OTCBB Daily List.<sup>11</sup> This identifier notifies investors and other market participants that the issuer is not current, or that the NASD staff does not have sufficient information to determine if the issuer is current, in its reporting obligations.<sup>12</sup>

NASD Rule 6530 generally permits the continued quoting of securities of delinquent issuers for a specified grace period.<sup>13</sup> Questions have been raised as to from what date the grace period, if applicable, commences. NASD is clarifying that the grace period, if

security. If the issuer did in fact timely file with its respective regulator, the issuer would not be considered delinquent for purposes of NASD Rule 6530(e).

<sup>9</sup> In order for a filing to be complete, it must, for example, contain all required certifications, attestations, and financial statements, including an auditor's review pursuant to SAS-100 (for quarterly reports) or an unqualified auditor's opinion (for annual reports). See Rule 13a-14 under the Act, 17 CFR 240.13a-14, and Rules 10-01(d) and 2-02(c) of Regulation S-X, 17 CFR 210.10-01(d) and 2-02(c). In addition, the auditor must be registered with the Public Company Accounting Oversight Board. See Section 102(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7212(a).

<sup>10</sup> A filing would not be considered delinquent if made within any applicable extension permitted by Rule 12b-25 under the Act, provided that the issuer files the applicable materials specified in Rule 12b-25. See 17 CFR 240.12b-25 (under Rule 12b-25, an issuer would need to file, among other things, a Form 12b-25 notice with the Commission no later than one business day after the due date for the applicable report). If the issuer does not file the required report by the expiration of the applicable Rule 12b-25 grace period, notice of a pending change to the issuer's symbol will be publicly reported on the OTCBB Daily List and the "E" modifier will be appended to the trading symbol of that issuer's securities. The applicable grace period under NASD Rule 6530 will be calculated from the date of publication on the OTCBB Daily List.

<sup>11</sup> Notice of a pending symbol change is publicly reported on the OTCBB Daily List within seven business days of the due date of the report. The "E" modifier is then appended to the issuer's security symbol within two business days thereafter. The OTCBB Daily List is available at <http://www.otcbb.com>.

<sup>12</sup> A list of delinquent issuers is available on <http://www.otcbb.com>.

<sup>13</sup> The grace period set forth in NASD Rule 6530 varies depending on the type of issuer. OTCBB issuers that file with the Commission are subject to a 30 calendar day grace period, whereas, OTCBB issuers that do not file with the Commission, but are required to file with other regulators (*i.e.*, banks, savings associations, and insurance companies) are afforded a 60 calendar day grace period. Pursuant to NASD Rule 6530(e), however, the third time an OTCBB issuer is delinquent in the prior two-year period, that issuer's securities will be removed from quotation on the OTCBB without the benefit of any grace period for the third delinquency, although seven calendar days will be provided to request a review of the staff determination by a hearing panel. See Securities Exchange Act Release No. 52786 (November 16, 2005), 70 FR 70907 (November 23, 2005) (SR-NASD-2005-011).

<sup>5</sup> See Securities Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (SR-NASD-98-51).

<sup>6</sup> See Securities Exchange Act Release No. 52786 (November 16, 2005), 70 FR 70907 (November 23, 2005) (SR-NASD-2005-011).

<sup>7</sup> NASD Rule 6530(e) applies to filings for reporting periods ending on and after October 1, 2005.

<sup>8</sup> When NASD does not receive notice that an issuer which files with a regulator other than the Commission has timely filed, the "E" modifier is appended to the trading symbol of the issuer's

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

applicable, is calculated from the date notification of the pending symbol change to append the "E" modifier is published on the OTCBB Daily List. If the issuer does not comply within any applicable grace period provided by NASD Rule 6530 and no request for review by a hearing panel has been received,<sup>14</sup> then the securities of the issuer are removed from quotation on the OTCBB following a subsequent publication on the OTCBB Daily List of the removal. In this case, notice of removal will appear on the Daily List within one business day after the expiration of the grace period.<sup>15</sup> Alternatively, if the delinquent issuer becomes current in its filings with the Commission or its respective regulator during any applicable grace period provided for in NASD Rule 6530, the "E" modifier will be removed from the trading symbol of that issuer's security following subsequent publication thereof on the OTCBB Daily List.<sup>16</sup> In

<sup>14</sup> A party aggrieved by a determination relating to the OTCBB may request a review of such determination by a hearing panel pursuant to the NASD Rule 9700 Series. The hearing panel determines whether the securities of an issuer are eligible for continued quotation because the issuer has, in fact, filed a complete periodic report. The hearing panel does not have the discretion to allow the securities of delinquent companies to continue to trade on the OTCBB. A request for review by a hearing panel will stay the security's removal until the panel makes its determination. An issuer that is not removed because it files a late report after requesting a hearing but before a decision by the hearing panel has been issued in the matter would not be considered to have failed to file for purposes of NASD Rule 6530(e)(2), however, that issuer would be considered to have filed late for purposes of NASD Rule 6530(e)(1). In a separate filing with the Commission, NASD is proposing to clarify the availability of this review process and to adopt fees for such review. See SR-NASD-2005-067 (available at <http://www.nasd.com>). See also Securities Exchange Act Release No. 52786 (November 16, 2005), 70 FR 70907 (November 23, 2005) (SR-NASD-2005-011).

<sup>15</sup> After publication on the Daily List, the issuer's securities will be removed from quotation on the following business day. Telephone conversation among Andrea Orr, Assistant General Counsel, NASD, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, Tim Fox, Special Counsel, Division of Market Regulation, Commission, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on March 20, 2006.

<sup>16</sup> A delinquent issuer may not prevent its security from being removed from the OTCBB by filing the required complete periodic report after the grace period expires but before notice of removal is published on the OTCBB Daily List and the security is removed from the system (e.g., if the issuer files the report on the 31st day following publication, where the grace period expired on the 30th day), and OTCBB market makers are not permitted to initiate quotations in delinquent issuers in such instances after the grace period has expired. After the expiration of any applicable grace period where the issuer has not filed the complete periodic report, NASD will continue to process the removal, and an NASD member would only be

this case, notice of the symbol change will appear on the OTCBB Daily List within one business day after the filing of the complete periodic report.<sup>17</sup>

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will clarify and provide greater transparency to the process for removing the securities of issuers from quotation on the OTCBB that fail to comply with the reporting requirements in NASD Rule 6530.

### B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by NASD.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>18</sup> and Rule 19b-4(f)(1) thereunder,<sup>19</sup> in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD.

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

permitted to quote the issuer's security to the extent permitted by NASD Rule 6530 and other applicable rules. Telephone conversation among Andrea Orr, Assistant General Counsel, NASD, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, Tim Fox, Special Counsel, Division of Market Regulation, Commission, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on March 20, 2006.

<sup>17</sup> See e-mail from Andrea Orr, Assistant General Counsel, NASD to Tim Fox, Special Counsel, Division of Market Regulation, Commission, dated March 22, 2006.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>19</sup> 17 CFR 240.19b-4(f)(1).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-029 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. 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 the File Number SR-NASD-2006-029 and should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4540 Filed 3-28-06; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53541; File No. SR-NASD-2006-033]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend NASD Rule 11890**

March 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 2006, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On March 13, 2006 and March 22, 2006, Nasdaq submitted Amendments No. 1<sup>3</sup> and 2,<sup>4</sup> respectively, to the proposed rule change. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to clarify the scope of NASD Rule 11890. Nasdaq proposes to implement the proposed rule change

on March 13, 2006.<sup>6</sup> The text of the proposed rule change is below.<sup>7</sup> Proposed new language is italicized; proposed deletions are in brackets.

11890. Clearly Erroneous Transactions  
(a) Authority To Review Transactions Pursuant to Complaint of Market Participant

- (1) No change.
- (2) Procedures for Reviewing Transactions

(A)—(B) No change.  
(C) Following the expiration of the period for submission of supporting material, a Nasdaq officer shall determine whether the complaint is eligible for review. A complaint shall not be eligible for review under paragraph (a) unless:

- (i) The complainant has provided all of the supporting information required under paragraph (a)(2)(B), and
- (ii) For trades in *Nasdaq securities* executed between 9:30 a.m. and 4 p.m. Eastern Time, or *trades in non-Nasdaq securities executed between the time when the primary market for the security first posts an executable two-sided quote for its regular market trading session and 4 p.m. Eastern Time*, the price of transaction to buy (sell) that is the subject of the complaint is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

**Inside Price Minimum Threshold**

\$0–\$0.99—\$0.02 + (0.10 × Inside Price)  
\$1.00–\$4.99—\$0.12 + (0.07 × (Inside Price—\$1.00))  
\$5.00–\$14.99—\$0.40 + (0.06 × (Inside Price—\$5.00))  
\$15 or more \$1.00

For a transaction to buy (sell) a Nasdaq [listed] security, the inside price shall be the best offer (best bid) in Nasdaq at the time that the first share of the order that resulted in the disputed transaction was executed, and for a transaction to buy (sell) a [non exchange-listed] *non-Nasdaq* security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed. A “*Nasdaq security*” means a security for which transaction reports are disseminated under the *Nasdaq UTP Plan*, and a “*non-Nasdaq security*” means a security for which

*transaction reports are disseminated under the Consolidated Tape Association Plan. The “primary market” for a non-Nasdaq Security is the market designated as the primary market under the Consolidated Tape Association Plan.*

- (D)–(G) No change.
- (b)–(d) No change.

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq 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. Nasdaq 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

NASD Rule 11890(a) allows designated officers of Nasdaq to declare transactions that arise out of the use or operation of Nasdaq execution or communications systems to be clearly erroneous and to nullify or modify the terms of such transactions. In SR-NASD-2004-009,<sup>8</sup> Nasdaq established a minimum price deviation threshold to provide a “bright line” rule standard for determining when transactions are considered eligible for review. A transaction price that meets these thresholds does not automatically trigger a clearly erroneous determination, but if the transaction price does not meet these thresholds the transaction will not be considered for clearly erroneous review. Thus, there is now a conclusive presumption that a transaction to buy (sell) is not clearly erroneous unless its price is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

Inside price	Minimum threshold
\$0–\$0.99 .....	\$0.02 + (0.10 × Inside Price).

<sup>8</sup> See Securities Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005) (SR-NASD-2004-009).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Form 19b-4 dated March 13, 2006 (“Amendment No. 1”). In Amendment No. 1, Nasdaq amended its filing to indicate that Nasdaq proposes to implement the proposed rule change on March 13, 2006, rather than immediately, in the event the Commission waives the 30-day operative waiting period.

<sup>4</sup> See Form 19b-4 dated March 21, 2006 (“Amendment No. 2”). In Amendment No. 2, Nasdaq amended its proposed definition of “Nasdaq security” and “non-Nasdaq security.”

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Amendment No. 1, *supra* note 3.

<sup>7</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at <http://www.nasdaq.com>. Prior to the date when The NASDAQ Stock Market LLC (“NASDAQ LLC”) commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

Inside price	Minimum threshold
\$1.00–\$4.99 .....	\$0.12 + (0.07 × (Inside Price—\$1.00)).
\$5.00–\$14.99 .....	\$0.40 + (0.06 × (Inside Price—\$5.00)).
\$15 or more .....	\$1.00

In SR–NASD–2005–115,<sup>9</sup> Nasdaq amended this rule to clarify that the minimum price deviation thresholds are applicable only to transactions executed during regular market hours, *i.e.*, between 9:30 a.m. and 4 p.m. This amendment reflected the fact that the analysis conducted by Nasdaq to determine the appropriate levels for the thresholds was based on pricing during normal market hours, and that therefore application of the thresholds during other trading sessions was not consistent with the intent underlying the rule. During pre-market and post-market trading sessions, the inside price of many stocks may not fully reflect trading interest in the stock, since the range of market participants in these trading sessions is far more limited than during regular market hours. As a result, a trade that occurs at a price that deviates significantly from a stock's trading range during the most recent regular market session may nevertheless be sufficiently close to the pre-market or post-market inside price that it would not meet the minimum deviation threshold for the stock. Because the thresholds established by Nasdaq were based on analysis of trading patterns during regular market hours, Nasdaq concluded that the rule should be clarified by limiting the thresholds' application to such hours. The change has resulted in a larger number of transactions being eligible for review under NASD Rule 11890, since transactions occurring during pre-market and post-market sessions are always be eligible for adjudication under the rule unless the market participant seeking an adjudication failed to provide the information required under NASD Rule 11890(a)(2)(B) (*i.e.*, the approximate time of transaction(s), security symbol, number of shares, price(s), contra broker(s) if the transactions are not anonymous, Nasdaq system used to execute the transactions, and the reason the review is being sought).

Nasdaq has now concluded that further clarification of the rule, in accordance with the foregoing discussion, is needed with respect to non-Nasdaq stocks (*i.e.*, stocks for which transaction reports are

disseminated through the Consolidated Tape Association Plan).<sup>10</sup> Because the primary market<sup>11</sup> for such stocks may not post an executable two-sided quotation precisely at 9:30 a.m., the pre-market trading session for such stocks may, in effect, run beyond that time. As a result, Nasdaq has found that trades in these stocks occurring after 9:30 but before the time when the primary market quote is available are frequently not subject to adjudication even though the price of the trades may deviate significantly from a stock's trading range during the most recent regular market session. The proposed rule change will address this concern by clarifying that for non-Nasdaq securities, the thresholds do not apply before the time when the primary market for the security first posts an executable two-sided quote for its regular market trading session.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,<sup>12</sup> in general and with Section 15A(b)(6) of the Act,<sup>13</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will ensure that NASD Rule 11890's minimum price deviation thresholds do not bar adjudication of clearly erroneous petitions in circumstances where the wider spreads prevailing before the primary market for a non-Nasdaq stock posts a quotation may make the application of such thresholds excessively restrictive.

<sup>10</sup> See Amendment No. 2, *supra* note 4.

<sup>11</sup> The rule defines "primary market" with reference to the Consolidated Tape Association Plan ("CTA Plan"), which references the market in which the greatest number of transactions in the security reported on the consolidated tape during the preceding six month period (or such shorter period as the security has been reported on the consolidated tape if it has not been so reported for a full six month period) has taken place. See CTA Plan (second restatement), Section XI, Operational Matters.

<sup>12</sup> 15 U.S.C. 78o–3.

<sup>13</sup> 15 U.S.C. 78o–3(b)(6).

## B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received any written comments.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b–4(f)(6) thereunder.<sup>15</sup>

Nasdaq has requested that the Commission waive the 30-day operative delay to permit Nasdaq to implement the rule proposal on March 13, 2006. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will ensure that NASD Rule 11890's minimum price deviation thresholds do not bar adjudication of clearly erroneous petitions for transactions occurring prior to the time that the primary market for a non-Nasdaq security disseminates a two-sided quote for the security, which is a period when wider spreads can prevail. Accordingly, the Commission has determined to waive the operative delay, and the proposed rule change has become effective upon filing with the Commission and operative as of March 13, 2006.<sup>16</sup> 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,

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b–4(f)(6).

<sup>16</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> See Securities Exchange Act Release No. 52549 (October 3, 2005), 70 FR 58762 (October 7, 2005) (SR–NASD–2005–115).

or otherwise in furtherance of the purposes of the Act.<sup>17</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-033 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-033. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-033 and

<sup>17</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 22, 2006, the date on which Nasdaq submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-4541 Filed 3-28-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53526; File No. SR-PCX-2006-19]

### Self-Regulatory Organizations; Pacific Exchange, Inc. (Now Known As NYSE Arca, Inc.); Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to Rebates and Credits a Market Maker is Eligible To Receive for Executions That Result From Principal Acting as Agent Orders Sent to and Executed at Away Market Centers

March 21, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 3, 2006, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items were prepared by the PCX. On March 15, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange")<sup>3</sup> filed Amendment No. 1 to the proposed rule change. On March 16, 2006, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On March 6, 2006, the PCX filed a proposed rule change (SR-PCX-2006-24) to amend its rules to reflect the following name changes: (i) From PCX to NYSE Arca; (ii) from PCX Equities, Inc. to NYSE Arca Equities, Inc.; (iii) from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and (iv) from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. That proposed rule change became effective upon filing. Amendment No. 2 to the instant proposed rule change reflects these name changes. The Exchange states that it plans to subsequently file a proposed rule change to update such names in its Schedule of Rates and Charges ("Schedule").

<sup>4</sup> In Amendment No. 2, the Exchange made clarifying and technical changes to the original filing and added a provision in the Schedule that requires Market Makers to reimburse the Exchange for any excessive credits received by such Market Makers.

regulatory organization pursuant to section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the proposal effective upon filing with the Commission.<sup>7</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule to create a credit associated with the fees that a Market Maker is charged for executions that result from principal acting as agent orders sent to and executed at away market centers. The Exchange also proposes to make a minor housekeeping correction to footnote 2 under the Trade Related Charges section of the Schedule. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange's Web site (<http://www.archipelago.com/regulation/filings.asp>) and at the Exchange's Office of the Secretary.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. 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 Exchange proposes to amend the Schedule in order to create a credit associated with the fees a Market Maker is charged for executions that result from principal acting as agent orders sent to and executed at away market centers.

Presently, the Exchange charges Market Makers a \$0.26 per contract fee for all transactions. On transactions that

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on March 16, 2006, the date on which the Exchange filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

result when principal acting as agent orders are sent to and executed at away market centers, the Exchange presently rebates to the Market Maker the transaction fee of \$0.26. The Exchange believes that this rebate is warranted due to the fact a Market Maker acting in this capacity is doing so on behalf of public customer orders and receives no beneficial gain from the transaction. The rebate of the Exchange transaction fee of \$0.26 covers the fees assessed by the Exchange on these trades; it does not cover additional costs a Market Maker incurs in connection with executing the trade. In addition to the Exchange transaction fee, a Market Maker must pay a transaction fee at the away exchange and clearing costs associated with the trade.

To help offset the additional costs associated with principal acting as agent orders that are sent to and executed at away market centers, the Exchange proposes to credit Exchange Market Makers \$0.26 per contract on these transactions. This credit will be in addition to the \$0.26 rebate the Exchange rebates market Makers for these trades. The new \$0.26 credit is designed to offset additional costs associated with sending orders away and might not cover all costs associated with these types of trades. In the event that the total amount the Exchange credits a Market Maker for sending orders away is in excess of the total actual expenses incurred in sending the orders away, the Exchange would be entitled to a reimbursement of the excess credits.<sup>8</sup> Market Maker expenses associated with sending orders away to other market centers will be based on the total aggregate expenses incurred during a calendar month.

In a previous filing (SR-PCX-2006-15),<sup>9</sup> the PCX eliminated the On Line Comparison fee associated with Market Maker transactions. A reference to that comparison fee was left inadvertently in the footnote attached to the Market Maker transaction fee. The Exchange now proposes to remove this reference to reconcile the footnote with the previously effective filing. Removing the reference to the comparison fee at this time will make no substantive change to the Schedule.

<sup>8</sup> The Commission notes that the transaction fees charged by away market centers for principal acting as agent orders executed on away markets are pursuant to pilot programs scheduled to expire on July 31, 2006.

<sup>9</sup> That proposed rule change was filed with the Commission on February 23, 2006 and became effective upon filing. See Securities Exchange Act Release No. 53485 (March 14, 2006).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general, and section 6(b)(4) of the Act<sup>11</sup> in particular, in that it provides for the equitable allocation of dues, fees and other charges among its OTP Firms, OTP Holders and other persons using its facilities for trading option contracts.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>12</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>13</sup> because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2006-19 on the subject line.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> See *supra* note 7.

## Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-PCX-2006-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2006-19 and should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4516 Filed 3-28-06; 8:45 am]

BILLING CODE 8010-01-P

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of temporary, emergency amendment to sentencing guidelines, policy statements, and commentary.

**SUMMARY:** Pursuant to the Anabolic Steroid Control Act of 2004, Pub. L. 108-358 (the "ASC Act") and the United States Parole Commission

<sup>15</sup> 17 CFR 200.30-3(a)(12).

Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109-76, the Commission hereby gives notice of a temporary, emergency amendment to the sentencing guidelines, policy statements, and commentary. This notice sets forth the temporary, emergency amendment and the reason for the amendment.

**DATES:** The Commission has specified an effective date of March 27, 2006, for the emergency amendment set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** The United States Parole Commission Extension and Sentencing Commission Authority Act of 2005 requires the Commission, under emergency amendment authority, to implement section 3 of the ASC Act no later than 180 days after the date of enactment of the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005. Accordingly, the Commission is required to promulgate a temporary, emergency amendment by March 27, 2006.

The temporary, emergency amendment set forth in this notice also may be accessed through the Commission's Web site at <http://www.ussc.gov>.

**Authority:** 28 U.S.C. 994(a), (o), (p), (x); section 105 of Pub. L. 109-9; and Pub. L. 109-76.

**Ricardo H. Hinojosa,**  
Chair.

1. *Amendment:* Section 2D1.1 is amended by redesignating subsections (b)(6) and (b)(7) as subsections (b)(8) and (b)(9), respectively; and by inserting the following after subsection (b)(5):

“(6) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by 2 levels.

(7) If the defendant distributed an anabolic steroid to an athlete, increase by 2 levels.”.

Section 2D1.1(c) is amended in the “\*Notes to Drug Quantity Table” in subdivision (F) by striking “(except anabolic steroids)”; and by adding at the end the following:

“For an anabolic steroid that is not in a pill, capsule, tablet, or liquid form (e.g., patch, topical cream, aerosol), the court shall determine the base offense level using a reasonable estimate of the quantity of anabolic steroid involved in the offense. In making a reasonable estimate, the court shall consider that each 25 mg of an anabolic steroid is one ‘unit’.”.

Section 2D1.1(c) is amended in the “\*Notes to the Drug Quantity Table” by striking subdivision (G); and by

redesignating subdivisions (H) through (J) as subdivisions (G) through (I), respectively.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in the first paragraph of Note 8 by inserting “Interaction with § 3B1.3.—” before “A defendant who”; by striking “enhancement” and inserting “adjustment”; and by adding at the end the following:

“Additionally, an enhancement under § 3B1.3 ordinarily would apply in a case in which the defendant used his or her position as a coach to influence an athlete to use an anabolic steroid.”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Notes 19 and 20 by striking “(b)(6)” each place it appears and inserting “(b)(8)”; and in Note 21 by striking “(b)(7)” each place it appears and inserting “(b)(9)”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended by adding at the end the following:

“24. Application of Subsection (b)(6).—For purposes of subsection (b)(6), ‘masking agent’ means a substance that, when taken before, after, or in conjunction with an anabolic steroid, prevents the detection of the anabolic steroid in an individual’s body.

25. Application of Subsection (b)(7).—For purposes of subsection (b)(7), ‘athlete’ means an individual who participates in an athletic activity conducted by (i) an intercollegiate athletic association or interscholastic athletic association; (ii) a professional athletic association; or (iii) an amateur athletic organization.”.

The Commentary to § 2D1.1 captioned “Background” is amended in the ninth paragraph by striking “(b)(6)(A)” and inserting “(b)(8)(A)”; and in the last paragraph by striking “(b)(6)(B) and (C)” and inserting “(b)(8)(B) and (C)”.

*Reason for Amendment:* This amendment implements the directive in the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109-76, which required the Commission, under emergency amendment authority, to implement section 3 of the Anabolic Steroid Control Act of 2004, Pub. L. 108-358 (the “ASC Act”). The ASC Act directed the Commission to “review the Federal sentencing guidelines with respect to offenses involving anabolic steroids” and “consider amending the \* \* \* guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use \* \* \*.”

The amendment implements the directives by increasing the penalties for

offenses involving anabolic steroids. It does so by changing the manner in which anabolic steroids are treated under § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).

The amendment eliminates the sentencing distinction between anabolic steroids and other Schedule III substances when the steroid is in a pill, capsule, tablet, or liquid form. For anabolic steroids in other forms (e.g., patch, topical cream, aerosol), the amendment instructs the court that it shall make a reasonable estimate of the quantity of anabolic steroid involved in the offense, and in making such estimate, the court shall consider that each 25 mg of anabolic steroid is one “unit”.

In addition, the amendment addresses two harms often associated with anabolic steroid offenses by providing new enhancements in § 2D1.1(b)(6) and (b)(7). Subsection (b)(6) provides a two-level enhancement if the offense involved the distribution of an anabolic steroid and a masking agent. Subsection (b)(7) provides a two-level enhancement if the defendant distributed an anabolic steroid to an athlete. Both enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The amendment also amends Application Note 8 of § 2D1.1 to provide that an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) ordinarily would apply in the case of a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.

[FR Doc. 06-3023 Filed 3-28-06; 8:45 am]

BILLING CODE 2211-01-P

## DEPARTMENT OF STATE

[Public Notice 5355]

### 30-Day Notice of Proposed Information Collection: DS 1843 and 1622, Medical History and Examination for Foreign Service, OMB 1405-0068

**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:* Medical History and Examination for Foreign Service.

*OMB Control Number:* 1405-0068.

*Type of Request:* Extension of a Currently Approved Collection.

*Originating Office:* Office of Medical Services, M/MED/EX.

*Form Number:* DS 1843 and DS-1622.

*Respondents:* Family members of Foreign Service Officers and Federal employees stationed abroad.

*Estimated Number of Respondents:* 9,800.

*Estimated Number of Responses:* 9,800.

*Average Hours Per Response:* 1.

*Total Estimated Burden:* 9,800 hours.

*Frequency:* Tour of Duty.

*Obligation to Respond:* Required to obtain a benefit.

**DATES:** Comments from the public will be accepted up to April 28, 2006.

**ADDRESSES:** Direct comments and questions to Alex Hunt, 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 202-395-7860. You may submit comments by any of the following methods:

*E-mail:* [ahunt@omb.eop.gov](mailto:ahunt@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 Susan Willig, Department of State, Office of Medical Services, SA-1, Room L101, 2401 E St., NW., Washington, DC 20052-0101, who may be reached on 202-663-1754 or at [willigsp@state.gov](mailto:willigsp@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:* Form DS-1843 and DS-1622 are designed to collect medical information that gives medical providers the current and adequate information needed to decide whether or not a Federal employee, and family members, will have sufficient medical resources at a diplomatic mission abroad.

*Methodology:* The information will be collected through the use of an electronic forms engine, or by hand written submission using a pre-printed form.

Dated: March 7, 2006.

**Maria C. Melchiorre,**

*Deputy Executive Director, Office of Medical Services, Department of State.*

[FR Doc. E6-4553 Filed 3-28-06; 8:45 am]

**BILLING CODE 4710-36-P**

## DEPARTMENT OF STATE

[Public Notice 5354]

### Bureau of Political-Military Affairs: Export of Lethal Defense Articles/ Defense Services to Indonesia

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that requests for the export or retransfer of lethal defense articles to Indonesia (and defense services related to such lethal defense articles) pursuant to section 38 of the Arms Export Control Act will be considered on a case-by-case basis.

**DATES:** *Effective Date:* March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Juraska, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-22860 or Fax (202) 261-8199.

**SUPPLEMENTARY INFORMATION:** It is the policy of the U.S. Government, effective as of March 17, 2006, to consider on a case-by-case basis applications for the export of lethal defense articles and related defense services to Indonesia. Section 599F(b) of the FY 2006 Foreign Operations, Export Financing and Related Programs Appropriations Act allows for the issuance of licenses for the export of lethal defense articles for the Indonesian Armed Forces should the Secretary of State waive, as being in the national security interest of the United States, legislative requirements for certification of certain conditions pertaining to Indonesia. Such a waiver was signed on November 16, 2005. The Department has also determined that it shall be U.S. Government policy to consider on a case-by-case basis applications for the export of lethal

defense articles and related defense services to Indonesia.

Previously, **Federal Register** Notices were published on October 14, 1999 (64 FR 55805), January 25, 2001 (66 FR 7836), and March 22, 2001 (66 FR 16085), that set forth a policy of denial for new export requests for Indonesia and suspended all licenses and approvals to export or otherwise transfer defense articles and defense services to Indonesia, except for certain exports related to commercial communication satellites and Y2K compliance activities that were not for the Indonesian military; permitted review, on a case-by-case basis, of requests for the export of C-130 spare parts to Indonesia, including for the Government of Indonesia; and, expanded the review, on a case-by-case basis, to defense articles/defense services exported to Indonesia for ultimate end-use by a third-country, respectively.

Further changes to the export policy toward Indonesia were reflected in a **Federal Register** Notice published on December 18, 2001 (66 FR 65235) that expanded the categories of defense articles/defense services eligible for consideration for export/transfer to Indonesia, on a case-by-case basis, to include: (a) Non-lethal defense articles and spare parts; and (b) non-lethal, safety-of-use spare parts for lethal end-items. For purposes of that Notice, "non-lethal defense articles" meant an item not a weapon, ammunition, or other equipment or material designed to inflict serious bodily harm or death (see, e.g., 10 U.S.C. 2557). Examples of safety-of-use items were cartridge actuated devices, propellant actuated devices, and technical manuals for military aircraft for purposes of enhancing the safety of the aircraft crew. No distinction was made between Indonesia's existing and new inventory.

This Notice expands what may be authorized for export to Indonesia to include lethal defense articles controlled on the U.S. Munitions List, as well as defense services related to the export of such lethal defense articles. Applications for such exports will be considered on a case-by-case basis in accordance with standard practice.

This action is taken pursuant to Sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States.

Dated: March 22, 2006.

**Gregory M. Suchan,**

*Acting Assistant Secretary, Bureau of Political Military Affairs, Department of State.*

[FR Doc. E6-4555 Filed 3-28-06; 8:45 am]

**BILLING CODE 4710-25-P**

**DEPARTMENT OF STATE****[Public Notice 5329]****Announcement of Meetings of the International Telecommunication Advisory Committee**

**SUMMARY:** This notice announces the program of International Telecommunication Advisory Committee meetings to prepare for meetings of the Asia-Pacific Economic Community Telecommunications and Information Working Group (APEC-TEL), various International Telecommunication Union Telecommunication Standardization Sector (ITU-T) and Radiocommunication Sector (ITU-R) Study Groups, and the Organization of American States Inter-American Telecommunication Commission (CITEL) in addition to meetings already announced.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for the 33rd meeting of APEC TEL in Calgary, Canada on April 13, 2006 2-4 p.m. at Verizon Communications, 1300 Eye Street, Washington, DC.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for various ITU-R Study Group meetings continuously by e-mail through the end of July 2006. People desiring to participate in this activity should contact the secretariat at [minardje@state.gov](mailto:minardje@state.gov) or (202) 647-3234 for directions.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for CITEL PCC.I (Telecommunication) on April 5 and 11 and May 11 and 17, 2006, 2-4 p.m. in Washington, DC, at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for CITEL PCC.II (Radiocommunication including Broadcasting) on April 11 and 25 and May 9 and 23, 2006 10-noon in Washington, DC, at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU Council April 12, 2006 in Washington, DC all 2-4 p.m. at a location to be determined.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU Plenipotentiary Conference 2006 on May 3, 17, 31, and June 14 and 28, 2006 in Washington, DC, 10-noon at a location to be determined.

These meetings are open to the public. Particulars on meeting location

and times, and information on conference bridges is available from the secretariat [minardje@state.gov](mailto:minardje@state.gov), telephone (202) 647-3234.

Dated: March 23, 2006.

**Anne D. Jillson,**

*Foreign Affairs Officer, International Communications & Information Policy, Department of State.*

[FR Doc. E6-4558 Filed 3-28-06; 8:45 am]

**BILLING CODE 4710-07-P**

**TENNESSEE VALLEY AUTHORITY****Sunshine Act Meeting Notice**

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 0601).

**TIME AND DATE:** 10:15 a.m. (e.s.t.), March 31, 2006. Knoxville Convention Center, 701 Henley Street, Knoxville, Tennessee 37902.

**STATUS:** Open.

**AGENDA:**

1. Introduction.
2. Selection of Chair.
3. Board Committees and/or Bylaws.
4. Operations Report.

**FOR FURTHER INFORMATION CONTACT:**

Please call TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999. People who plan to attend the meeting and have special needs should call (865) 632-6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: March 24, 2006.

**Maureen H. Dunn,**

*General Counsel and Secretary.*

[FR Doc. 06-3067 Filed 3-27-06; 9:47 am]

**BILLING CODE 8120-08-P**

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****Petition for Waiver of Compliance**

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Kansas City Southern Railway Company**

[Waiver Petition Docket Number FRA-2005-23483]

The Kansas City Southern Railway Company (KCS) seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.23, 229.27, and 229.29, as they pertain to the requirement to maintain the locomotive repair record form FRA 6180.49A, commonly referred to as the Blue Card, in the cab of their locomotives. If granted, KCS would maintain locomotive inspection information in a secure database. The database would be maintained as the required office copy of form FRA 6180.49A. A computer generated form, which is similar to and contains all information currently contained on the required FRA 6180.49A, would be maintained on board the locomotive. In place of required signatures of persons performing inspections and tests, KCS employees would be provided with a unique login identification number and a secure password to access the system and verify performance of inspections. In place of signatures, a computer generated report would block print the name of the employee performing a required inspection and block print the employees' supervisor who is certifying that all inspections have been made and all repairs were completed. Required filing of the previous inspection record will be maintained through the database.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA-2005-23483) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the

public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC, on March 21, 2006.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E6-4499 Filed 3-28-06; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund: Open Meeting of the Community Development Advisory Board

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces the next meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (the Fund).

**DATES:** The next meeting of the Advisory Board will be held from 9 a.m. to 4 p.m. on April 26, 2006.

**ADDRESSES:** The Advisory Board meeting will be held in Conference Rooms B and C of the Bureau of the Mint, U.S. Treasury, located at 801 9th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** The Office of Public and Legislative Affairs of the Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, (202) 622-8042 (this is not a toll free number). Other information regarding the Fund and its programs may be obtained through the Fund's Web site at <http://www.cdfifund.gov>.

**SUPPLEMENTARY INFORMATION:** Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Advisory Board. The charter for the Advisory Board has been filed in

accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held in Conference Rooms B and C of the Bureau of the Mint, U.S. Treasury, located at 801 9th Street, NW., Washington, DC, from 9 a.m. to 4 p.m. on April 26, 2006. The room will accommodate up to 20 members of the public. Seats are available to members of the public on a first-come, first-served basis.

Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Because the meeting will be held in a secured facility, members of the public who desire to attend the meeting must contact the Fund's Office of Public and Legislative Affairs by 5 p.m. ET on April 20, 2006 by calling (202) 622-8042 (this is not a toll free number) or via e-mail at [luechthb@cdfi.treas.gov](mailto:luechthb@cdfi.treas.gov), to inform the Fund of your desire to attend the meeting and to provide the information that will be required to facilitate your entry to the facility.

Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund's Office of Public and Legislative Affairs of the Fund, 601 13th Street, NW., Suite 200 South, Washington, DC, 20005, by 5 p.m. ET on April 20, 2006.

The Advisory Board meeting will include a report from the Director on the activities of the Fund since the last Advisory Board meeting, as well as policy, programmatic, fiscal and legislative initiatives for the years 2006 and 2007.

**Authority:** 12 U.S.C. 4703; Chapter X, Pub. L. 104-19, 109 Stat. 237.

Dated: March 23, 2006

**Arthur A. Garcia,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E6-4543 Filed 3-28-06; 8:45 am]

BILLING CODE 4810-70-P

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

*Name:* Larry M. Wortzel, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to evaluate "the compliance of the People's Republic of China with its accession agreement to the World Trade Organization." The Commission is further mandated to assess "the qualitative and quantitative nature of the transfer of United States production activities to the People's Republic of China, including the relocation of high technology, manufacturing, and research and development facilities, the impact of such transfers on United States national security \* \* \* and the effect of such transfers on United States economic security and employment."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on Tuesday, April 4, 2006.

### Background

This event is the fourth in a series of public hearings the Commission will hold during its 2006 report cycle to collect input from leading experts in academia, business, industry, government and the public on the impact of the economic and national security implications of the U.S. growing bilateral trade and economic relationship with China. The April 4 hearing is being conducted to obtain commentary about issues connected to China's World Trade Organization Compliance. Information on upcoming hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site <http://www.uscc.gov>.

The April 4 hearing will address "China's World Trade Organization Compliance: Industrial Subsidies and the Impact on U.S. and World Markets" and will be Co-chaired by Commissioners Michael Wessel and Peter Brookes.

#### Purpose of Hearing

The hearing is designed to assist the Commission in fulfilling its mandate by assessing China's compliance with its World Trade Organization accession agreement on subsidies, examining what constitutes the breadth of China's subsidy regime, evaluating the level of transparency into China's subsidy regime and economic planning process, and identifying how China's industrial subsidies negatively or positively affect U.S. companies, investors, and workers.

Copies of the hearing agenda will be made available on the Commission's Web site <http://www.uscc.gov>. Any interested party may file a written statement by April 4, 2006, by mailing to the contact below.

**DATE AND TIME:** Tuesday, April 4, 2006, 9 a.m. to 5 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at [www.uscc.gov](http://www.uscc.gov) in the near future.

**ADDRESSES:** The hearing will be held on Capitol Hill on April 4 in Room 2323 Rayburn House Office Building. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone 202-624-1409, or via e-mail at [kmichels@uscc.gov](mailto:kmichels@uscc.gov).

**Authority:** Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106-398 as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), as amended by Public Law 109-108 (November 22, 2005).

Dated: March 23, 2006.

#### Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E6-4508 Filed 3-28-06; 8:45 am]

BILLING CODE 1137-00-P

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (VA Form 10-21081)]

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assess the quality of care provided to veterans prior to his or her death.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 30, 2006.

**ADDRESSES:** Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail [ann.bickoff@hq.med.va.gov](mailto:ann.bickoff@hq.med.va.gov). Please refer to "OMB Control No. 2900—New (VA Form 10-21081)" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ann W. Bickoff (202) 273-8310 or fax (202) 273-9381.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Title:** After Death Bereaved Family Member Satisfaction Survey, VA Form 10-21081(NR).

**OMB Control Number:** 2900—New (VA Form 10-21081).

**Type of Review:** New collection.

**Abstract:** The data collected on VA Form 10-21081(NR) will be used to survey family members of deceased veterans on their satisfaction with the quality of care provided to their loved one prior to his or her death at a VA facility.

**Affected Public:** Individuals or households.

**Estimated Annual Burden:** 588 hours.

**Estimated Average Burden per Respondent:** 15 minutes.

**Frequency of Response:** One-time.

**Estimated Number of Respondents:** 2,351.

Dated: March 20, 2006.

By direction of the Secretary.

**Denise McLamb,**

Program Analyst, Records Management Service.

[FR Doc. E6-4496 Filed 3-28-06; 8:45 am]

BILLING CODE 8320-01-P

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a town hall meeting for April 11, 2006, at the National Vietnam Veterans Art Museum, 1801 South Indiana Avenue, Chicago, IL. The town hall meeting will begin at 7 p.m. and end at 9 p.m. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The Commission is conducting eight fact-finding site visits throughout the United States. The Chicago area was selected based upon criteria that included the concentration of veterans, active-duty service members, and National Guard members, and reservist, and the co-location of Veterans Benefits

Administration, Veterans Health Administration, and Department of Defense (DoD) facilities with particular interests in transition activities. The goal of this visit is to allow the commissioners the opportunity to tour local VA and DoD facilities, examine the processes in place which assist veterans in their efforts to obtain benefits, and to present veterans, survivors and the general public with an opportunity to learn about the work of the Commission

and to offer comments in a face-to-face forum.

Interested persons may attend the town hall meeting and present oral statements to the Commission. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may provide written comments for review by the Commission prior to the meeting, by e-mail to [veterans@vetscommission.intranets.com](mailto:veterans@vetscommission.intranets.com)

or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: March 22, 2006.

By direction of the Secretary.

**E. Philip Riggan,**

*Committee Management Officer.*

[FR Doc. 06-2987 Filed 3-28-06; 8:45 am]

**BILLING CODE 8320-01-M**



# Federal Register

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**Wednesday,  
March 29, 2006**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Parts 59, 80, 85 and 86  
Control of Hazardous Air Pollutants From  
Mobile Sources; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 59, 80, 85 and 86

[EPA-HQ-OAR-2005-0036; FRL-8041-2]

RIN 2060-AK70

### Control of Hazardous Air Pollutants From Mobile Sources

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

**ACTION:** Proposed rule.

**SUMMARY:** Today EPA is proposing controls on gasoline, passenger vehicles, and portable gasoline containers (gas cans) that would 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 proposing to limit the benzene content of gasoline to an annual average of 0.62% by volume, beginning in 2011. We are also proposing to limit exhaust emissions of hydrocarbons from passenger vehicles when they are operated at cold temperatures. This standard would be phased in from 2010 to 2015. For passenger vehicles we also propose evaporative emissions standards that are equivalent to those in California. Finally, we are proposing a hydrocarbon emissions standard for gas cans beginning in 2009, which would reduce evaporation and spillage of gasoline from these containers.

These controls would significantly reduce emissions of benzene and other mobile source air toxics such as 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and naphthalene. This proposal would result in additional substantial benefits to public health and welfare by significantly reducing emissions of particulate matter from passenger vehicles.

We project annual nationwide benzene reductions of 35,000 tons in 2015, increasing to 65,000 tons by 2030. Total reductions in mobile source air toxics would be 147,000 tons in 2015 and over 350,000 tons in 2030. Passenger vehicles in 2030 would emit 45% less benzene. Gas cans meeting the new standards would emit almost 80% less benzene. Gasoline would have 37% less benzene overall. We estimate that these reductions would have an average cost of less than 1 cent per gallon of gasoline and less than \$1 per vehicle. The average cost for gas cans would be

less than \$2 per can. The reduced evaporation from gas cans would result in significant fuel savings, which would more than offset the increased cost for the gas can.

**DATES:** Comments must be received on or before May 30, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before April 28, 2006.

**Hearing:** We will hold a public hearing on April 12, 2006. The hearing will start at 10 a.m. local time and continue until everyone has had a chance to speak. If you want to testify at the hearing, notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by April 3, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0036, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- Fax your comments to: (202) 566-1741.

- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

- Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0036. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an

e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section XI, Public Participation, of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding 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.

**Hearing:** The public hearing will be held at Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202, Telephone: (703) 486-1111. See section XI, Public Participation, for more information about public hearings.

**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; email address: [lieske.christopher@epa.gov](mailto:lieske.christopher@epa.gov), or Assessment and Standards Division

Hotline; telephone number: (734) 214-4636; e-mail address: *asdinfor@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**General Information**

*A. 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 would also affect you if you produce gasoline motor fuel or manufacture portable gasoline containers. Regulated categories include:

Category	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>	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	

<sup>a</sup> North American Industry Classification System (NAICS).

<sup>b</sup> 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.

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

1. Submitting CBI

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

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

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Regulatory Impact Analysis (RIA) 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. 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. Sections II.A and IV of this preamble and Chapter 3 of the RIA provide more detail about NATA, as well as our analysis of exposures near roadways.

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 hydrocarbons except POM. 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 (specifically, diesel particulate matter and diesel exhaust organic gases) is one of the pollutants that pose the greatest relative cancer risk. 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.

As discussed in detail in Section V of this preamble and Chapter 2 of the RIA, this proposal would significantly reduce emissions of the many air toxics that are hydrocarbons, including benzene, 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and naphthalene. The proposed fuel benzene standard and hydrocarbon standards for vehicles and gas cans would together reduce total emissions of mobile source air toxics by 350,000 tons in 2030, including 65,000 tons of benzene. Mobile sources were responsible for 68% of benzene emissions in 1999. As a result of this proposal, in 2030 passenger vehicles would emit 45% less benzene, gas cans would emit 78% less benzene, and the gasoline would have 37% less benzene overall.

In addition, EPA has already taken significant steps to reduce diesel emissions from mobile sources, which will result in a 70% reduction between

1999 and 2020. We have adopted stringent standards for diesel trucks and buses, and nonroad diesel engines (engines used, for example, in construction, agricultural, and industrial applications). We also have additional programs underway to reduce diesel emissions, including voluntary programs and a proposal that is being developed to reduce emissions from diesel locomotives and marine engines.

The proposed reductions in mobile source air toxics emissions would 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. In addition, the hydrocarbon reductions from the vehicle and gas can standards would reduce VOC emissions (which are a precursor to ozone and PM<sub>2.5</sub>) by over 1 million tons in 2030. The proposed vehicle standards would reduce direct PM<sub>2.5</sub> emissions by 20,000 tons in 2030 and would also reduce secondary formation of PM<sub>2.5</sub>. Although ozone and PM<sub>2.5</sub> are considered criteria pollutants rather than "air toxics," reductions in ozone and PM<sub>2.5</sub> are important co-benefits of this proposal. More details on emissions, cancer risks, and adverse health and welfare effects associated with ozone and PM are found in sections II.A, IV and V of this preamble and Chapters 2 and 3 of the RIA.

Section II.B of this preamble provides an overview of the regulatory program that EPA is proposing for passenger vehicles, gasoline, and gas cans. We are proposing standards to limit the exhaust hydrocarbons from passenger vehicles during cold temperature operation. We are also proposing evaporative hydrocarbon emissions standards for passenger vehicles. We are proposing to limit the average annual benzene content of gasoline. Finally, we are proposing hydrocarbon emissions standards for gas cans that would reduce evaporation, permeation, and spillage from these containers. Detailed discussion of each of these programs is in sections VI, VII, and VIII of the preamble and Chapters 5, 6, and 7 of the RIA.

We estimate that the benefits of this proposal would be about \$6 billion in 2030, based on the direct PM<sub>2.5</sub> 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 proposal would be about \$200 million in 2030 (expressed in 2003 dollars). These net social costs include the value of fuel

savings from the proposed gas can standards, which would be worth \$82 million in 2030.

The proposed reductions would have an average cost of 0.13 cents per gallon of gasoline, less than \$1 per vehicle, and less than \$2 per gas can. The reduced evaporation from gas cans would result in fuel savings that would more than offset the increased cost for the gas can. In 2030, the long-term cost per ton of the proposed standards (in combination, and including fuel savings) would be \$450 per ton of total mobile source air toxics reduced; \$2,400 per ton of benzene reduced; and no cost for the hydrocarbon and PM reductions (because the vehicle standards would have no cost in 2020 and beyond). Section IX of the preamble and Chapters 8–13 of the RIA provide more details on the costs, benefits, and economic impacts of the proposed standards. The impacts on small entities and the flexibilities we are proposing are discussed in section XII.C of this preamble and Chapter 14 of the RIA.

#### *B. What Background Information is Helpful to Understand this Proposal?*

##### *1. What Are Air Toxics and Related Health Effects?*

Air toxics, which are also known in the Clean Air Act as "hazardous air pollutants," are those pollutants known or suspected to cause cancer or other serious health or environmental effects. For example, some of these pollutants are known to have negative effects on people's respiratory, cardiovascular, neurological, immune, reproductive, or other organ systems, and they may also have developmental effects. They may pose particular hazards to more susceptible and sensitive populations, such as children, the elderly, or people with pre-existing illnesses.

Mobile source air toxics (MSATs) are those toxics emitted by motor vehicles, nonroad engines (such as lawn and garden equipment, farming and construction equipment, aircraft, locomotives, and ships), and their fuels. Toxics are also emitted by 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.

Some MSATs of particular concern include benzene, 1,3-butadiene, formaldehyde, acrolein, naphthalene, and diesel particulate matter and diesel exhaust organic gases. Benzene and 1,3-butadiene are both known human

carcinogens. Section III of this preamble provides more detail on the health effects of each of these pollutants.

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.

## 2. What is the Statutory Authority for Today's Proposal?

### a. 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 from motor vehicles, 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 proposing a cold-temperature hydrocarbon emission standard for passenger vehicles under this authority.

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 proposing a benzene standard for gasoline under this authority.

Clean Air Act section 202(l)(2) requires EPA to "from time to time revise" its regulations controlling hazardous air pollutants from motor vehicles and fuels. As described in more detail in section I.F. below, EPA has previously set standards under section 202(l), and we committed in that rule to engage in further rulemaking to

implement section 202(l). This proposal fulfills that commitment.

### b. 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). EPA plans to publish a **Federal Register** notice announcing that EPA has added portable gasoline containers to the list of consumer products to be regulated. This action must be taken by EPA prior to issuing a final rule for gas cans. 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 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 proposing a hydrocarbon standard for gas cans under the authority of section 183(e).

### c. Energy Policy Act

Section 1504(b) of the Energy Policy Act of 2005 requires EPA to adjust the toxics emissions baselines 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 VII of this preamble, we believe today's proposed action would in fact result in greater reductions than would be achieved by adjusting the baselines under the Energy Policy Act. Accordingly, under the

provisions of the Energy Policy Act, this proposed action would obviate the need for readjusting emissions baselines for reformulated gasoline.

## 3. What Other Actions Has EPA Taken Under Clean Air Act Section 202(l)?

### a. 2001 Mobile Source Air Toxics Rule

EPA published a final rule under Clean Air Act section 202(l) on March 29, 2001, entitled, "Control of Emissions of Hazardous Air Pollutants from Mobile Sources" (66 FR 17230). This rule established toxics emissions performance standards for gasoline refiners. These standards were designed to ensure that the over compliance to the standard seen in the in-use fuels produced in the years of 1998–2000 would continue in the future.

EPA adopted this anti-backsliding requirement as a near-term control that could be implemented and take effect within a year or two. We did not adopt long-term controls, those controls that require a longer lead time to implement, because we lacked information to address the costs and benefits of potential fuel controls in the context of the fuel sulfur controls that we had finalized in February 2000. However, the March 2001 rule did commit to additional rulemaking that would evaluate the need for and feasibility of additional controls.<sup>1</sup> Today's proposal fulfills that commitment, and represents the second step of the two-step approach originally envisioned in the 2001 rule.

The 2001 rule did not set additional air toxics controls for motor vehicles, because the technology-forcing Tier 2 light-duty vehicle standards and 2007 heavy-duty engine and vehicle standards had just been promulgated. We found that those standards represented the greatest degree of toxics control achievable at that time under section 202(l).<sup>2</sup>

### b. Technical Analysis Plan

The 2001 rulemaking also included a Technical Analysis Plan that described toxics-related research and activities that would inform our future rulemaking to evaluate the need for and appropriateness of additional mobile source air toxic controls. Specifically, we identified four critical areas where there were data gaps requiring long-term efforts:

- Developing better air toxics emission factors for nonroad sources;
- Improving estimation of air toxics exposures in microenvironments;

<sup>1</sup> See *Sierra Club v. EPA*, 325 F. 3d 374, 380 (D.C. Cir. 2003), which upholds this approach.

<sup>2</sup> 66 FR 17241–17245 (March 29, 2001).

- Improving consideration of the range of total public exposures to air toxics; and
- Increasing our understanding of the effectiveness and costs of vehicle, fuel and nonroad controls for air toxics.

EPA and other outside researchers have conducted significant research in these areas since 2001. The findings of this research are described in more detail in other sections of this preamble and in the regulatory impact analysis for this proposal. Following are some highlights of our activities.

*Nonroad emissions testing.* EPA has tested emissions of nonroad diesel engines for a comprehensive suite of hydrocarbons and inorganic compounds. These emissions tests employed steady-state as well as transient test cycles, using typical nonroad diesel fuel and low-sulfur nonroad diesel fuel. In addition, EPA tested small gasoline-powered engines such as lawnmowers, leaf blowers, chainsaws and string trimmers.

Improved estimation of exposures in microenvironments and consideration of the range of public exposures. EPA and other researchers have conducted a substantial amount of research and analysis in these areas, which is discussed in section IV of this preamble and in the regulatory impact analysis. This research has involved monitoring as well as the development and application of enhanced modeling tools. For example, personal exposure monitoring and ambient monitoring has been conducted at homes and schools near roadways; in vehicles; in homes with attached garages; and in occupational settings involving both diesel and gasoline nonroad equipment. We have also applied dispersion modeling techniques with greater spatial refinement to estimate gradients of toxic pollutants near roadways. A variety of improvements to our emissions, dispersion, and exposure modeling tools are improving our ability to consider the range of exposure people experience. These include the MOBILE6 emissions model, improved spatial and temporal allocation of emissions, development of the Community Multiscale Air Quality (CMAQ) model, and updates to the HAPEM exposure model. Many of these improvements were applied in EPA's National-Scale Air Toxics Assessment for 1999 and other analyses EPA performed to support this proposal. In fact, EPA developed a modification of the HAPEM exposure model to account for higher pollutant concentrations near major roads.

Research in these areas is continuing both inside and outside EPA, including

work under the auspices of the Health Effects Institute and the Mickey Leland National Urban Air Toxics Research Center.

Costs and effectiveness of vehicle, fuel, and nonroad controls for air toxics. EPA's analysis of the costs and effectiveness of vehicle and fuel controls is described in section IX of this preamble and in the regulatory impact analysis. In addition, as described in section V, EPA is currently developing rules that will examine controls of small gasoline engines and diesel locomotive and marine engines.

## II. Overview of Proposal

### A. Why Is EPA Making This Proposal?

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,<sup>3</sup> 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, or people that spend a large amount of time in vehicles, 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 will remain a public health concern. Benzene will remain the largest contributor to this risk. In addition, some mobile source air toxics contribute to the formation of ozone and PM<sub>2.5</sub>, which contribute to serious public health problems, which are discussed further in section II.A.4.

Sections II.A.1–3 discuss the risks posed by outdoor toxics now and in the future, based on national-scale estimates such as EPA's National-Scale Air Toxics Assessment (NATA). EPA's NATA for 1999 provides some perspective on the average risk of cancer and noncancer health effects resulting from breathing air toxics from outdoor sources, and the contribution of mobile sources to these risks.<sup>4,5</sup> This assessment did not include indoor sources of air toxics. Also, it estimates average concentrations within

<sup>3</sup> Based on quantitative estimates of risk, which do not include diesel particulate matter and diesel exhaust organic gases.

<sup>4</sup> [http://www.epa.gov/ttn/atw/nata\\_1999](http://www.epa.gov/ttn/atw/nata_1999).

<sup>5</sup> 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 confidential estimate of cancer unit risk.

a census tract, and therefore does not reflect elevated concentrations and exposures near roadways within a census tract. 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.

EPA also performed a national-scale assessment for future years, using the same modeling tools and approach as the 1999 NATA. Finally, we also performed national-scale exposure modeling that accounts for the higher toxics concentrations near roads. This latter modeling provides a perspective on the mobile source contribution to risk from air toxics that is not reflected in our other national-scale assessments.

### 1. National Cancer Risk from Air Toxics

According to NATA, the average national cancer risk in 1999 from all outdoor sources of air toxics was 42 in a million. That is, 42 out of one million people would be 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. Considering only the subset of compounds emitted by mobile sources (see Table IV.C–2), the national average cancer risk in 1999, including the stationary source contribution to these pollutants, was 23 in a million.

Benzene is the largest contributor to cancer risk of all 133 pollutants quantitatively assessed in the 1999 NATA. The national average cancer risk from benzene alone was 11 in a million. Over 120 million people in 1999 were exposed to a risk level above 10 in a million due to chronic inhalation exposure to benzene. Mobile sources were responsible for 68% 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. The predicted national average cancer risk from MSATs in 2030 will be 18 in a million, according to EPA analysis (described in more detail in section IV of this preamble and Chapter 3 of the Regulatory Impact Analysis). In fact, in 2030 there will be more people exposed to the highest levels of risk. The number of Americans above the 10 in a million cancer risk level from exposure to MSATs is projected to increase from 214 million in 1999 to 240 million in 2030. Mobile sources will continue to be a significant contributor to risk in the future, accounting for 22% of total air

toxic emissions in 2020, and 44% of benzene emissions.

## 2. Noncancer Health Effects

According to the NATA for 1999, 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).<sup>6</sup> 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 1999. The majority of this risk was from acrolein, and formaldehyde also contributed to the risk of respiratory health effects. Mobile sources will continue to be responsible for the majority of noncancer risk from outdoor air toxics in 2030.

Although not included in NATA's estimates of noncancer risk, PM from gasoline and diesel mobile sources contribute significantly to the health effects associated with ambient PM, for which EPA has established a National Ambient Air Quality Standard. There is extensive human data showing a wide spectrum of adverse health effects associated with exposure to ambient PM.

## 3. Exposure Near Roads and From Attached Garages

The national-scale risks described above do not account for higher exposures experienced by people who live near major roadways, or people who live in homes with attached garages. A substantial number of studies show elevated concentrations of multiple MSATs in close proximity to major roads. We also conducted an exposure modeling study for three geographically distinct states (Colorado, New York, and Georgia) and found that when the elevated concentrations near roadways are accounted for, the distribution of benzene exposure is broader, with a larger fraction of the population exposed to higher concentrations. The largest effect on personal exposure occurs for the population living near major roads. A U.S. Census survey of housing found that in 2003 12.6% of U.S. housing units were within 300 feet of a major transportation source.<sup>7</sup> The potential population exposed to elevated concentrations near major roadways is

therefore large. In addition, our analysis indicates that benzene exposure experienced by people living in homes with attached garages may be twice the national average benzene exposure estimated by NATA for 1999. More details on exposure near roads and from attached garages can be found in section IV of this preamble.

## 4. Ozone and Particulate Matter

Many MSATs are part of a larger category of mobile source emissions known as volatile organic compounds (VOC), which contribute to the formation of ozone and particulate matter (PM). In addition, some MSATs are emitted directly as PM rather than being formed through secondary processes. Thus, MSATs contribute to adverse health effects both as individual pollutants, and as precursors to ozone and PM. Mobile sources contribute significantly to national emissions of VOC and PM. In addition, gas cans are a source of both VOC and benzene emissions.

Both ozone and PM contribute to serious public health problems, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), changes in lung function and increased respiratory symptoms, changes to lung tissues and structures, altered respiratory defense mechanisms, chronic bronchitis, and decreased lung function.

In addition, ozone and PM cause significant harm to public welfare. Specifically, ozone causes damage to vegetation, which leads to crop and forestry economic losses, as well as harm to national parks, wilderness areas, and other natural systems. PM contributes to the substantial impairment of visibility in many parts of the U.S., including national parks and wilderness areas. 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.

Finally, atmospheric deposition and runoff of polycyclic organic matter (POM), metals, and other mobile-source-related compounds contribute to the contamination of water bodies such as the Great Lakes and coastal waters (e.g., the Chesapeake Bay).

## B. What Is EPA Proposing?

### 1. Light-Duty Vehicle Emission Standards

As described in more detail in section VI, we are proposing new standards for both exhaust and evaporative emissions from passenger vehicles. The new exhaust emissions standards would 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.

Current vehicle emission standards require that the certification testing of NMHC is 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 would also result in lower direct PM emissions at cold temperatures.

Accordingly, we are proposing that light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles would be subject to a new non-methane hydrocarbon (NMHC) exhaust emissions standard at 20 °F. Vehicles at or below 6,000 pounds gross vehicle weight rating (GVWR) would 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 would be subject to a sales-weighted fleet average NMHC level of 0.5 grams/mile. For lighter vehicles, the standard would phase in between 2010 and 2013. For heavier vehicles, the new standards would phase in between 2012 and 2015. We are also proposing 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.

We are also proposing a set of nominally more stringent evaporative emission standards for all light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles. The proposed 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 we are proposing today would codify the approach that most

<sup>6</sup> That is, the respiratory hazard index exceeded 1. See section III.D of this preamble for more information.

<sup>7</sup> 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.

manufacturers are already taking for 50-state evaporative systems, and the standards would thus prevent backsliding in the future. We are proposing to implement the evaporative emission standards in 2009 for lighter vehicles and in 2010 for the heavier vehicles.

Section VI provides details on the proposed exhaust and evaporative standards and their implementation, and our rationale for proposing them.

## 2. Gasoline Fuel Standards

As described in more detail in section VII, we are proposing to limit the benzene content of all gasoline, both reformulated and conventional. We propose that beginning January 1, 2011, refiners would meet an average gasoline benzene content standard of 0.62% by volume on all their gasoline. We are not proposing a standard for California, however, because it is already covered by a similar state program.

This proposed fuel standard would result in air toxics emissions reductions that are greater than required under all existing gasoline toxics programs. As a result, EPA is proposing that upon full implementation in 2011, the regulatory provisions for the benzene control program would become the single regulatory mechanism used to implement the RFG and Anti-dumping annual average toxics requirements. The current RFG and Anti-dumping annual average provisions thus would be replaced by the proposed benzene control program. The MSAT2 benzene control program would also replace the MSAT1 requirements. In addition, the program would 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 the Energy Policy Act. In all of these ways, we would significantly consolidate and simplify the existing national fuel-related MSAT regulatory program.

We also propose that refiners could generate benzene credits and use or transfer them as a part of a nationwide averaging, banking, and trading (ABT) program. From 2007–2010 refiners could generate benzene credits by taking early steps to reduce gasoline benzene levels. Beginning in 2011 and continuing indefinitely, refiners could generate credits by producing gasoline with benzene levels below the 0.62% average standard. Refiners could apply the credits towards company compliance, “bank” the credits for later use, or transfer (“trade”) them to other refiners nationwide (outside of California) under the proposed program. Under this program, refiners could use

credits to achieve compliance with the benzene content standard.

This proposed ABT program would allow us to set a more stringent benzene standard than would otherwise be possible, and it would allow implementation to occur earlier. Under this proposed benzene content standard and ABT program, gasoline in all areas of the country would have lower benzene levels than they have today. Overall benzene levels would be 37% lower. This would reduce benzene emissions and exposure nationwide.

Finally, we propose hardship provisions. Refiners approved as “small refiners” would be eligible for certain temporary relief provisions. In addition, any refiner facing extreme unforeseen circumstances or extreme hardship circumstances could apply for similar temporary relief.

Section VII of this preamble provides a detailed explanation and rationale for the proposed fuel program and its implementation. It also discusses and seeks comment on a variety of alternatives that we considered.

## 3. Portable Gasoline Container (Gas Can) Controls

Portable gasoline containers, or gas cans, are consumer products used to refuel a wide variety of gasoline-powered equipment, including lawn and garden equipment, recreational equipment, and passenger vehicles that have run out of gas. As described in section VIII, we are proposing standards that would reduce hydrocarbon emissions from evaporation, permeation, and spillage. These standards would significantly reduce benzene and other toxics, as well as VOC more generally. VOC is an ozone precursor.

We propose a performance-based standard of 0.3 grams per gallon per day of hydrocarbons, based on the emissions from the can over a diurnal test cycle. The standard would apply to gas cans manufactured on or after January 1, 2009. We also propose test procedures and a certification and compliance program, in order to ensure that gas cans would meet the emission standard over a range of in-use conditions. The proposed standards would result in the use of best available control technologies, such as durable permeation barriers, automatically closing spouts, and cans that are well-sealed.

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 proposing. Although a few aspects of the program we are proposing are different, we believe manufacturers would be able to meet both EPA and California requirements with the same gas can designs.

## III. What Are Mobile Source Air Toxics (MSATs) and Their Health Effects?

### A. 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. There are a variety of ways in which to identify compounds that have the potential for serious adverse health effects. For example, EPA’s Integrated Risk Information System (IRIS) is EPA’s database containing information on human health effects that may result from exposure to various chemicals in the environment. In addition, Clean Air Act section 112(b) contains a list of hazardous air pollutants that EPA is required to control through regulatory standards; other agencies or programs such as the Agency for Toxic Substances and Disease Registry and the California EPA have developed health benchmark values for various compounds; and the International Agency for Research on Cancer and the National Toxicology Program have assembled evidence of substances that cause cancer in humans and issue judgments on the strength of the evidence. Each source of information has its own strengths and limitations. For example, there are inherent limitations on the number of compounds that have been investigated sufficiently for EPA to conduct an IRIS assessment. There are some compounds that are not listed in IRIS but are considered to be hazardous air pollutants under Clean Air Act section 112(b) and are regulated by the Agency (e.g., propionaldehyde, 2,2,4-trimethylpentane).

### B. Compounds Emitted by Mobile Sources and Identified in IRIS

In its 2001 MSAT rule, EPA identified a list of 21 MSATs. We listed a compound as an MSAT if it was emitted from mobile sources, and if the Agency had concluded in IRIS that the compound posed a potential cancer hazard and/or if IRIS contained an inhalation reference concentration or ingestion reference dose for the compound. Since 2001, EPA has conducted an extensive review of the

literature to produce a list of the compounds identified in the exhaust or evaporative emissions from onroad and nonroad equipment, using baseline as well as alternative fuels (e.g., biodiesel, compressed natural gas). This list, the Master List of Compounds Emitted by Mobile Sources (“Master List”), currently includes approximately 1,000 compounds. It is available in the public docket for this rule and on the web ([www.epa.gov/otaq/toxics.htm](http://www.epa.gov/otaq/toxics.htm)). Table III.B–1 lists those compounds from the Master List that currently meet those 2001 MSAT criteria, based on the current IRIS.

Table III.B–1 identifies all of the compounds from the Master List that are present in IRIS with (a) a cancer hazard

identification of known, probable, or possible human carcinogens (under the 1986 EPA cancer guidelines) or carcinogenic to humans, likely to be carcinogenic to humans, or suggestive evidence of carcinogenic potential (under the 2005 EPA cancer guidelines); and/or (b) an inhalation reference concentration or an ingestion reference dose. Although all these compounds have been detected in emissions from mobile sources, many are emitted in trace amounts and data are not adequate to develop an inventory. Those compounds for which we have developed an emissions inventory are summarized in Table IV.C–2. There are several compounds for which IRIS assessments are underway and therefore

are not included in Table III.B–1. These compounds are: Cerium, copper, ethanol, ethyl tertiary butyl ether (ETBE), platinum, propionaldehyde, and 2,2,4-trimethylpentane.

The fact that a compound is listed in Table III.B–1 does not imply a risk to public health or welfare at current levels, or that it is appropriate to adopt controls to limit the emissions of such a compound from motor vehicles or their fuels. In conducting any such further evaluation, pursuant to sections 202(a) or 211(c) of the Act, EPA would consider whether emissions of the compound from motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

TABLE III.B–1.—COMPOUNDS EMITTED BY MOBILE SOURCES THAT ARE LISTED IN IRIS\*

1,1,1,2-Tetrafluoroethane .....	Cadmium .....	Manganese.
1,1,1-Trichloroethane .....	Carbon disulfide .....	Mercury, elemental.
1,1-Biphenyl .....	Carbon tetrachloride .....	Methanol.
1,2-Dibromoethane .....	Chlorine .....	Methyl chloride.
1,2-Dichlorobenzene .....	Chlorobenzene .....	Methyl ethyl ketone (MEK).
1,3-Butadiene .....	Chloroform .....	Methyl isobutyl ketone (MIBK).
2,4-Dinitrophenol .....	Chromium III .....	Methyl tert-butyl ether (MTBE).
2-Methylnaphthalene .....	Chromium VI .....	Molybdenum.
2-Methylphenol .....	Chrysene .....	Naphthalene.
4-Methylphenol .....	Crotonaldehyde .....	Nickel.
Acenaphthene .....	Cumene (isopropyl benzene) .....	Nitrate.
Acetaldehyde .....	Cyclohexane .....	N-Nitrosodiethylamine.
Acetone .....	Cyclohexanone .....	N-Nitrosodimethylamine.
Acetophenone .....	Di(2-ethylhexyl)phthalate .....	N-Nitroso-di-n-butylamine.
Acrolein (2-propenal) .....	Dibenz[a,h]anthracene .....	N-Nitrosodi-N-propylamine.
Ammonia .....	Dibutyl phthalate .....	N-Nitrosopyrrolidine.
Anthracene .....	Dichloromethane .....	Pentachlorophenol.
Antimony .....	Diesel PM and Diesel exhaust organic gases	Phenol.
Arsenic, inorganic .....	Diethyl phthalate .....	Phosphorus.
Barium and compounds .....	Ethylbenzene .....	Phthalic anhydride.
Benz[a]anthracene .....	Ethylene glycol monobutyl ether .....	Pyrene.
Benzaldehyde .....	Fluoranthene .....	Selenium and compounds.
Benzene .....	Fluorene .....	Silver.
Benzo[a]pyrene (BaP) .....	Formaldehyde .....	Strontium.
Benzo[b]fluoranthene .....	Furfural .....	Styrene.
Benzo[k]fluoranthene .....	Hexachlorodibenzo-p-dioxin, mixture (dioxin/ furans).	Tetrachloroethylene.
Benzoic acid .....	n-Hexane .....	Toluene.
Beryllium and compounds .....	Hydrogen cyanide .....	Trichlorofluoromethane.
Boron (Boron and Borates only) .....	Hydrogen sulfide .....	Vanadium.
Bromomethane .....	Indeno[1,2,3-cd]pyrene .....	Xylenes.
Butyl benzyl phthalate .....	Lead and compounds (inorganic) .....	Zinc and compounds.

\* Compounds listed in IRIS as known, probable, or possible human carcinogens and/or pollutants for which the Agency has calculated a reference concentration or reference dose.

**C. Which Mobile Source Emissions Pose the Greatest Health Risk at Current Levels?**

The 1999 National-Scale Air Toxics Assessment (NATA) provides some perspective on which mobile source emissions pose the greatest risk at current estimated ambient levels.<sup>8</sup> We

<sup>8</sup> It is, of course, not necessary for EPA to show that a compound is a national or regional risk driver to show that its emission from motor vehicles may reasonably cause or contribute to endangerment of public health or welfare. A showing that motor

also conducted a national-scale assessment for future years, which is discussed more fully in section IV of this preamble and Chapters 2 and 3 of the RIA. Our understanding of what emissions pose the greatest risk will evolve over time, based on our understanding of the ambient levels and

vehicles contribute some non-trivial percentage of the inventory of a compound known to be associated with adverse health effects would normally be sufficient. Cf. *Bluewater Network v. EPA*, 370 F. 3d 1, 15 (D.C. Cir. 2004).

health effects associated with the compounds.<sup>9</sup>

**1. National and Regional Risk Drivers in 1999 National-Scale Air Toxics Assessment**

The 1999 NATA evaluates 177 hazardous air pollutants currently listed under CAA section 112(b), as well as

<sup>9</sup> The discussion here considers risks other than those attributed to ambient levels of criteria pollutants.

diesel PM.<sup>10</sup> NATA is described in greater detail in Chapters 2 and 3 of the Regulatory Impact Analysis for this proposed rule. Additional information can also be obtained from the NATA website (<http://www.epa.gov/ttn/atw/nata1999>). Based on the assessment of inhalation exposures associated with outdoor sources of these hazardous air pollutants, NATA has identified cancer and noncancer risk drivers on a national and regional scale (Table III.C-1). A cancer risk driver on a national scale is a hazardous air pollutant for which at least 25 million people are exposed to risk greater than ten in one million. Benzene is the only compound identified in the 1999 NATA as a national cancer risk driver. A cancer risk driver on a regional scale is a hazardous air pollutant for which at least one million people are exposed to risk greater than ten in one million or at least 10,000 people are exposed to risk greater than 100 in one million. Twelve compounds (or groups of compounds in the case of POM) were identified as regional cancer risk drivers. The 1999 NATA concludes that diesel particulate matter is among the substances that pose the greatest relative risk, although the cancer risk cannot be quantified.

A noncancer risk driver at the national scale is a hazardous air pollutant for which at least 25 million people are exposed at a concentration greater than the inhalation reference concentration. 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. Acrolein is the only compound identified in the 1999 NATA as a national noncancer risk driver. A noncancer risk driver on a regional scale is defined as a hazardous air pollutant for which at least 10,000 people are exposed to an ambient concentration greater than the inhalation reference concentration. Sixteen regional-scale noncancer risk drivers were identified in the 1999 NATA (see Table III.C-1.).

TABLE III.C-1.—NATIONAL AND REGIONAL CANCER AND NONCANCER RISK DRIVERS IN 1999 NATA

Cancer <sup>1</sup>	Noncancer
National drivers <sup>2</sup> .....	National drivers <sup>4</sup>
Benzene .....	Acrolein
Regional drivers <sup>3</sup> .....	Regional drivers <sup>5</sup>
Arsenic compounds ..	Antimony
Benzidine .....	Arsenic compounds
1,3-Butadiene .....	1,3-Butadiene
Cadmium compounds	Cadmium compounds
Carbon tetrachloride	Chlorine
Chromium VI .....	Chromium VI
Coke oven .....	Diesel PM
Ethylene oxide .....	Formaldehyde
Hydrazine .....	Hexamethylene 1-6-diisocyanate
Naphthalene .....	Hydrazine
Perchloroethylene .....	Hydrochloric acid
Polycyclic organic matter.	Maleic anhydride
	Manganese compounds

TABLE III.C-1.—NATIONAL AND REGIONAL CANCER AND NONCANCER RISK DRIVERS IN 1999 NATA—Continued

Cancer <sup>1</sup>	Noncancer
	Nickel compounds
	2,4-Toluene diisocyanate
	Triethylamine

<sup>1</sup> The list of cancer risk drivers does not include diesel particulate matter. However, the 1999 NATA concluded that it was one of the pollutants that posed the greatest relative cancer risk.

<sup>2</sup> At least 25 million people exposed to risk >10 in 1 million.

<sup>3</sup> At least 1 million people exposed to risk >10 in 1 million or at least 10,000 people exposed to risk >100 in 1 million.

<sup>4</sup> At least 25 million people exposed to a hazard quotient > 1.0.

<sup>5</sup> At least 10,000 people exposed to a hazard quotient > 1.

2. 1999 NATA Risk Drivers with Significant Mobile Source Contribution

Among the national and regional-scale cancer and noncancer risk drivers identified in the 1999 NATA, seven compounds have significant contributions from mobile sources: benzene, 1,3-butadiene, formaldehyde, acrolein, polycyclic organic matter (POM), naphthalene, and diesel particulate matter and diesel exhaust organic gases (Table III.C-2.). For example, mobile sources contribute 68% of the national benzene inventory, with 49% from on-road sources and 19% from nonroad sources.

TABLE III.C-2.—MOBILE SOURCE CONTRIBUTION TO 1999 NATA RISK DRIVERS

1999 NATA risk drivers	Percent contribution from all mobile sources (percent)	Percent contribution from on-road mobile sources (percent)
Benzene .....	68	49
1,3-Butadiene .....	58	41
Formaldehyde .....	47	27
Acrolein .....	25	14
Polycyclic organic matter* .....	6	3
Naphthalene .....	27	21
Diesel PM and Diesel exhaust organic gases .....	100	38

\*This POM inventory includes the 15 POM compounds: benzo[b]fluoranthene, benz[a]anthracene, indeno(1,2,3-c,d)pyrene, benzo[k]fluoranthene, chrysene, benzo[a]pyrene, dibenz(a,h)anthracene, anthracene, pyrene, benzo(g,h,i)perylene, fluoranthene, acenaphthylene, phenanthrene, fluorene, and acenaphthene.

<sup>10</sup>NATA does not include a quantitative estimate of cancer risk for diesel particulate matter and diesel exhaust organic gases.

#### D. What Are the Health Effects of Air Toxics?

##### 1. Overview of Potential Cancer and Noncancer Health Effects

Air toxics can cause a variety of cancer and noncancer health effects. A number of the mobile source air toxic pollutants described in section III are known or likely to pose a cancer hazard in humans. Many of these compounds also cause adverse noncancer health effects resulting from chronic,<sup>11</sup> subchronic,<sup>12</sup> or acute<sup>13</sup> inhalation exposures. These include neurological, cardiovascular, liver, kidney, and respiratory effects as well as effects on the immune and reproductive systems. Section III.D.2 discusses the health effects of air toxic compounds listed in Table III.C-2, as well as acetaldehyde. The compounds in Table III.C-2 were all identified as national and regional-scale cancer and noncancer risk drivers in the 1999 National-Scale Air Toxics Assessment (NATA), and have significant inventory contributions from mobile sources. Acetaldehyde is included because it is a likely human carcinogen, has a significant inventory contribution from mobile sources, and was identified as a risk driver in the 1996 NATA. We are also including diesel particulate matter and diesel exhaust organic gases in this discussion. Although 1999 NATA did not quantify cancer risks associated with exposure to this pollutant, EPA has concluded that diesel exhaust ranks with the other substances that the national-scale assessment suggests pose the greatest relative risk.<sup>14</sup>

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 µg/m<sup>3</sup> in air. Some air toxics are known to be carcinogenic in animals but lack data in humans. These have been assumed to be human carcinogens. Also, relationships between exposure and probability of cancer are assumed to be linear. In addition, 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 (MLE) estimate 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 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 intraspecies extrapolation (animal to human) and interspecies extrapolation (average human to sensitive human). Additional sources of uncertainty can be using 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 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.

##### 2. Health Effects of Key MSATs

###### a. Benzene

The EPA's IRIS database lists benzene, an aromatic hydrocarbon, as a known human carcinogen (causing leukemia) by all routes of exposure.<sup>15</sup> A number of adverse noncancer health effects including blood disorders and immunotoxicity have also been associated with long-term occupational exposure to benzene.

Inhalation is the major source of human exposure to benzene in the occupational and non-occupational setting. Long-term inhalation occupational exposure to benzene has been shown to cause cancer of the hematopoietic (blood cell) system in adults. Among these are acute nonlymphocytic leukemia<sup>16</sup> and chronic lymphocytic leukemia.<sup>17 18</sup>

<sup>15</sup> 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>.

<sup>16</sup> 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 leukemias 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 cells that are responsible for the 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.

<sup>17</sup> 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.

<sup>18</sup> 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](http://www.epa.gov/otaq/regs/toxics/tox_archive.htm).

<sup>11</sup> Chronic exposure is defined in the glossary of the Integrated Risk Information (IRIS) database ([www.epa.gov/iris](http://www.epa.gov/iris)) as repeated exposure by the oral, dermal, or inhalation route for more than approximately 10 of the life span in humans (more than approximately 90 days to 2 years in typically used laboratory animal species).

<sup>12</sup> Defined in the IRIS database as exposure to a substance spanning approximately 10 of the lifetime of an organism.

<sup>13</sup> Defined in the IRIS database as exposure by the oral, dermal, or inhalation route for 24 hours or less.

<sup>14</sup> <http://www.epa.gov/ttn/atw/nata1999>.

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 humans and animals<sup>19,20</sup> and increased proliferation of mouse bone marrow cells.<sup>21,22</sup>

The latest assessment by EPA places the excess risk of developing acute nonlymphocytic leukemia from inhalation exposure to benzene at  $2.2 \times 10^{-6}$  to  $7.8 \times 10^{-6}$  per  $\mu\text{g}/\text{m}^3$ . In other words, there is a risk of about two to eight excess leukemia cases in one million people exposed to  $1 \mu\text{g}/\text{m}^3$  of benzene over a lifetime.<sup>23</sup> This range of unit risks are 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 random variation of the observed data. 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.<sup>24</sup> 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. They support the inference that cancer risks are as high or are higher than the estimates provided in the existing EPA assessment.<sup>25</sup> 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 ( $80,000 \mu\text{g}/\text{m}^3$ ).<sup>26</sup> 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.<sup>27</sup> 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."<sup>28,29</sup> These

data are from the largest cohort study 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 whether these data provide sufficient evidence to reject a linear dose-response curve. 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 risk of leukemia and other toxic effects to children if they 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.<sup>30,31</sup> Data from animal studies have shown benzene exposures result in damage to the hematopoietic (blood cell formation) system during development.<sup>32,33,34</sup> Also, key changes related to the development of childhood leukemia occur in the developing fetus.<sup>35</sup> 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

the dose-related incidence of hematologic neoplasms in China. *J. Nat. Cancer Inst.* 89:1065-1071.

<sup>29</sup> Hayes, R.B.; Songnian, Y.; Dosemeci, M.; and Linet, M. (2001) Benzene and lymphohematopoietic malignancies in humans. *Am. J. Indust. Med.* 40:117-126.

<sup>30</sup> 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.

<sup>31</sup> McKinney, P.A.; Alexander, F.E.; Cartwright, R.A.; *et al.* (1991) Parental occupations of children with leukemia in west Cumbria, north Humberdale, and Gateshead, Br. *Med. J.* 302:681-686.

<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> 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.

<sup>35</sup> 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\[1\].pdf](http://www.epa.gov/iris/toxreviews/0276-tr[1].pdf).

<sup>19</sup> 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.

<sup>20</sup> U.S. EPA (1998) Environmental Protection Agency, Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. EPA600-P-97-001F. <http://www.epa.gov/ncepihom/Catalog/EPA600P97001F.html>.

<sup>21</sup> 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.

<sup>22</sup> U.S. EPA (1998) Environmental Protection Agency, Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. EPA600-P-97-001F. <http://www.epa.gov/ncepihom/Catalog/EPA600P97001F.html>.

<sup>23</sup> U.S. EPA (1998). Environmental Protection Agency, Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. EPA600-P-97-001F. <http://www.epa.gov/ncepihom/Catalog/EPA600P97001F.html>.

<sup>24</sup> 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>.

<sup>25</sup> U.S. EPA (1998) Carcinogenic Effects of Benzene: An Update. EPA/600/P-97/001F.

<sup>26</sup> Rothman, N; Li, GL; Dosemeci, M; *et al.* (1996) Hematotoxicity among Chinese workers heavily exposed to benzene. *Am. J. Indust. Med.* 29:236-246.

<sup>27</sup> 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.

<sup>28</sup> 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

age.<sup>36</sup> 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.<sup>37, 38</sup> People with long-term occupational exposure to benzene have experienced harmful effects on the blood-forming tissues, especially in 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,<sup>39</sup> a condition characterized by decreased numbers of circulating erythrocytes (red blood cells), leukocytes (white blood cells), and thrombocytes (blood platelets).<sup>40, 41</sup> 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.<sup>42, 43</sup> The most sensitive noncancer effect observed in humans, based on current data, is the depression of the absolute lymphocyte count in blood.<sup>44, 45</sup>

EPA's inhalation reference concentration (RfC) for benzene is 30  $\mu\text{g}/\text{m}^3$ , 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, there have appeared human reports of benzene's hematotoxic effects 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  $\text{mg}/\text{m}^3$ )<sup>46</sup> and even at air levels of 1 ppm (about 3  $\text{mg}/\text{m}^3$ ) or less among genetically susceptible populations.<sup>47</sup> 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.<sup>48</sup> 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  $\mu\text{g}/\text{m}^3$  for 1–14 days exposure.

#### b. 1,3-Butadiene

EPA has characterized 1,3-butadiene, a hydrocarbon, as a leukemogen,

carcinogenic to humans by inhalation.<sup>49, 50</sup> 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 from which to draw any conclusions on potentially sensitive subpopulations. The upper bound cancer unit risk estimate is 0.08 per ppm or  $3 \times 10^{-5}$  per  $\mu\text{g}/\text{m}^3$  (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  $\mu\text{g}/\text{m}^3$  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.<sup>51</sup> 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 risk from 1,3-butadiene exposure in the general population, particularly for breast cancer in females. Confidence in the excess cancer risk estimate of 0.08 per ppm is moderate.

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.<sup>52</sup> 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  $\mu\text{g}/\text{m}^3$ . Confidence in the inhalation RfC is medium.

#### c. Formaldehyde

Since 1987, EPA has classified formaldehyde, a hydrocarbon, as a

<sup>36</sup> 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.

<sup>37</sup> Aksoy, M. (1989) Hematotoxicity and carcinogenicity of benzene. *Environ. Health Perspect.* 82:193–197.

<sup>38</sup> Goldstein, B.D. (1988) Benzene toxicity. *Occupational medicine. State of the Art Reviews* 3: 541–554.

<sup>39</sup> 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 vertebra, sternum, ribs, and pelvis. 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.

<sup>40</sup> 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.

<sup>41</sup> Goldstein, B.D. (1988) Benzene toxicity. *Occupational medicine. State of the Art Reviews* 3: 541–554.

<sup>42</sup> Aksoy, M., S. Erdem, and G. Dincol. (1974) Leukemia in shoe-workers exposed chronically to benzene. *Blood* 44:837.

<sup>43</sup> 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.

<sup>44</sup> 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.

<sup>45</sup> 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>.

<sup>46</sup> 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.

<sup>47</sup> Lan, Qing, Zhang, L., Li, G., Vermeulen, R., *et al.* (2004). Hematotoxicity in Workers Exposed to Low Levels of Benzene. *Science* 306: 1774–1776.

<sup>48</sup> Turteltaub, 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.

<sup>49</sup> 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>.

<sup>50</sup> U.S. EPA (1998). A Science Advisory Board Report: Review of the Health Risk Assessment of 1,3-Butadiene. EPA–SAB–EHC–98.

<sup>51</sup> Delzell, E. N. Sathikumar, 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.

<sup>52</sup> 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.

probable human carcinogen based on evidence in humans and in rats, mice, hamsters, and monkeys.<sup>53</sup> Recently released research conducted by the National Cancer Institute (NCI) found an increased risk of nasopharyngeal cancer among workers exposed to formaldehyde.<sup>54 55</sup> 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.<sup>56</sup> 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.”

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.<sup>57 58 59</sup> 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 are 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.<sup>60</sup> 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).<sup>61</sup> 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.

#### d. Acetaldehyde

Acetaldehyde, a hydrocarbon, is classified in EPA's IRIS database as a probable human carcinogen and is considered moderately toxic by inhalation.<sup>62</sup> Based on nasal tumors in rodents, the upper confidence limit estimate of a lifetime extra cancer risk from continuous acetaldehyde exposure is about  $2.2 \times 10^{-6}$  per  $\mu\text{g}/\text{m}^3$ . In other words, it is estimated that about 2 persons in one million exposed to  $1 \mu\text{g}/\text{m}^3$  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.<sup>63 64</sup>

<sup>60</sup> Health Canada. 2001. Priority Substances List Assessment Report. Formaldehyde. Environment Canada, Health Canada, February 2001.

<sup>61</sup> 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).

<sup>62</sup> 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>.

<sup>63</sup> 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.

<sup>64</sup> Appleman, L.M., R.A. Woutersen, and V.J. Feron. (1982). Inhalation toxicity of acetaldehyde in

Data from these studies showing degeneration of the olfactory epithelium were found to be sufficient for EPA to develop an RfC for acetaldehyde of  $9 \mu\text{g}/\text{m}^3$ . 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.<sup>65</sup> Some asthmatics have been shown to be a sensitive subpopulation to decrements in functional expiratory volume (FEV1 test) and bronchoconstriction upon acetaldehyde inhalation.<sup>66</sup>

#### e. 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  $0.02 \mu\text{g}/\text{m}^3$ .<sup>67</sup> 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.

#### f. 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

rats. I. Acute and subacute studies. *Toxicology.* 23: 293–297.

<sup>65</sup> 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>.

<sup>66</sup> 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.

<sup>67</sup> 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>.

<sup>53</sup> 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.

<sup>54</sup> 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.

<sup>55</sup> 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.

<sup>56</sup> Pinkerton, L. E. 2004. Mortality among a cohort of garment workers exposed to formaldehyde: an update. *Occup. Environ. Med.* 61: 193–200.

<sup>57</sup> 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.

<sup>58</sup> 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.

<sup>59</sup> 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.

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.<sup>68</sup> These studies are discussed in the Regulatory Impact Analysis.

#### g. 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 (External Review Draft, IRIS Reassessment of the Inhalation Carcinogenicity of Naphthalene, U.S. EPA. <http://www.epa.gov/iris>) of a reassessment of the inhalation carcinogenicity of naphthalene.<sup>69</sup> The draft reassessment completed external peer review in 2004 by Oak Ridge Institute for Science and Education.<sup>70</sup> Based on external comments, additional analyses are being considered. California EPA has also released a new risk assessment for naphthalene with a cancer unit risk estimate of  $3 \times 10^{-5}$  per  $\mu\text{g}/\text{m}^3$ .<sup>71</sup> 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.<sup>72</sup> The cancer data form the basis of an inhalation RfC of  $3 \mu\text{g}/\text{m}^3$ .<sup>73</sup> A low to medium confidence rating was given to this RfC, in part because it cannot be said with

certainty that this RfC will be protective for hemolytic anemia and cataracts, the more well-known human effects from naphthalene exposure.

#### h. Diesel Particulate Matter and Diesel Exhaust Organic Gases

In EPA's Diesel Health Assessment Document (HAD),<sup>74</sup> 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, 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. The possible risk range analysis was developed 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.

The acute and chronic exposure-related effects of 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.<sup>75 76 77 78</sup> The RfC is  $5 \mu\text{g}/\text{m}^3$  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 Diesel HAD also briefly summarizes health effects associated with ambient PM and the EPA's annual National Ambient Air Quality Standard (NAAQS) of  $15 \mu\text{g}/\text{m}^3$ . 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 RfC is not meant to say that  $5 \mu\text{g}/\text{m}^3$  provides adequate public health protection for ambient  $\text{PM}_{2.5}$ . In fact, there may be benefits to reducing diesel PM below  $5 \mu\text{g}/\text{m}^3$  since diesel PM is a major contributor to ambient  $\text{PM}_{2.5}$ .

#### E. 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, in contrast to diesel exhaust, which has been evaluated in IRIS. However, there is 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.<sup>79</sup> Their results demonstrate that emissions from gasoline engines are mutagenic and can induce inflammation and have cytotoxic effects. Gasoline exhaust is a ubiquitous

<sup>68</sup> Perara, 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.

<sup>69</sup> U.S. EPA. (2004) External Review Draft, IRIS Reassessment of the Inhalation Carcinogenicity of Naphthalene. <http://www.epa.gov/iris>

<sup>70</sup> 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>

<sup>71</sup> 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](http://www.oehha.ca.gov/air/toxic_contaminants/draftnaphth.html)

<sup>72</sup> International Agency for Research on Cancer (IARC). (2002) Monographs on the Evaluation of the Carcinogenic Risk of Chemicals for Humans. Vol. 82. Lyon, France.

<sup>73</sup> 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>.

<sup>74</sup> 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>.

<sup>75</sup> 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.

<sup>76</sup> 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.

<sup>77</sup> Mauderly, J.L; Jones, R.K; Griffith, W.C; et al. (1987) Diesel exhaust is a pulmonary carcinogen in rats exposed chronically by inhalation. *Fundam. Appl. Toxicol.* 9:208–221.

<sup>78</sup> Nikula, K.J; Snipes, M.B; Barr, E.B; 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.

<sup>79</sup> 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.

source of particulate matter, contributing to the health effects observed for ambient PM which is discussed extensively in the EPA Particulate Matter Criteria Document.<sup>80</sup> 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<sub>2.5</sub>.<sup>81</sup> 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).

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 in 2006. Some source apportionment studies show gasoline and diesel PM can result in larger contributions to ambient PM than predicted by EPA emission inventories.<sup>82 83</sup> These source apportionment studies were one impetus behind 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 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.

#### F. Near-Roadway Health Effects

Over the years there have been a large number of studies that have examined 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 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 road 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.

#### G. How Would This Proposal Reduce Emissions of MSATs?

The benzene and hydrocarbon standards proposed in this action would 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 listed in Table III.B-1 and discussed in more detail in Chapter 1 of the RIA. The emission reductions expected from today's controls are reported in section V.E of this preamble and Chapter 2 of the RIA.

EPA believes that the emission reductions from the standards proposed 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 you consider just the compounds listed in Table III.B-1, or consider all of the compounds on the Master List of emissions, given the breadth of EPA's current and proposed control programs and the broad groups of emissions that many of the control technologies reduce.

EPA has already taken significant steps to reduce diesel emissions from mobile sources. We have adopted stringent standards for on-highway diesel trucks and buses, and nonroad diesel engines (engines used, for example, in construction, agricultural, and industrial applications). We also have additional programs underway to reduce diesel emissions, including voluntary programs and a proposal that is being developed to reduce emissions from diesel locomotives and marine engines.

Emissions from motor vehicles can be chemically categorized as hydrocarbons, trace elements (including metals) and a

<sup>80</sup> 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 (PM Criteria Document).

<sup>81</sup> PM Criteria Document, p. 8-318.

<sup>82</sup> 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.

<sup>83</sup> 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.

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 proposed today, we would control the emissions of these compounds from motor vehicles to the maximum amount currently feasible or currently identifiable with available information. Section VI of this preamble provides more details about why the proposed and existing standards represent maximum achievable reduction of hydrocarbons from motor vehicles. There are not motor vehicle controls to 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 VII of this preamble describes why the standards we are proposing today represent the maximum emission reductions achievable through fuel controls, considering the factors required by Clean Air Act section 202(l).

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 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 provides EPA with various authorities to regulate fuel additives in order to reduce the risk to public health from exposure to their emissions. It is under this section that EPA requires manufacturers to register additives 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, section 211 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. Clean Air Act section 211(c) provides the primary mechanism by which EPA would take actions necessary to minimize exposure to metals or other additives to diesel and gasoline. It is under section 211 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.

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.<sup>84 85 86</sup> For the remaining compounds (e.g., chlorinated 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.

#### **IV. What Are the Air Quality and Health Impacts of Air Toxics, and How Do Mobile Sources Contribute?**

##### *A. What Is the Health Risk to the U.S. Population from Inhalation Exposure to Ambient Sources of Air Toxics, and How Would It be Reduced by the Proposed Controls?*

EPA's National-Scale Air Toxics Assessment (NATA) assesses human

health impacts from chronic inhalation exposures to outdoor sources of air toxics. It assesses lifetime risks assuming continuous exposure to levels of air toxics estimated for a particular point in time. The most recent NATA was done for the year 1999.<sup>87</sup>

The NATA modeling framework has a number of limitations, but it remains very useful in identifying air toxic pollutants and sources of greatest concern. Among the significant limitations of the framework, which are discussed in more detail in the regulatory impact analysis, is that it cannot be used to reliably identify "hot spots," such as areas in immediate proximity to major roads, where the air concentration, exposure and/or risk might be significantly higher within a census tract<sup>88</sup> or county. These "hot spots" are discussed in more detail in section IV.B.2. The framework also does not account for risk from sources of air toxics originating indoors, such as stoves, out-gassing from building materials, or evaporative benzene emissions from cars in attached garages. There are also limitations associated with the dose-response values used to quantify risk; these are discussed in Section I of the preamble. Importantly, it should be noted that the 1999 NATA does not include default adjustments for early life exposures recently recommended in the Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens.<sup>89</sup> These adjustments would be applied to compounds which act through a mutagenic mode of action. EPA will determine as part of the IRIS assessment process which substances meet the criteria for making adjustments, and future assessments will reflect them. If warranted, incorporation of such adjustments would lead to higher estimates of risk assuming constant lifetime exposure.

Because of its limitations, EPA notes that the NATA assessment should not be used as the basis for developing risk reduction plans or regulations to control specific sources or pollutants. Additionally, this assessment should not be used for estimating risk at the local level, for quantifying benefits of reduced air toxic emissions, or for identifying localized hotspots. In this

<sup>87</sup> [www.epa.gov/ttn/atw/nata1999](http://www.epa.gov/ttn/atw/nata1999).

<sup>88</sup> A census tract is a subdivision of a county that typically contains roughly 4000 people. In urban areas, these tracts can be very small, on the order of a city block, whereas in rural areas, they can be large.

<sup>89</sup> U. S. EPA. (2005) Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens. Report No. EPA/630/R-03/003F. Available electronically at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=116283>.

<sup>84</sup> 65 FR 6697, February 10, 2000.

<sup>85</sup> 66 FR 5001, January 18, 2001.

<sup>86</sup> 69 FR 38958, June 29, 2004.

rule, we have evaluated air quality, exposure, and risk impacts of mobile source air toxics using the 1999 NATA, as well as projections of risk to future years using the same tools as 1999 NATA. In addition, we also evaluate more refined local scale modeling, measured ambient concentrations, personal exposure measurements, and other data. This information is discussed below, as well as in Chapter 3 of the RIA. It serves as a perspective on the possible risk-related implications of the rule.

Overall, the average nationwide lifetime population cancer risk in 1999 NATA was 42 in a million, assuming continuous exposure to 1999 levels. The average noncancer respiratory hazard index was 6.4.<sup>90</sup> Highway vehicles and nonroad equipment account for almost 50% of the average population cancer risk, and 74% of the noncancer risk. These estimates are based on the contribution of sources within 50 kilometers of a given emission point and do not include the contribution to ambient concentrations from transport beyond 50 kilometers. Ambient concentrations from transport beyond 50 kilometers, referred to as "background" in NATA, are responsible for almost 50% of the average cancer risk in NATA.

Section III.C.1 discusses the pollutants that the 1999 National-Scale Air Toxics Assessment identifies as national and regional risk drivers. As summarized in Table III.C-1, benzene is the only pollutant described as a national cancer risk driver. Twenty-four percent of the total cancer risk in the

1999 National-Scale Air Toxics Assessment was due to benzene. In 1999, 68% of nationwide benzene emissions were attributable to mobile sources. 1,3-Butadiene and naphthalene are regional cancer risk drivers that have a large mobile source contribution. As presented in Table III.C-2, 58% of nationwide 1,3-butadiene emissions in 1999 came from mobile sources. Twenty-seven percent of nationwide naphthalene emissions in 1999 came from mobile sources.

One compound, acrolein, was identified as a national risk driver for noncancer health effects, and 25% of primary acrolein emissions were attributable to mobile sources. Over 70% of the average ambient concentration of acrolein is attributable to mobile sources. This is due to the large contribution from mobile source 1,3-butadiene, which is transformed to acrolein in the atmosphere.

Table III.C-2 provides additional information on the mobile source contribution to emissions of national and regional risk drivers. The standards proposed in this rule will reduce emissions of all these pollutants.

In addition to the 1999 NATA, we have estimated future-year risks for those pollutants included in the 1999 NATA whose emissions inventories include a mobile source contribution (see Table IV.B-1). This analysis indicates that cancer and noncancer risk will continue to be a public health concern due to exposure to mobile-source-related pollutants.

Figure IV.A-1 summarizes changes in average population inhalation cancer risk for the MSATs in Table IV.A-1. Despite significant reductions in risk from these pollutants, average inhalation cancer risks are expected to remain well above 1 in 100,000. In addition, because of population growth (using projected populations from the

U.S. Bureau of Census), the number of Americans above the 1 in 100,000 cancer risk level from exposure to these mobile source air toxics is projected to increase from about 214 million in 1999 to 240 million in 2030. Benzene continues to account for a large fraction of the total inhalation cancer risk from mobile source air toxics, decreasing slightly from 45% of the risk in 1999 to 37% in 2030. Similarly, although the average noncancer respiratory hazard index for MSATs decreases from over 6 in 1999 to 3.2 in 2030, the population with a hazard index above one increases from 250 million in 1999 to 273 million in 2030. That is, in 2030 nearly the entire U.S. population will still be exposed to levels of these pollutants that have the potential to cause adverse respiratory health effects (other than cancer).

These projected risks were estimated using the same tools and methods as the 1999 NATA, but with future-year projected inventories. More detailed information on the methods used to do these projections, and associated limitations and uncertainties, can be found in Chapter 3 of the RIA for this rule. Projected risks assumed 1999 "background" levels. For MSATs, "background" accounts for slightly less than 20% of the average cancer risk in 1999, increasing to 24% in 2030. However, background levels should decrease along with emissions. A sensitivity analysis of this assumption is presented in Chapter 3 of the RIA. It should also be noted that the projected inventories used for this modeling do not include some more recent revisions, such as higher emissions of hydrocarbons, including gaseous air toxics, at cold temperatures. These revisions are discussed in section V and increase the overall magnitude of the inventory.

<sup>90</sup> A hazard index above 1 indicates the potential for adverse health effects. It cannot be translated into a probability that an adverse effect will occur, and is not likely to be proportional to risk. A hazard index greater than one can be best described as only indicating that a potential may exist for adverse health effects.

Figure IV.A-1. Trends in Nationwide Average Population Cancer Risk from Inhalation Exposure to Outdoor Sources of Mobile Source Air Toxics, 1999 to 2030

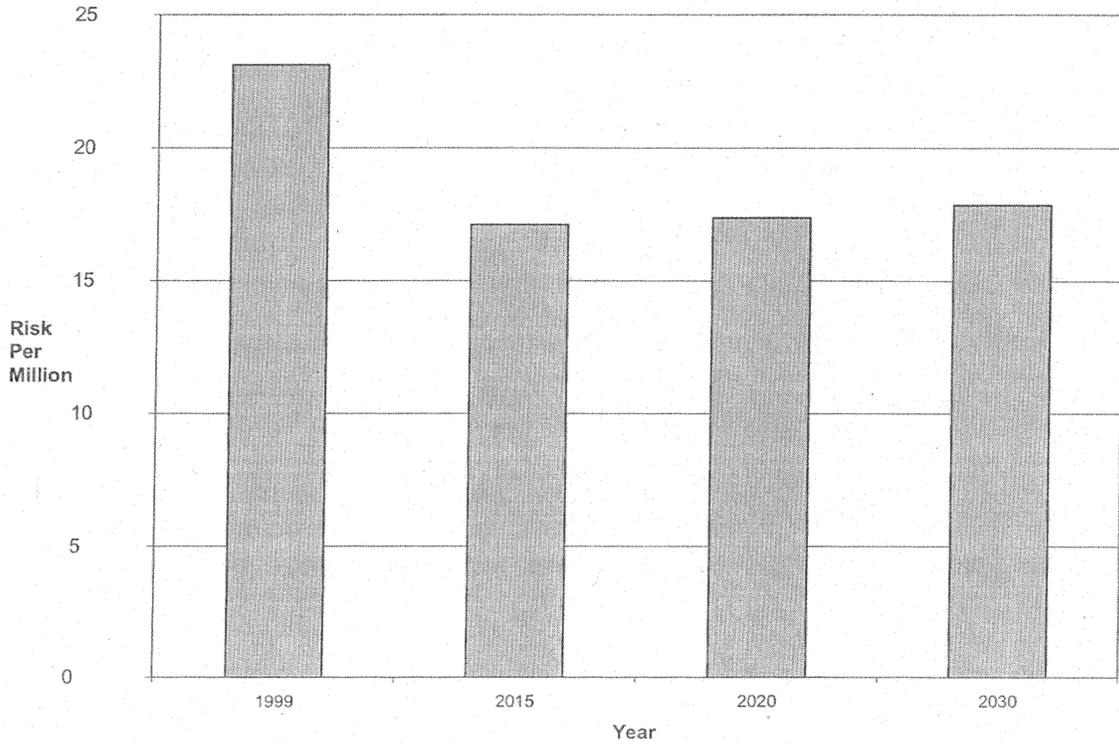


TABLE IV.A-1.—POLLUTANTS INCLUDED IN RISK MODELING FOR PROJECTION YEARS \*

1,3-Butadiene .....	Ethyl Benzene
2,2,4-Trimethylpentane ....	Fluoranthene **
Acenaphthene ** .....	Fluorene **
Acenaphthylene ** .....	Formaldehyde
Acetaldehyde .....	Hexane
Acrolein .....	Indeno(1,2,3,c,d)-pyrene **
Anthracene ** .....	Manganese
Benzene .....	Methyl tert-butyl ether (MTBE)
Benz(a)anthracene ** .....	Naphthalene
Benzo(a)pyrene ** .....	Nickel
Benzo(b)fluoranthene ** ...	Phenanthrene **
Benzo(g,h,i)perylene ** .....	Propionaldehyde
Benzo(k)fluoranthene ** ...	Pyrene **
Chromium (includes Chromium III, Chromium VI, and non-speciated Chromium).	Styrene
Chrysene ** .....	Toluene

TABLE IV.A-1.—POLLUTANTS INCLUDED IN RISK MODELING FOR PROJECTION YEARS \*—Continued

Dibenzo(a,h)anthracene **	Xylenes
* This list includes compounds from the 1999 National-Scale Air Toxics Assessment with a mobile source emissions contribution, for which data were sufficient to develop an emissions inventory.	
** POM compound as discussed in Section III.	
<i>B. What Is the Distribution of Exposure and Risk?</i>	
1. Distribution of National-Scale Estimates of Risk From Air Toxics	
National-scale modeling indicates that 95th percentile average cancer risk from exposure to mobile source air toxics is more than three times higher than median risk. In addition, the 95th percentile cancer risk is more than 10 times higher than the 5th percentile risk. This is true for all years modeled,	

from 1999 to 2030. Table IV.B-1 gives the median and 5th and 95th percentile cancer risk distributions for mobile source air toxics. As previously mentioned, the tools used in this assessment are inadequate for identifying “hot spots” and do not account for significant sources of inhalation exposure, such as benzene emissions within attached garages from vehicles, equipment, and portable fuel containers. If these hot spots and additional sources of exposure were accounted for, a larger percentage of the population would be exposed to higher risk levels. (Sections IV.B.2-4 provides more details on “hot spots” and the implications for distribution of risk.) In addition, the modeling underestimates the contribution of hydrocarbon and particulate matter emissions at cold temperatures. These modeling results are discussed in more detail in Chapter 3 of the RIA.

TABLE IV.B—1.—MEDIAN AND 5TH AND 95TH PERCENTILE LIFETIME INHALATION CANCER RISK DISTRIBUTIONS FOR INHALATION EXPOSURE TO OUTDOOR SOURCES OF MOBILE SOURCE AIR TOXICS

[Based on modeled average census tract risks]

Pollutant	1999			2020		
	5th	Median	95th	5th	Median	95th
All MSATs .....	$4.0 \times 10^{-6}$	$1.9 \times 10^{-5}$	$5.9 \times 10^{-5}$	$3.6 \times 10^{-6}$	$1.3 \times 10^{-5}$	$4.4 \times 10^{-5}$
Benzene .....	$2.4 \times 10^{-6}$	$8.9 \times 10^{-6}$	$2.5 \times 10^{-5}$	$2.1 \times 10^{-6}$	$5.6 \times 10^{-6}$	$1.4 \times 10^{-5}$
1,3-Butadiene .....	$1.6 \times 10^{-7}$	$3.1 \times 10^{-6}$	$1.2 \times 10^{-5}$	$7.5 \times 10^{-8}$	$2.0 \times 10^{-6}$	$7.5 \times 10^{-6}$
Acetaldehyde .....	$1.0 \times 10^{-6}$	$2.5 \times 10^{-6}$	$6.9 \times 10^{-6}$	$9.3 \times 10^{-7}$	$1.6 \times 10^{-6}$	$3.6 \times 10^{-6}$
Naphthalene .....	$1.1 \times 10^{-7}$	$1.4 \times 10^{-6}$	$7.6 \times 10^{-6}$	$1.0 \times 10^{-7}$	$1.4 \times 10^{-6}$	$8.5 \times 10^{-6}$

## 2. Elevated Concentrations and Exposure in Mobile Source-Impacted Areas

Air quality measurements near roads often identify elevated concentrations of air toxic pollutants at these locations. The concentrations of air toxic pollutants near heavily trafficked roads, as well as the pollutant composition and characteristics, differ from those measured distant from heavily trafficked roads. Exposures for populations residing, working, or going to school near major roads are likely higher than for other populations. The vehicle and fuel standards proposed in this rule will reduce those elevated exposures. Following is an overview of concentrations of air toxics and exposure to air toxics in areas heavily impacted by mobile source emissions.

### a. Concentrations Near Major Roadways

The 1999 NATA estimates average concentrations within a census tract, but it does not differentiate between locations near roadways and those further away (within the same tract). Local-scale modeling can better characterize distributions of concentrations, using more refined allocation of highway vehicle emissions. Urban-scale assessments done in Houston, TX and Portland, OR illustrated steep gradients of air toxic concentrations along major roadways, as well as better agreement with monitor data.<sup>91–92 93</sup> Results of the Portland study show average concentrations of motor vehicle-related pollutants are ten times higher at 50 meters from a road than they are at greater than 400 meters a road. These findings are consistent with pollutant dispersion theory, which

<sup>91–92</sup> Kinnee, E.J.; Touma, J.S.; Mason, R.; Thurman, J.; Beidler, A.; Bailey, C.; Cook, R. (2004) Allocation of onroad mobile emissions to road segments for air toxics modeling in an urban area. Transport. Res. Part D 9: 139–150.

<sup>93</sup> Cohen, J.; Cook, R.; Bailey, C.R.; Carr, E. (2005) Relationship between motor vehicle emissions of hazardous pollutants, roadway proximity, and ambient concentrations in Portland, Oregon. Environ. Modelling & Software 20: 7–12.

predicts that pollutants emitted along roadways will show highest concentrations nearest a road, and concentrations exponentially decrease with increasing distance downwind. These near-road pollutant gradients have been confirmed by measurements of both criteria pollutants and air toxics, and they are discussed in detail in Chapter 3 of the RIA.

Air quality monitoring is another means of evaluating pollutant concentrations at locations near sources such as roadways. It is also used to evaluate model performance at a given point and, given adequate data quality, can be statistically analyzed to determine associations with different source types. EPA has been deploying fixed-site ambient monitors that monitor concentrations of multiple air toxics, including benzene, over time. Several studies have found that concentrations of benzene and other mobile source air toxics are significantly elevated near busy roads compared to “urban background” concentrations measured at a fixed site. These studies are discussed in detail in Chapter 3 of the RIA.

Ambient VOC concentrations were measured around residences in Elizabeth, NJ, as part of the Relationship among Indoor, Outdoor, and Personal Air (RIOPA) study. Data from that study was analyzed to assess how concentrations are influenced by proximity to known ambient emission sources.<sup>94 95</sup> The ambient concentrations of benzene, toluene, ethylbenzene, and xylene isomers (BTEX) were found to be

<sup>94</sup> Kwon, J. (2005) Development of a RIOPA database and evaluation of the effect of proximity on the potential residential exposure to VOCs from ambient sources. Rutgers, the State University of New Jersey and University of Medicine and Dentistry of New Jersey. PhD dissertation. This document is available in Docket EPA–HQ–OAR–2005–0036.

<sup>95</sup> Weisel, C.P. (2004) Assessment of the contribution to personal exposures of air toxics from mobile sources. Final report. Submitted to EPA Office of Transportation and Air Quality. Environmental & Occupational Health Sciences Institute, Piscataway, NJ. This document is available in Docket EPA–HQ–OAR–2005–0036.

inversely associated with distances to interstate highways and major urban roads, and with distance to gasoline stations. The data indicate that BTEX concentrations around homes within 200 meters of roadways and gas stations are 1.5 to 4 times higher than urban background levels.

### b. Exposures Near Major Roadways

The modeling assessments and air quality monitoring studies discussed above have increased our understanding of ambient concentrations of mobile source air toxics and potential population exposures. Results from the following exposure studies reveal 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. Following is a detailed discussion on exposed populations near major roadways.

#### i. Vehicles

Several studies suggest that significant exposures may be experienced while driving in vehicles. A recent in-vehicle monitoring study was conducted by EPA and consisted of in-vehicle air sampling throughout work shifts within ten police patrol cars used by the North Carolina State Highway Patrol (smoking not permitted inside the vehicles).<sup>96</sup> Troopers operated their vehicles in typical patterns, including highway and city driving and refueling. In-vehicle benzene concentrations averaged  $12.8 \mu\text{g}/\text{m}^3$ , while concentrations measured at an “ambient” site located outside a nearby state environmental office averaged  $0.32 \mu\text{g}/\text{m}^3$ . The study also found that the benzene concentrations were closely

<sup>96</sup> Riediker, M.; Williams, R.; Devlin, R.; et al. (2003) Exposure to particulate matter, volatile organic compounds, and other air pollutants inside patrol cars. Environ. Sci. Technol. 37: 2084–2093.

associated with other fuel-related VOCs measured.

In Boston, the exposure of commuters to VOCs during various commuting modes was examined.<sup>97</sup> For commuters driving a car, the mean time-weighted concentrations of benzene, toluene, and xylenes in-vehicle were measured at 17.0, 33.1, and 28.2  $\mu\text{g}/\text{m}^3$ , respectively.

The American Petroleum Institute funded a screening study of high-end exposure microenvironments as required by section 211(b) of the Clean Air Act.<sup>98</sup> The study included vehicle chase measurements and measurements in several vehicle-related microenvironments in several cities for benzene and other air toxics. In-vehicle microenvironments (average benzene concentrations in parentheses) included the vehicle cabin tested on congested freeways (17.5  $\mu\text{g}/\text{m}^3$ ), in parking garages above-ground (155  $\mu\text{g}/\text{m}^3$ ) and below-ground (61.7  $\mu\text{g}/\text{m}^3$ ), in urban street canyons (7.54  $\mu\text{g}/\text{m}^3$ ), and during refueling (46.0  $\mu\text{g}/\text{m}^3$ ).

In 1998, the California Air Resources Board published an extensive study of concentrations of in-vehicle air toxics in Los Angeles and Sacramento, CA.<sup>99</sup> The data set is large and included a variety of sampling conditions. On urban freeways, benzene in-vehicle concentrations ranged from 3 to 15  $\mu\text{g}/\text{m}^3$  in Sacramento and 10 to 22  $\mu\text{g}/\text{m}^3$  in Los Angeles. In comparison, ambient benzene concentrations ranged from 1 to 3  $\mu\text{g}/\text{m}^3$  in Sacramento and 3 to 7  $\mu\text{g}/\text{m}^3$  in Los Angeles.

Similar findings of elevated concentrations of pollutants have also been found in studies done in diesel buses.<sup>100 101 102</sup>

Overall, these studies show that concentrations experienced by

commuters and other roadway users are substantially higher than those measured in typical urban air. As a result, the time a person spends in a vehicle will significantly affect their overall exposure.

#### ii. Homes and Schools

The proximity of schools to major roads may result in elevated exposures for children due to potentially increased concentrations indoors and increased exposures during outdoor activities. Here we discuss international studies in addition to the limited number of U.S. studies, because while fleets and fuels outside the U.S. can differ significantly, the spatial distribution of concentrations is relevant.

In the Fresno Asthmatic Children's Environment Study (FACES), traffic-related pollutants were measured on selected days from July 2002 to February 2003 at a central site, and inside and outside of homes and outdoors at schools of asthmatic children.<sup>103</sup> Preliminary data indicate that PAH concentrations are higher at elementary schools located near primary roads than at elementary schools distant from primary roads (or located near primary roads with limited access). PAH concentrations also appear to increase with increase in annual average daily traffic on nearest major collector. Remaining results regarding the variance in traffic pollutant concentrations at schools in relation to proximity to roadways and traffic density will be available in 2006.

The East Bay Children's Respiratory Health Study studied traffic-related air pollution outside of schools near busy roads in the San Francisco Bay Area in 2001.<sup>104</sup> Concentrations of the traffic pollutants  $\text{PM}_{10}$ ,  $\text{PM}_{2.5}$ , black carbon, total  $\text{NO}_x$ , and  $\text{NO}_2$  were measured at 10 school sites in neighborhoods that spanned a busy traffic corridor during the spring and fall seasons. The school sites were selected to represent a range of locations upwind and downwind of major roads. Differences were observed in concentrations between schools nearby (< 300 m) versus those more distant (or upwind) from major roads. Investigators found spatial variability in exposure to black carbon,  $\text{NO}_x$ ,  $\text{NO}$ , and (to a lesser extent)  $\text{NO}_2$ , due specifically to roads with heavy traffic within a relatively small geographic area.

<sup>103</sup> Personal communication with FACES Investigators Fred Lurmann, Paul Roberts, and Katharine Hammond. Data is currently being prepared for publication.

<sup>104</sup> Kim J.J.; Smorodinsky S.; Lipsett M.; et al. (2004) Traffic-related air pollution near busy roads. *Am. J. Respir. Crit. Care Med.* 170: 520–526.

A study to assess children's exposure to traffic-related air pollution while attending schools near motorways was performed in the Netherlands.<sup>105</sup> Investigators measured  $\text{PM}_{2.5}$ ,  $\text{NO}_2$  and benzene inside and outside of 24 schools located within 400 m of motorways. The indoor average benzene concentration was 3.2  $\mu\text{g}/\text{m}^3$  with a range of 0.6–8.1  $\mu\text{g}/\text{m}^3$ . The outdoor average benzene concentration was 2.2  $\mu\text{g}/\text{m}^3$  with a range of 0.3–5.0  $\mu\text{g}/\text{m}^3$ . Overall results indicate that indoor pollutant concentrations are significantly correlated with traffic density and composition, percentage of time downwind, and distance from major roadways.

The Toxic Exposure Assessment—Columbia/Harvard (TEACH) study measured the concentrations of VOCs,  $\text{PM}_{2.5}$ , black carbon, and metals outside the homes of high school students in New York City.<sup>106</sup> The study was conducted during winter and summer of 1999 on 46 students and their homes. Average winter (and summer) indoor concentrations exceeded outdoor concentrations by a factor of 2.3 (1.3). In addition, analyses of spatial and temporal patterns of MTBE concentrations were consistent with traffic patterns. MTBE is a tracer for motor vehicle pollution.

Children are exposed to elevated levels of air toxics not only in their homes, classrooms, and outside on school grounds, but also during their commute to school. See the discussion of in-vehicle concentrations of air toxics above and in Chapter 3 of the RIA.

#### iii. Pedestrians and Bicyclists

Researchers have noted that pedestrians and cyclists along major roads experience elevated exposures to motor vehicle related pollutants. Although commuting near roadways leads to higher levels of exposure to traffic pollutants, the general consensus is that exposure levels of those commuting by walking or biking is lower than for those who travel by car or bus, (see discussion on in-vehicle exposure in previous section above). These studies are discussed in Chapter 3 of the RIA for this rule.

<sup>105</sup> Janssen, N.A.H.; van Vliet, P.H.N.; Aarts, F.; et al. (2001) Assessment of exposure to traffic related air pollution of children attending schools near motorways. *Atmos. Environ.* 35: 3875–3884.

<sup>106</sup> Kinney, P.L.; Chillrud, S.N.; Ramstrom, S.; et al. (2002) Exposures to multiple air toxics in New York City. *Environ Health Perspect.* 110 (Suppl 4): 539–546.

<sup>97</sup> Chan C.-C., Spengler J. D., Ozkaynak H., and Lefkopoulou M. (1991) Commuter Exposures to VOCs in Boston, Massachusetts. *J. Air Waste Manage. Assoc.* 41: 1594–1600.

<sup>98</sup> Zielinska, B.; Fujita, E.M.; Sagebiel, J.C.; et al. (2002) Interim data report for Section 211(B) Tier 2 high end exposure screening study of baseline and oxygenated gasoline. Prepared for American Petroleum Institute, November 19, 2002. This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>99</sup> Rodes, C.; Sheldon, L.; Whitaker, D.; et al. (1998) Measuring concentrations of selected air pollutants inside California vehicles. Final report to California Air Resources Board. Contract No. 95–339.

<sup>100</sup> Fitz, D.R.; Winer, A.M.; Colome, S.; et al. (2003) Characterizing the Range of Children's Pollutant Exposure During School Bus Commutes. Prepared for the California Resources Board.

<sup>101</sup> Sabin, L.D.; Behrentz, E.; Winer, A.M.; et al. (2005) Characterizing the range of children's air pollutant exposure during school bus commutes. *J. Expos. Anal. Environ. Epidemiol.* 15: 377–387.

<sup>102</sup> Batterman, S.A.; Peng, C.Y.; and Braun, J. (2002) Levels and composition of volatile organic compounds on commuting routes in Detroit, Michigan. *Atmos. Environ.* 36: 6015–6030.

### c. Exposure and Concentrations in Homes with Attached Garages

People living in homes with attached garages are potentially exposed to substantially higher concentrations of benzene, toluene, and other VOCs indoors. Homes with attached garages present a special concern related to infiltration of components of fuel, exhaust, and other materials stored in garages (including gasoline in gas cans). A study from the early 1980's found that approximately 30% of an average nonsmoker's benzene exposure originated from sources in attached garages.<sup>107</sup>

Concentrations within garages are often substantially higher than those found outdoors or indoors. A recently-completed study in Michigan found that average concentrations in residential garages were 36.6  $\mu\text{g}/\text{m}^3$ , compared to 0.4  $\mu\text{g}/\text{m}^3$  outdoors.<sup>108</sup> A recent study in Alaska, where fuel benzene concentrations are higher, cold start emissions are higher, and homes are more tightly sealed than in most of the U.S., found average garage concentrations of 101  $\mu\text{g}/\text{m}^3$ .<sup>109</sup> Air passing from these high-benzene locations can cause increased concentrations indoors.

Measurement studies have found that homes with attached garages can have significantly higher concentrations of benzene and other VOCs. One study from Alaska found that in homes without attached garages, average benzene concentrations were 8.6  $\mu\text{g}/\text{m}^3$ , while homes with attached garages had average concentrations of 70.8  $\mu\text{g}/\text{m}^3$ .<sup>110</sup> Another showed that indoor CO and total hydrocarbon (THC) concentrations rose sharply following a cold vehicle starting and pulling out of the attached garage, persisting for an hour or more.<sup>111</sup> The study also showed that cold start emissions accounted for 13–85% of indoor non-methane

<sup>107</sup> Wallace, L. (1996) Environmental exposure to benzene: an update. *Environ Health Perspect.* 104 (Suppl 6): 1129–1136.

<sup>108</sup> Batterman, S.; Hatzivasilis, G.; Jia, C. (2006) Concentrations and emissions of gasoline and other vapors from residential vehicle garages. *Atmos. Environ.* 30: 1828–1844.

<sup>109</sup> George, M.; Kaluza, P.; Maxwell, B.; Moore, G.; Wisdom, S. (2002) Indoor air quality & ventilation strategies in new homes in Alaska. Alaska Building Science Network. [www.cchrc.org](http://www.cchrc.org). This document is available in Docket EPA–HQ–OAR–2005–0036.

<sup>110</sup> Schlapia, A.; Morris, S. (1998) Architectural, behavioral, and environmental factors associated with VOCs in Anchorage homes. Proceedings of the Air & Waste Management Associations 94th Annual Conference. Paper 98–A504.

<sup>111</sup> Graham, L.A.; Noseworthy, L.; Fugler, D.; O'Leary, K.; Karman, D.; Grande, C. (2004) Contribution of vehicle emissions from an attached garage to residential indoor air pollution levels. *J. Air & Waste Manage. Assoc.* 54: 563–584.

hydrocarbons (NMHC), while hot soak emissions accounted for 9–71% of indoor NMHC. Numerous other studies have shown associations between VOCs in indoor air and the presence of attached garages. These studies are discussed in Chapter 3 of the RIA.

EPA has conducted a modeling analysis to examine the influence of attached garages on personal exposure to benzene.<sup>112</sup> The analysis modeled the air flow between the outdoor environment, indoor environment, and the garage, and accounted for the fraction of home air intake from the garage. Compared to national average exposure concentrations of 1.36  $\mu\text{g}/\text{m}^3$  modeled for 1999 in the National-Scale Air Toxics Assessment, which do not account for emissions originating in attached garages, average exposure concentrations for people with attached garages could more than double. For additional details, see Chapter 3 of the RIA.

Overall, emissions of VOCs within attached garages result in substantially higher concentrations of benzene and other pollutants indoors. Proposed reductions in fuel benzene content, new standards for cold temperature exhaust emissions during vehicle starts, and reduced emissions from gas cans are all expected to significantly reduce this major source of exposure.

### d. Occupational Exposure

Occupational settings can be considered a microenvironment in which exposure to benzene and other air toxics can occur. Occupational exposures to benzene from mobile sources or fuels can be several orders of magnitude greater than typical exposures in the non-occupationally exposed population. Several key occupational groups include workers in fuel distribution, storage, and tank remediation; handheld and non-handheld equipment operators; and workers who operate gasoline-powered engines such as snowmobiles and ATV's. Exposures in these occupational settings are discussed in Chapter 3 of the RIA.

In addition, some occupations require that workers spend considerable time in vehicles, which increases the time they spend in a higher-concentration microenvironment. In-vehicle concentrations are discussed in a previous section above.

<sup>112</sup> Bailey, C. (2005) Additional contribution to benzene exposure from attached garages. Memorandum to the Docket. This document is available in Docket EPA–HQ–OAR–2005–0036.

### 3. What Are the Size and Characteristics of Highly Exposed Populations?

A study of the populations in three states (Colorado, Georgia, and New York) indicated that more than half of the population lives within 200 meters of a major road.<sup>113</sup> In addition, analysis of data from the Census Bureau's American Housing Survey suggests that approximately 37 million people live within 300 feet of a 4- or more lane highway, railroad, or airport. American Housing Survey statistics, as well as epidemiology studies, indicate that those houses sited 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 discussed in detail in Chapter 3 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.<sup>114 115</sup> Using a more general definition of a "major road," between 22% and 51% of different study populations live near such roads.

### 4. What Are the Implications for Distribution of Individual Risk?

We have made revisions to HAPEM5, which is the exposure model used in our national-scale modeling, in order to account for near-road impacts. The effect of the updated model is best understood as widening the distribution of exposure, with a larger fraction of the population being exposed to higher benzene concentrations. Including the effects of residence locations near roads can result in exposures to some individuals that are up to 50% higher than those predicted by HAPEM5.

The revised model, HAPEM6, was run for three states representing different parts of the country. These areas are intended to represent different

<sup>113</sup> Major roads are defined as those roads defined by the U.S. Census as one of the following: "limited access highway," "highway," "major road," or "ramp."

<sup>114</sup> 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.

<sup>115</sup> 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.

geographies, development patterns, and housing densities. The states modeled include Georgia, Colorado, and New York. Overall, these study results indicate that proximity to major roads can significantly increase personal exposure for populations living near major roads. These modeling tools will be extended to a national scale for the final rulemaking.

For details on the modeling study with HAPEM6, refer to Chapter 3.2 of the RIA. We used geographic information systems to estimate the population within each U.S. census tract living at various distances from a major road (within 75 meters; between 75 and 200 meters; or beyond 200 meters). An exposure gradient was determined for people living in each zone, based on dispersion modeling.<sup>116</sup> These gradients were confirmed with monitoring studies funded by EPA.<sup>117</sup> The HAPEM5 model was updated to account for elevated concentrations within these defined distances from roadways and the population living in these areas.

### C. Ozone

While the focus of this rule is on air toxics, the proposed vehicle and gas can standards will also help reduce volatile organic compounds (VOCs), which are precursors to ozone.

#### 1. Background

Ground-level ozone, the main ingredient in smog, is formed by the reaction of VOCs and nitrogen oxides (NO<sub>x</sub>) in the 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. VOCs can also be emitted by natural sources such as vegetation. The gas can controls proposed in this action would help reduce VOC emissions by reducing evaporation, permeation and spillage from gas cans. The proposed vehicle

controls 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.<sup>118</sup> 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. Further complicating matters, 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<sub>x</sub> emissions. As a result, differences in VOC and NO<sub>x</sub> emissions contribute to daily, seasonal, and yearly differences in ozone concentrations across different locations.

The current ozone National Ambient Air Quality Standards (NAAQS) has an 8-hour averaging time. The 8-hour ozone NAAQS, established by EPA in 1997, 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. It 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 critically assessed in the EPA ozone criteria document (CD) and EPA staff paper.<sup>119 120</sup> In August 2005, the EPA

released the second external review draft of a new ozone CD which is scheduled to be released in final form in February 2006.<sup>121</sup> This document summarizes the findings of the 1996 ozone criteria document and critically assesses relevant new scientific information which has emerged in the past decade. Additional information on health and welfare effects of ozone can also be found in the draft RIA for this proposal.

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 normal activity. Ozone can also aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period. People who are of particular concern with respect to ozone exposures include children and adults who are active outdoors. Those people particularly susceptible to ozone effects are people with respiratory disease (*e.g.*, asthma), people with unusual sensitivity to ozone, and children.

There has been new research that suggests additional serious health effects beyond those that had been known when the 1996 ozone CD was published. Since then, over 1,700 new ozone-related health and welfare studies have been published in peer-reviewed journals.<sup>122</sup> Many of these studies have investigated 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 and emergency room visits for asthma and other respiratory causes, and premature

Paper, EPA-452/R-96-007. This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>121</sup> U.S. EPA (2005) Air Quality Criteria for Ozone and Related Photochemical Oxidants (Second External Review Draft). This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>122</sup> New Ozone Health and Environmental Effects References, Published Since Completion of the Previous Ozone AQCD, National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (7/2002). This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>116</sup> Cohen, J.; Cook, R.; Bailey, C.R.; Carr, E. (2005) Relationship between motor vehicle emissions of hazardous pollutants, roadway proximity, and ambient concentrations in Portland, Oregon. *Environ Modelling & Software* 20: 7-12.

<sup>117</sup> Kwon, J. (2005) Development of a RIOPA database and evaluation of the effect of proximity on the potential residential exposure to VOCs from ambient sources. PhD Dissertation. Rutgers, The State University of New Jersey and University of Medicine and Dentistry of New Jersey. Written under direction of Dr. Clifford Weisel. This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>118</sup> U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA600-P-93-004aF. This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>119</sup> U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA600-P-93-004aF. This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>120</sup> U.S. EPA (1996) Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff

mortality. EPA is currently in the process of evaluating these and other studies as part of the ongoing review of the air quality criteria document and NAAQS for ozone. Key new health information falls into four general areas: development of new-onset asthma, hospital admissions for young children, school absence rate, and premature mortality.

Aggravation of existing asthma resulting from short-term ambient ozone exposure was reported prior to the 1997 NAAQS standard and has been observed in studies published subsequently.<sup>123 124</sup> In addition, a relationship between long-term ambient ozone concentrations and the incidence of new-onset asthma in adult males (but not in females) was reported by McDonnell et al. (1999).<sup>125</sup> Subsequently, an additional study suggests that incidence of new diagnoses of asthma in children is associated with heavy exercise in communities with high concentrations (*i.e.*, mean 8-hour concentration of 59.6 parts per billion (ppb) or greater) of ozone.<sup>126</sup> This relationship was documented in children who played 3 or more sports and thus spent more time outdoors. It was not documented in those children who played one or two sports.

Previous studies have shown relationships between ozone and hospital admissions in the general population. A study in Toronto reported a significant relationship between 1-hour maximum ozone concentrations and respiratory hospital admissions in children under the age of two.<sup>127</sup> Given the relative vulnerability of children in this age category, there is particular concern about these findings.

Increased rates of illness-related school absenteeism have been associated with 1-hour daily maximum

and 8-hour average ozone concentrations in studies conducted in Nevada<sup>128</sup> in kindergarten to 6th grade and in Southern California in grades four through six.<sup>129</sup> These studies suggest that higher ambient ozone levels may result in increased school absenteeism.

The air pollutant most clearly associated with premature mortality is PM, with many studies reporting such an association. However, recent analyses provide evidence that short term ozone exposure is associated with increased premature mortality. Bell et al. (2004) published new analyses of the 95 cities in the National Morbidity, Mortality, and Air Pollution Study (NMMAPS) data sets, showing associations between daily mortality and the previous week's ozone concentrations which were robust to adjustment for particulate matter, weather, seasonality, and long-term trends.<sup>130</sup> Although earlier analyses undertaken as part of the NMMAPS did not report an effect of ozone on total mortality across the full year, in those earlier studies the NMMAPS investigators did observe an effect after limiting the analysis to summer, when ozone levels are highest.<sup>131 132</sup> Another recent study from 23 cities throughout Europe (APHEA2) also found an association between ambient ozone and daily mortality.<sup>133</sup> Similarly, other studies have shown associations

between ozone and mortality.<sup>134 135</sup> Specifically, Touloumi et al. (1997) found that 1-hour maximum ozone levels were associated with daily numbers of deaths in four cities (London, Athens, Barcelona, and Paris), and a quantitatively similar effect was found in a group of four additional cities (Amsterdam, Basel, Geneva, and Zurich).

In all, the new studies that have become available since the 8-hour ozone standard was adopted in 1997 continue to demonstrate the harmful effects of ozone on public health, and the need to attain and maintain the ozone NAAQS.

### 3. 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.<sup>136</sup> As of September 2005 there are approximately 159 million people living in 126 areas designated as not in attainment with the 8-hour ozone NAAQS. There are 474 full or partial counties that make up the 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 achieve the 8-hour ozone NAAQS is expected to decrease.

Based on the recent ozone modeling performed for the CAIR analysis<sup>137</sup>, 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

<sup>123</sup> Thurston, G.D.; Lippman, M.L.; Scott, M.B.; Fine, J.M. (1997) Summertime Haze Air Pollution and Children with Asthma. *American Journal of Respiratory Critical Care Medicine* 155: 654–660.

<sup>124</sup> Ostro, B.; Lipsett, M.; Mann, J.; Braxton-Owens, H.; White, M. (2001) Air pollution and exacerbation of asthma in African-American children in Los Angeles. *Epidemiology* 12(2): 200–208.

<sup>125</sup> McDonnell, W.F.; Abbey, D.E.; Nishino, N.; Lebowitz, M.D. (1999) "Long-term ambient ozone concentration and the incidence of asthma in nonsmoking adults: the AHSMOG study." *Environmental Research* 80(2 Pt 1): 110–121.

<sup>126</sup> McConnell, R.; Berhane, K.; Gilliland, F.; London, S.J.; Islam, T.; Gauderman, W.J.; Avol, E.; Margolis, H.G.; Peters, J.M. (2002) Asthma in exercising children exposed to ozone: a cohort study. *Lancet* 359: 386–391.

<sup>127</sup> Burnett, R.T.; Smith-Doiron, M.; Stieb, D.; Raizenne, M.E.; Brook, J.R.; Dales, R.E.; Leech, J.A.; Cakmak, S.; Krewski, D. (2001) Association between ozone and hospitalization for acute respiratory diseases in children less than 2 years of age. *Am. J. Epidemiol.* 153: 444–452.

<sup>128</sup> Chen, L.; Jennison, B.L.; Yang, W.; Omaye, S.T. (2000) Elementary school absenteeism and air pollution. *Inhalation Toxicol.* 12: 997–1016.

<sup>129</sup> Gilliland, F.D.; Berhane, K.; Rappaport, E.B.; Thomas, D.C.; Avol, E.; Gauderman, W.J.; London, S.J.; Margolis, H.G.; McConnell, R.; Islam, K.T.; Peters, J.M. (2001) The effects of ambient air pollution on school absenteeism due to respiratory illnesses. *Epidemiology* 12:43–54.

<sup>130</sup> Bell, M.L.; McDermott, A.; Zeger, S.L.; Samet, J.M.; Dominici, F. Ozone and short-term mortality in 95 U.S. urban communities, 1987–2000. *JAMA* 292(19): 2372–2378.

<sup>131</sup> Samet, J.M.; Zeger, S.L.; Dominici, F.; Curriero, F.; Coursac, I.; Dockery, D.W.; Schwartz, J.; Zanobetti, A. (2000) The National Morbidity, Mortality and Air Pollution Study: Part II: Morbidity, Mortality and Air Pollution in the United States. Research Report No. 94, Part II. Health Effects Institute, Cambridge, MA, June 2000. This document is available in Docket EPA–HQ–OAR–2005–0036.

<sup>132</sup> Samet, J.M.; Zeger, S.L.; Dominici, F.; Curriero, F.; Coursac, I.; Zeger, S. (2000) Fine Particulate Air Pollution and Mortality in 20 U.S. Cities, 1987–1994. *The New England Journal of Medicine* 343(24): 1742–1749.

<sup>133</sup> Gryparis, A.; Forsberg, B.; Katsouyanni, K.; Analitis, A.; Touloumi, G.; Schwartz, J.; Samoli, E.; Medina, S.; Anderson, H.R.; Niciu, E.M.; Wichmann, H.E.; Kriz, B.; Kosnik, M.; Skorkovsky, J.; Vonk, J.M.; Dortbudak, Z. (2004) Acute effects of ozone on mortality from the "Air Pollution and Health: A European Approach" project. *Am. J. Respir. Crit. Care Med.* 170: 1080–1087.

<sup>134</sup> Thurston, G.D.; Ito, K. (2001) Epidemiological studies of acute ozone exposures and mortality. *J. Exposure Anal. Environ. Epidemiol.* 11: 286–294.

<sup>135</sup> Touloumi, G.; Katsouyanni, K.; Zmirou, D.; Schwartz, J.; Spix, C.; Ponce de Leon, A.; Tobias, A.; Quenel, P.; Rabczenko, D.; Bacharova, L.; Bisanti, L.; Vonk, J.M.; Ponka, A. (1997) Short-term effects of ambient oxidant exposure on mortality: A combined analysis within the APHEA project. *Am. J. Epidemiol.* 146: 177–185.

<sup>136</sup> A map of the 8-hour ozone nonattainment areas is included in the RIA for this proposed rule.

<sup>137</sup> Technical Support Document for the Final Clean Air Interstate Rule Air Quality Modeling. This document is available in Docket EPA–HQ–OAR–2005–0036.

take action to bring those 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.<sup>138</sup> We also expect many of the 8-hour ozone nonattainment areas to adopt additional emission reduction programs, but we are unable to quantify or rely upon future reductions from additional state and local programs that have not yet been adopted. The expected ozone inventory reductions from the standards proposed in this action may be useful to states in attaining or maintaining the 8-hour ozone NAAQS.

A metamodeling tool developed at EPA, the ozone response surface metamodel, was used to estimate the effects of the proposed emission reductions. The ozone response surface metamodel was created using multiple runs of the Comprehensive Air Quality Model with Extensions (CAMx). Base and proposed 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 proposal 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 proposed rule, as described in Chapter 3 of the draft RIA. The proposed gas can 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 proposed gas can controls. As stated in Section VII.E.3, 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 due to the proposed gas can controls.

#### D. Particulate Matter

The cold temperature vehicle controls proposed here will result in reductions of primary PM being emitted by

vehicles. In addition, both the proposed vehicle controls and the proposed gas can controls will reduce VOCs that react in the atmosphere to form secondary PM<sub>2.5</sub>, namely organic carbonaceous PM<sub>2.5</sub>.

#### 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<sub>10</sub> refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (μm). PM<sub>2.5</sub> refers to fine particles, those particles with an aerodynamic diameter less than or equal to a nominal 2.5 μm. Coarse fraction particles refer to those particles with an aerodynamic diameter less than or equal to a nominal 10 μm. Inhalable (or “thoracic”) coarse particles refer to those particles with an aerodynamic diameter greater than 2.5 μm but less than or equal to 10 μm. Ultrafine PM refers to particles with diameters of 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. Ambient fine particles are a complex mixture including sulfates, nitrates, chlorides, organic carbonaceous material, elemental carbon, geological material, and metals. Fine particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers, while coarse particles generally tend to deposit to the earth within minutes to hours and within tens of kilometers from the emission source.

EPA has NAAQS for both PM<sub>2.5</sub> and PM<sub>10</sub>. Both the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS consist of a short-term (24-hour) and a long-term (annual) standard. The 24-hour PM<sub>2.5</sub> NAAQS is set at a level of 65 μg/m<sup>3</sup> based on the 98th percentile concentration averaged over three years. The annual PM<sub>2.5</sub> NAAQS specifies an expected annual arithmetic mean not to exceed 15 μg/m<sup>3</sup> averaged over three years. The 24-hour PM<sub>10</sub> NAAQS is set at a level of 150 μg/m<sup>3</sup> not to be exceeded more than once per year. The annual PM<sub>10</sub> NAAQS specifies an expected annual arithmetic mean not to exceed 50 μg/m<sup>3</sup>.

EPA has recently proposed to amend the PM NAAQS.<sup>139</sup> The proposal

includes lowering the level of the primary 24-hour fine particle standard from the current level of 65 micrograms per cubic meter (μg/m<sup>3</sup>) to 35 μg/m<sup>3</sup>, retaining the level of the annual fine standard at 15 μg/m<sup>3</sup>, and setting a new primary 24-hour standard for certain inhalable coarse particles (the indicator is qualified so as to include any ambient mix of PM<sub>10-2.5</sub> that is dominated by resuspended dust from high-density traffic on paved roads and PM generated by industrial and construction sources, and excludes any ambient mix of PM<sub>10-2.5</sub> dominated by rural windblown dust and soils and PM generated by agricultural and mining sources) at 70 μg/m<sup>3</sup>. The Agency is also requesting comment on various other standards for fine and inhalable coarse PM (71 FR 2620, Jan. 17, 2006).

#### 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 1997 PM criteria document, the recent 2004 EPA Criteria Document for PM as well as the 2005 PM Staff Paper.<sup>140 141 142</sup> Further discussion of health effects associated with PM can also be found in the draft RIA for this proposal.

As described in the documents listed above, health effects associated with short-term variation (e.g. hours to days) in ambient PM<sub>2.5</sub> include premature mortality, hospital admissions, heart and lung diseases, increased cough, 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<sub>2.5</sub> and premature mortality, including deaths attributed to cardiovascular changes and lung cancer.

17, 2006). This document is also available on the web at: <http://www.epa.gov/air/particlepollution/actions.html>

<sup>140</sup> U.S. EPA (1996) Air Quality Criteria for Particulate Matter, EPA 600/P-95-001aF, EPA 600/P-95-001bF. This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>141</sup> 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.

<sup>142</sup> 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.

<sup>138</sup> The Los Angeles South Coast Air Basin 8-hour ozone nonattainment area will have to attain before June 15, 2021.

<sup>139</sup> U.S. EPA, National Ambient Air Quality Standards for Particulate Matter (71 FR 2620, Jan.

Recently, several studies have highlighted the adverse effects of PM specifically from mobile sources.<sup>143 144</sup> Studies have also focused on health effects due to PM exposures on or near roadways.<sup>145</sup> 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. The proposed vehicle controls may help to reduce exposures to mobile source related PM<sub>2.5</sub>. Additional information on near roadway health effects can be found in Section III of this preamble.

### 3. Current and Projected PM<sub>2.5</sub> Levels

EPA has recently finalized PM<sub>2.5</sub> nonattainment designations (70 FR 943, Jan 5, 2005).<sup>146</sup> As can be seen from the designations, ambient PM<sub>2.5</sub> levels exceeding the level of the PM<sub>2.5</sub> NAAQS are widespread throughout the country. There are approximately 88 million people living in 39 areas (which include all or part of 208 counties) designated as not in attainment with the PM<sub>2.5</sub> NAAQS.

EPA has already adopted many emission control programs that are expected to reduce ambient PM levels. These rules include the Clean Air Interstate Rule (70 FR 25162, May 12, 2005), as well as many mobile source rules. Section V.D details many of these mobile source rules.<sup>147</sup> As a result of these programs, the number of areas that fail to achieve the 1997 PM<sub>2.5</sub> NAAQS is expected to decrease. Based on modeling performed for the CAIR analysis, we estimate that 28 Eastern counties (where 19 million people are

projected to live) will exceed the PM<sub>2.5</sub> standard in 2010.<sup>148</sup> In addition, 56 Eastern counties (where 24 million people are projected to live) are expected to be within 10 percent of violating the PM<sub>2.5</sub> in 2010.

While the final implementation process for bringing the nation's air into attainment with the 1997 PM<sub>2.5</sub> NAAQS is still being completed in a separate rulemaking action, we expect that most areas will need to attain the 1997 PM<sub>2.5</sub> NAAQS in the 2009 to 2014 time frame, and then be required to maintain the NAAQS thereafter. The expected PM and VOC inventory reductions from the standards proposed in this action will be useful to states in attaining or maintaining the PM<sub>2.5</sub> NAAQS.

### 4. Current PM<sub>10</sub> Levels

Air quality monitoring data indicates that as of September 2005 approximately 29 million people live in 55 designated PM<sub>10</sub> nonattainment areas, which include all or part of 54 counties. The RIA for this proposed rule lists the PM<sub>10</sub> nonattainment areas and their populations.

Based on section 188 of the Act, we expect that most areas will attain the PM<sub>10</sub> NAAQS no later than December 31, 2006, depending on an area's classification and other factors, and then be required to maintain the PM<sub>10</sub> NAAQS thereafter. The expected PM and VOC inventory reductions from the standards proposed in this action could be useful to states in maintaining the PM<sub>10</sub> NAAQS.<sup>149</sup>

### E. Other Environmental Effects

#### 1. Visibility

##### a. Background

Visibility can be defined as the degree to which the atmosphere is transparent to visible light.<sup>150</sup> 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, because of the special emphasis given to protecting these lands now and for future generations. For more information on visibility see the recent 2004 EPA Criteria Document for PM as well as the 2005 PM Staff Paper.<sup>151 152</sup>

To address the welfare effects of PM on visibility, EPA set secondary PM<sub>2.5</sub> standards in 1997 which would act in conjunction with the establishment of a regional haze program. EPA concluded that PM<sub>2.5</sub> causes adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity and the secondary (welfare-based) PM<sub>2.5</sub> NAAQS was established as equal to the suite of primary (health-based) NAAQS (62 FR 38669, July 18, 1997). 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 Federal class I areas (62 FR 38680-81, July 18, 1997).<sup>153</sup> In July 1999 the regional haze rule (64 FR 35714) was put in place to protect the visibility in mandatory Federal class I areas. Visibility can be said to be impaired in both PM<sub>2.5</sub> nonattainment areas and mandatory Federal class I areas.<sup>154</sup>

available in Docket EPA-HQ-OAR-2005-0036. This book can be viewed on the National Academy Press Website at <http://www.nap.edu/books/0309048443/html/>.

<sup>151</sup> 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.

<sup>152</sup> 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.

<sup>153</sup> 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.

<sup>154</sup> As mentioned above, the EPA has recently proposed to amend the PM NAAQS (71 FR 2620, Jan. 17, 2006). The proposal would set the secondary NAAQS equal to the primary standards for both PM<sub>2.5</sub> and PM<sub>10-2.5</sub>. EPA also is taking comment on whether to set a separate PM<sub>2.5</sub> standard, designed to address visibility (principally in urban areas), on potential levels for that standard

<sup>143</sup> 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.

<sup>144</sup> 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<sub>10</sub> on Hospital Admissions for Heart and Lung Disease. *Environmental Health Perspectives* 110: 43-49.

<sup>145</sup> Riekider, 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.

<sup>146</sup> US EPA, Air Quality Designations and Classifications for the Fine Particles (PM<sub>2.5</sub>) National Ambient Air Quality Standards, December 17, 2004. (70 FR 943, Jan 5, 2005) This document is also available on the web at: <http://www.epa.gov/pmdesignations/>.

<sup>147</sup> The Clean Air Interstate Rule (CAIR) will reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> from power plants in the Eastern 37 states, reducing interstate transport of nitrogen oxides and sulfur dioxide and helping cities and states in the East meet the ozone and PM NAAQS. (70 FR 25162) (May 12, 2005).

<sup>148</sup> Technical Support Document for the Final Clean Air Interstate Rule Air Quality Modeling. This document is available in Docket EPA-HQ-OAR-2005-0036.

<sup>149</sup> As mentioned above, the EPA has recently proposed to amend the PM NAAQS, by establishing a new indicator for certain inhalable coarse particles, and a new primary 24-hour standard for coarse particles described by that indicator. EPA also proposed to revoke the current 24-hour PM<sub>10</sub> standard in all areas of the country except in those areas with a population of at least 100,000 people and which contain at least one monitor violating the 24-hour PM<sub>10</sub> standard, based on the most recent 3 years of air quality data. In addition, EPA proposed to revoke upon promulgation of this rule the current annual PM<sub>10</sub> standard if EPA finalizes the proposed primary standard for PM<sub>10-2.5</sub> (71 FR 2620, Jan. 17, 2006).

<sup>150</sup> 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

## b. Current Visibility Impairment

Data showing PM<sub>2.5</sub> nonattainment areas, and visibility levels above background at the Mandatory Class I Federal Areas demonstrate that unacceptable visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote mandatory Federal class I areas.<sup>155</sup> The mandatory federal class I areas are listed in Chapter 3 of the draft RIA for this action. The areas that have design values above the PM<sub>2.5</sub> NAAQS are also listed in Chapter 3 of the draft RIA for this action.

## c. Future Visibility Impairment

Recent modeling for the Clean Air Interstate Rule (CAIR) was used to project visibility conditions in mandatory Federal class I areas across the country in 2015. The results for the mandatory Federal Class I areas suggest that these areas are predicted to continue to have annual average deciview levels above background in the future.<sup>157</sup> Modeling done for the CAIR also projected PM<sub>2.5</sub> levels in the Eastern U.S. in 2010. These projections include all sources of PM<sub>2.5</sub>, including the engines covered in this proposal, and suggest that PM<sub>2.5</sub> levels above the 1997 NAAQS will persist into the future.<sup>158</sup>

The vehicles that would be subject to the proposed 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<sub>2.5</sub>. The gas cans that would be subject to the proposed 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 Federal class I areas.

within a range of 20 to 30 µg/m<sup>3</sup>, and on averaging times for the standard within a range of four to eight daylight hours.

<sup>155</sup> US EPA, Air Quality Designations and Classifications for the Fine Particles (PM<sub>2.5</sub>) National Ambient Air Quality Standards, December 17, 2004. (70 FR 943, Jan 5, 2005) This document is also available on the web at: <http://www.epa.gov/pmdesignations/>.

<sup>156</sup> US EPA. Regional Haze Regulations, July 1, 1999. (64 FR 35714, July 1, 1999).

<sup>157</sup> 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.

<sup>158</sup> EPA recently proposed to revise the current secondary PM NAAQS standards by making them identical to the suite of proposed primary standards for fine and coarse particles (71 FR 2620, Jan. 17, 2006).

## 2. Plant Damage From Ozone

Ozone contributes to many environmental effects, with damage to plants and ecosystems being of most concern. Plant damage affects crop yields, forestry production, and ornamentals. The adverse effect of ozone on forests and other natural vegetation can in turn cause damage to associated ecosystems, with additional resulting economic losses. Prolonged ozone concentrations of 100 ppb can be phytotoxic to a large number of plant species, and can produce acute injury and reduced crop yield and biomass production. Ozone concentrations within the range of 50 to 100 ppb have the potential over a longer duration to create chronic stress on vegetation that can result in reduced plant growth and yield, shifts in competitive advantages in mixed populations, decreased vigor, and injury. Ozone effects on vegetation are presented in more detail in the 1996 Criteria Document and the 2005 draft Criteria Document.

## 3. 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.<sup>159</sup> For some watersheds, atmospheric deposition represents a significant input to the total surface water PAH burden.<sup>160</sup> Emissions

<sup>159</sup> 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.

<sup>160</sup> 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.

<sup>161</sup> Simcik, M.F.; Eisenrich, S.J.; and Liroy, P.J. (1999) Source Apportionment and Source/Sink

from mobile sources have been found to account for a percentage of the atmospheric deposition of PAHs. For instance, recent studies have identified gasoline and diesel vehicles as the major contributors in the atmospheric deposition of PAHs to Chesapeake Bay, Massachusetts Bay and Casco Bay.<sup>162</sup> The vehicle controls being proposed may help to reduce deposition of heavy metals and POM.

## 4. 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.<sup>164</sup> 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.

## V. What Are Mobile Source Emissions Over Time and How Would This Proposal Reduce Emissions, Exposure and Associated Health Effects?

### A. Mobile Source Contribution to Air Toxics Emissions

In 1999, based on the National Emissions Inventory (NEI), mobile sources accounted for 44% of total

Relationships of PAHs in the Coastal Atmosphere of Chicago and Lake Michigan. Atmospheric Environment 33: 5071-5079.

<sup>162</sup> 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.

<sup>163</sup> 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.

<sup>164</sup> 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.

emissions of 188 hazardous air pollutants (on the Clean Air Act section 112(b) list of hazardous air pollutants). Diesel particulate matter (PM) is not included in this list of 188 pollutants. Sixty-five percent of the mobile source tons in this inventory were attributable to highway mobile sources, and the remainder to nonroad sources. Furthermore, over 90% of mobile source emissions of air toxics (not including diesel PM) are attributable to gasoline vehicles and equipment.

Recently, EPA projected trends in air toxic emissions (not including diesel PM) to 2020, using the 1999 National Emissions Inventory (NEI) as a baseline.<sup>165</sup> Overall, air toxic emissions are projected to decrease from 5,030,000 tons in 1999 to 4,010,000 tons in 2020, as a result of emission controls on major, area, and mobile sources. In the

<sup>165</sup> Strum, M., R. Cook, J. Thurman, D. Ensley, A. Pope, T. Palma, R. Mason, H. Michaels, and S. Shedd. 2005. Projection of Hazardous Air Pollutant Emissions to Future Years. Science of the Total Environment, in press.

absence of Clean Air Act emission controls currently in place, EPA estimates air toxic emissions would total 11,590,000 tons in 2020.

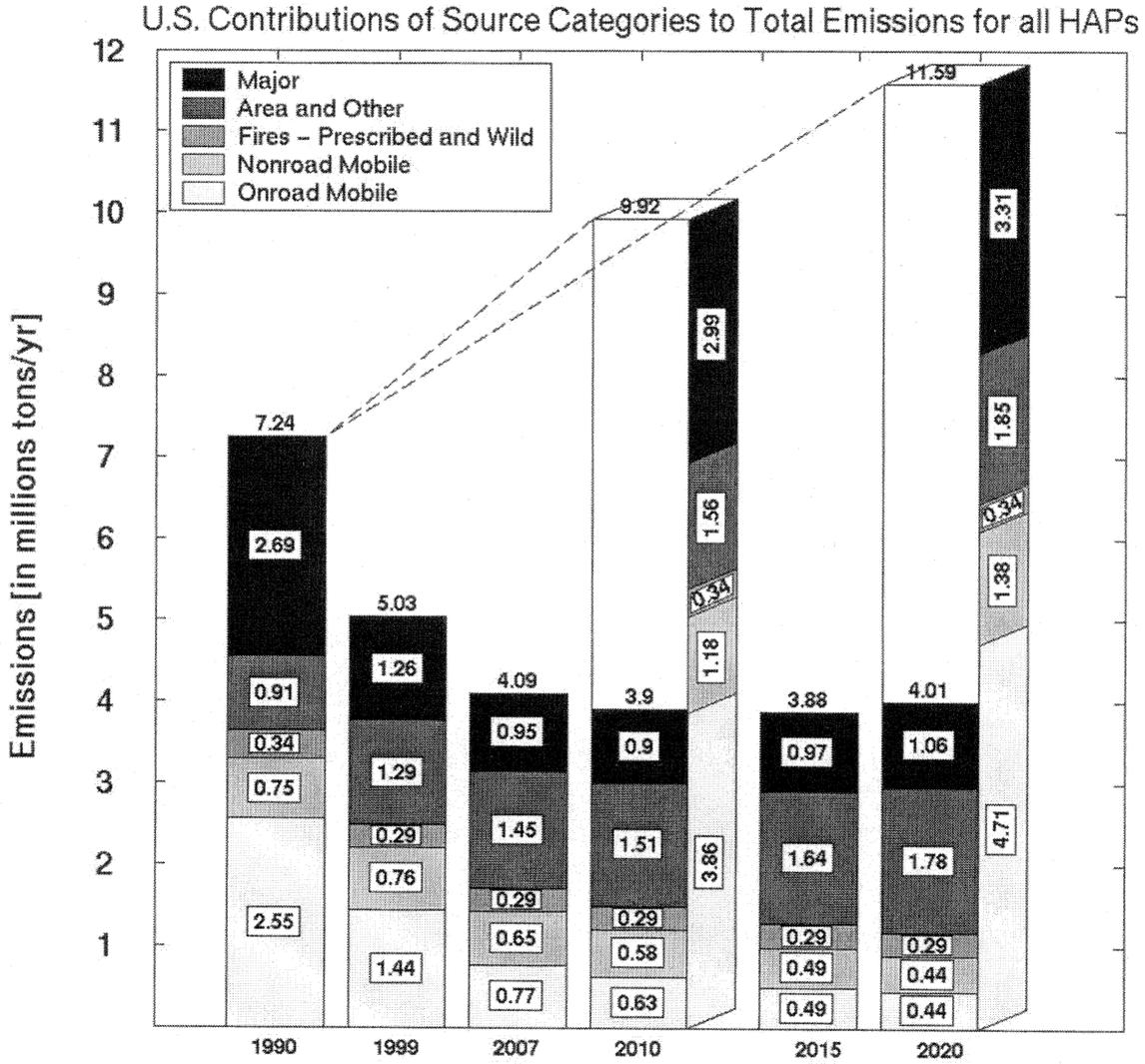
Figure V.A-1 depicts the contributions of source categories to air toxic emissions between 1990 and 2020.<sup>166</sup> As indicated in Figure V.A-1, mobile source air toxic emissions will be reduced 60% between 1999 and 2020, from 2.2 million to 880,000 tons. This reduction will occur despite a projected 57% increase in vehicle miles traveled, and a projected 63% increase in nonroad activity, based on units of work called horsepower-hours. It should be noted, however, that EPA anticipates mobile source air toxic emissions will begin to increase after 2020, from about 880,000 tons in 2020 to 920,000 tons in

<sup>166</sup> It should be noted that after 2010, stationary source emissions are based only on economic growth, and do not account for reductions from ongoing toxics programs such as the urban air toxics program, residual risk standards and area source program, which are expected to further reduce toxics.

2030. This is because, after 2020, reductions from control programs will be outpaced by increases in activity.

In 1999, 29% of air toxic emissions were from highway vehicles and 15% from nonroad equipment. Moreover, 54% of air toxic emissions from highway vehicles were emitted by light-duty gasoline vehicles (LDGVs) and 37% by light-duty trucks (LDGTs) (see Table V.A-1). EPA projects that in 2020, only 27% of highway vehicle toxic emissions will be from LDGVs and 63% will be from LDGTs. Air toxic emissions from nonroad equipment are dominated by lawn and garden equipment, recreational equipment, and pleasure craft, which collectively accounted for almost 80% of nonroad toxic emissions in 1999 and 2020 (see Table V.A-2).

Figure V.A-1 Contribution of Source Categories to Air Toxic Emissions, 1990 to 2020 (not including diesel particulate matter). **Note:** Dashed line represents projected emissions without Clean Air Act controls.



If diesel PM emissions were added to the mobile source total, mobile sources would account for 48% of a total 5,398,000 tons in 1999. Figure V.A.-2 summarizes the trend in diesel PM between 1999 and 2020, by source category. Diesel PM emissions will be reduced from 368,000 tons in 1999 to 114,000 tons in 2020, a decrease of 70%. As controls on highway diesel engines

and nonroad diesel engines phase in, diesel-powered locomotives and commercial marine vessels increase from 11% of the inventory in 1999 to 27% in 2020.

Subsequent to the development of these projected inventories for mobile source air toxics, a number of inventory revisions have occurred. Data EPA has collected indicate that the MOBILE6.2

emission factor model is under predicting hydrocarbon emissions (including air toxics) and PM emissions at lower temperatures, from light-duty vehicles meeting National Low Emission Vehicle (NLEV) and Tier 2 tailpipe standards. The inventories presented in sections V.B, V.C., and V.E. reflect these enhancements.

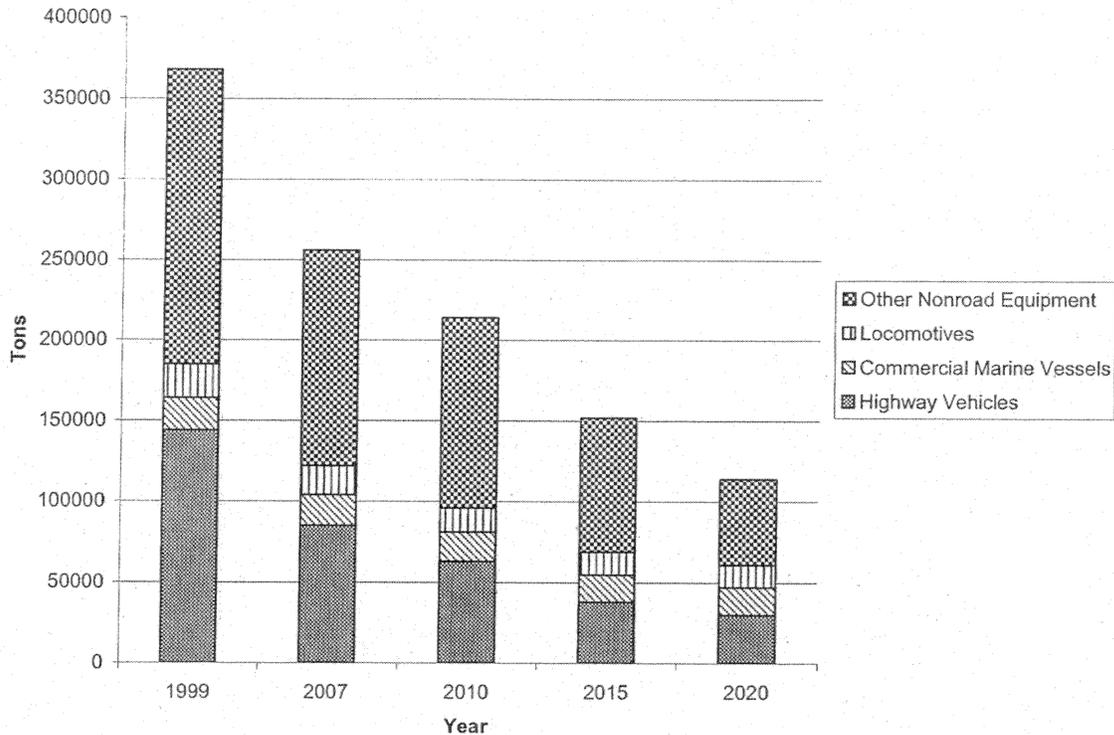
TABLE V.A-1.—PERCENT CONTRIBUTION OF VEHICLE CLASSES TO HIGHWAY VEHICLE AIR TOXIC EMISSIONS, 1999 TO 2020  
[Not including diesel particulate matter]

Vehicle	1999 (%)	2007 (%)	2010 (%)	2015 (%)	2020 (%)
Light-Duty Gasoline Vehicles .....	54	41	37	31	27
Light-Duty Gasoline Trucks .....	37	49	53	59	63
Heavy-Duty Gasoline Vehicles .....	6	5	4	4	3
Heavy-Duty Diesel Vehicles .....	3	4	4	4	5
Other (motorcycles and light-duty diesel vehicles and trucks) .....	1	1	1	2	2

TABLE V.A-2.—CONTRIBUTION OF EQUIPMENT TYPES TO NONROAD AIR TOXIC EMISSIONS, 1999 TO 2020

Equipment type	1999 (%)	2007 (%)	2010 (%)	2015 (%)	2020 (%)
Lawn and Garden .....	26	18	17	21	25
Pleasure Craft .....	34	27	25	25	25
Recreational .....	19	38	40	35	29
All Others .....	21	17	18	19	21

Figure V.A-2. Contribution of Mobile Source Categories to Diesel Particulate Matter Emissions, 1999 to 2020



B. VOC Emissions From Mobile Sources

Table V.B-1 presents 48-State VOC emissions from key mobile source sectors in 1999, 2010, 2015, and 2020, not including the effects of this proposed rule. The 1999 inventory estimates for nonroad equipment were

obtained from the National Emissions Inventory, and the 2010 and later year estimates were obtained from the inventories developed for the Clean Air Interstate Air Quality Rule (CAIR). The table provides emissions for nonroad equipment such as commercial marine vessels, locomotives, aircraft, lawn and

garden equipment, recreational vehicles and boats, industrial equipment, and construction equipment. The estimates for highway vehicle classes were developed for this rule. The estimates for light-duty gasoline vehicles reflect revised estimates of hydrocarbon emissions at low temperatures.

TABLE V.B-1.—48-STATE VOC EMISSIONS (TONS) FROM KEY MOBILE SOURCE SECTORS IN 1999, 2010, 2015, AND 2020

[Without this proposed rule]

Category	1999	2010	2015	2020
Light Duty Gasoline Vehicles and Trucks .....	4,873,000	2,896,000	2,566,000	2,486,000

TABLE V.B-1.—48-STATE VOC EMISSIONS (TONS) FROM KEY MOBILE SOURCE SECTORS IN 1999, 2010, 2015, AND 2020—Continued  
[Without this proposed rule]

Category	1999	2010	2015	2020
Heavy Duty and Other Highway Vehicles .....	672,000	255,000	212,000	200,000
Nonroad Equipment .....	2,785,000	1,739,000	1,500,000	1,387,000

VOC emissions from highway vehicles are about twice those from nonroad equipment in 1999. Emissions from both highway vehicles and nonroad equipment decline substantially between 1999 and 2020 as a result of EPA control programs that are already adopted. The VOC emission reductions associated with this proposed rule are presented in section V.E, below.

C. PM Emissions From Mobile Sources

Table V.C-1 presents 48-State PM<sub>2.5</sub><sup>167</sup> emissions from key mobile source sectors in 1999, 2010, 2015, and 2020, not including the effects of this proposed rule. The estimates in Table V.C-1 come from the same sources as the VOC estimates in section V.B. EPA is considering revisions to estimates of the PM emissions inventory for motor

vehicles. Recent data suggest PM emissions are significantly higher than currently estimated in the MOBILE6 emissions model. In addition, testing done for this rule demonstrates that PM emissions are elevated at cold temperatures. The estimates in Table V.C-1 do not account for the effects of cold temperature.

TABLE V.C-1—48-STATE PM<sub>2.5</sub> EMISSIONS (TONS) FROM KEY MOBILE SOURCE SECTORS IN 1999, 2010, 2015, AND 2020  
[Without this proposed rule]

Category	1999	2010	2015	2020
Light-Duty Gasoline Vehicles and Trucks .....	48,000	33,000	36,000	39,000
Heavy-Duty and Other Highway Vehicles .....	136,000	51,000	28,000	20,000
Nonroad Equipment .....	332,000	232,000	201,000	178,000

Section V.E, below, presents estimates of PM emission reductions associated with the proposed cold-temperature vehicle standards.

D. Description of Current Mobile Source Emissions Control Programs That Reduce MSATs

As described in section V.A, existing mobile source control programs will reduce MSAT emissions (not including diesel PM) by 60% between 1999 and 2020. Diesel PM from mobile sources will be reduced by 70% between 1999 and 2020. The mobile source programs include controls on fuels, highway vehicles, and nonroad 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, as well as voluntary programs to reduce mobile source emissions, such as the National Clean Diesel Campaign and Best Workplaces for Commuters. A more detailed description of mobile source programs is provided in Chapter 2 of the RIA.

1. Fuels Programs

Several federal fuel programs reduce MSAT emissions. Some of these programs directly control air toxics, such as the reformulated gasoline (RFG) program's benzene content limit and required reduction in total toxics emissions, and the anti-backsliding requirements of the anti-dumping and current MSAT programs, which require that gasoline cannot get dirtier with respect to toxics emissions. Others, such as the gasoline sulfur program, control toxics indirectly by reducing hydrocarbon and related toxics emissions.

a. RFG

The RFG program contains two direct toxics control requirements. The first is a fuel benzene standard, requiring RFG to average no greater than 0.95 volume percent benzene annually (on a refinery or importer basis). The RFG benzene requirement includes a per-gallon cap on fuel benzene level of 1.3 volume percent. In 1990, when the Clean Air Act was amended to require reformulated gasoline, fuel benzene averaged 1.60 volume percent. For a variety of reasons, including other

regulations, chemical product prices and refining efficiencies, most refiners and importers have achieved significantly greater reductions in benzene than required by the program. In 2003, RFG benzene content averaged 0.62 percent. The RFG benzene requirement includes a per-gallon cap on fuel benzene level of 1.3 volume percent.

The second RFG toxics control requires that RFG achieve a specific level of toxics emissions reduction. The requirement has increased in stringency since the RFG program began in 1995, when the requirement was that RFG annually achieve a 16.5% reduction in total (exhaust plus evaporative) air toxics emissions. Currently, a 21.5% reduction is required. These reductions are determined using the Complex Model. As mentioned above, for a variety of reasons most regulated parties have overcomplied with the required toxics emissions reductions. During 1998-2000, RFG achieved, on average, a 27.5% reduction in toxics emissions.

b. Anti-Dumping

The anti-dumping regulations were intended to prevent the dumping of "dirty" gasoline components, which

<sup>167</sup> PM<sub>2.5</sub> is particulate matter under 2.5 microns in diameter. Over 85% of the mass of PM from mobile sources is PM<sub>2.5</sub>.

were removed to produce RFG, into conventional gasoline (CG). Since the dumping of "dirty" gasoline components, for example, benzene or benzene-containing blending streams, would show up as increases in toxics emissions, the anti-dumping regulations require that a refiner's or importer's CG be no more polluting with respect to toxics emissions than the refiner's or importer's 1990 gasoline. The anti-dumping program considers only exhaust toxics emissions and does not include evaporative emissions.<sup>168</sup> Refiners and importers have either a unique individual anti-dumping baseline or they have the statutory anti-dumping baseline if they did not fulfill the minimum requirements for developing a unique individual baseline. In 1990, average exhaust toxics emissions (as estimated by the Complex Model) were 104.5 mg/mile;<sup>169</sup> in 2004, CG exhaust toxics emissions averaged 90.7 mg/mile. Although CG has no benzene limit, benzene levels have declined significantly from the 1990 level of 1.6 volume percent to 1.1 volume percent for CG in 2004.

#### c. 2001 Mobile Source Air Toxics Rule (MSAT1)

As discussed above, both RFG and CG have, on average, exceeded their respective toxics control requirements. In 2001, EPA issued a mobile source air toxics rule (MSAT1, for the purposes of this second proposal), as discussed in section I.D. The intent of MSAT1 is to prevent refiners and importers from backsliding from the toxics performance that was being achieved by RFG and CG. In order to lock in superior levels of control, the rule requires that the annual average toxics performance of gasoline must be at least as clean as the average performance of the gasoline produced or imported during the three-year period 1998–2000. The period 1998–2000 is called the baseline period. Toxics performance is determined separately for RFG and CG, in the same manner as the toxics determinations required by the RFG<sup>170</sup> and anti-dumping rules.

Like the anti-dumping provisions, MSAT1 utilizes an individual baseline against which compliance is determined. The average 1998–2000 toxics performance level, or baseline, is determined separately for each refinery and importer.<sup>171</sup> To establish a unique

individual MSAT1 baseline, EPA requires each refiner and importer to submit documentation supporting the determination of the baseline. Most refiners and many importers in business during the baseline period had sufficient data to establish an individual baseline. An MSAT1 baseline volume is associated with each unique individual baseline value. The MSAT1 baseline volume reflects the average annual volume of such gasoline produced or imported during the baseline period. Refiners and importers who did not have sufficient refinery production or imports during 1998–2000 to establish a unique individual MSAT1 baseline must use the default baseline provided in the rule.

The MSAT1 program began with the annual averaging period beginning January 1, 2002. Since then, the toxics performance for RFG has improved from a baseline period average of 27.5% reduction to 29.5% reduction in 2003. Likewise, CG toxics emissions have decreased from an average of 95 mg/mile during 1998–2000 to 90.7 mg/mile in 2003.

#### d. Gasoline Sulfur

EPA's gasoline sulfur program<sup>172</sup> requires, beginning in 2006, that sulfur levels in gasoline can be no higher in any one batch than 80 ppm, 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. With lower sulfur levels, emission control technologies can work longer and more efficiently. Both new and older vehicles benefit from reduced gasoline sulfur levels.

#### e. 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 vapor 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. EPA has controlled summertime gasoline RVP since 1989 primarily as a VOC and

requirements for conventional gasoline must be met on the same aggregate basis (40 CFR Part 80, Subpart E).

<sup>172</sup> 65 FR 6822 (February 10, 2000).

ozone precursor control, which also results in some toxics pollutant reductions.

#### f. 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.<sup>173</sup> This program contains averaging, banking and trading provisions, as well as other compliance flexibilities. In June 2004, EPA issued rules governing the sulfur content of diesel fuel used in nonroad diesel engines.<sup>174</sup> 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.

#### g. 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

<sup>173</sup> 66 FR 5002 (January 18, 2001) <http://www.epa.gov/otaq/diesel.html>.

<sup>174</sup> 69 FR 38958 (June 29, 2004).

<sup>168</sup> See RFG rule for why evaporative emissions are not included in the anti-dumping toxics determination.

<sup>169</sup> Phase II.

<sup>170</sup> 40 CFR Part 80, Subpart D.

<sup>171</sup> Except for those who comply with the anti-dumping requirements for conventional gasoline on an aggregate basis, in which case the MSAT1

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.<sup>175</sup> 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.<sup>176</sup> 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; 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. 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.

Reducing vehicle idling provides important environmental benefits. As a part of their daily routine, truck drivers often keep their vehicles at idle during stops to provide power, heat and air conditioning. EPA's SmartWay Transport Partnership is helping the freight industry to adopt innovative idle

reduction technologies and take advantage of proven systems that provide drivers with basic necessities without using the engine. To date, there are 50 stationary anti-idling projects, and mobile technology has been installed on nearly 20,000 trucks. The SmartWay Transport Partnership also works with the freight industry to reduce fuel use (with a concomitant reduction in emissions) 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<sup>SM</sup> program is working with employers across the country to reverse the trend of longer, single-occupancy vehicle commuting. OTAQ has created a national list of the Best Workplaces for Commuters to formally recognize employers that offer superior commuter benefits such as free transit passes, subsidized vanpools/carpools, and flexi-place, or work-from-home, programs. More than 1,300 employers representing 2.8 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 14 major metropolitan areas to increase the penetration of commuter benefits in the marketplace and the visibility of the companies that have received the BWC 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 twenty locations across the country including downtown Denver, Houston, Minneapolis and Tampa.

## E. Emission Reductions From Proposed Controls

### 1. Proposed Vehicle Controls

We are proposing 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, acrolein and naphthalene, and will also reduce emissions of direct and secondary PM. We are also proposing new evaporative emissions standards for Tier 2 vehicles starting in

<sup>175</sup> 65 FR 6697, February 10, 2000.

<sup>176</sup> 66 FR 5001, January 18, 2001.

2009. These new evaporative standards reflect the emissions levels already being achieved by manufacturers.

a. Volatile Organic Compounds (VOC)  
Table V.E-1 shows the VOC exhaust emission reductions from light-duty gasoline vehicles and trucks that would result from our proposed standards. The proposed standards would reduce VOC

emissions in 2030 by 32%. Overall VOC exhaust emissions from these vehicles would be reduced by 81% between 1999 and 2030 (including the effects of the proposed standards as well as standards already in place, such as Tier 2).

TABLE V.E-1.—ESTIMATED NATIONAL REDUCTIONS IN EXHAUST VOC EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 1999 TO 2030

	1999	2015	2020	2030
VOC Without Rule (tons)	4,899,891	2,625,076	2,556,751	2,899,269
VOC With Proposed Vehicle Standards (tons)	N.A.	2,305,202	2,020,267	1,985,830
VOC Reductions from Proposed Vehicle Standards (tons)	N.A.	319,874	536,484	913,439
Percentage Reduction	N.A.	12	21	32

b. Toxics

In 2030, we estimate that the proposed vehicle standards would

result in a 38% reduction in benzene emissions and 37% reduction in total emissions of the MSATs<sup>177</sup> from light-

duty vehicles and trucks (see Tables V.E-2 and V.E-3).

TABLE V.E-2.—ESTIMATED NATIONAL REDUCTIONS IN BENZENE EXHAUST EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 1999 TO 2030

	1999	2015	2020	2030
Benzene Without Rule (tons)	171,154	101,355	106,071	124,897
Benzene With Proposed Vehicle Standards (tons)	N.A.	84,496	77,966	77,208
Benzene Reductions from Proposed Vehicle Standards (tons)	N.A.	16,859	28,105	47,689
Percentage Reduction	N.A.	17	26	38

TABLE V.E-3.—ESTIMATED NATIONAL REDUCTIONS IN EXHAUST MSAT EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 1999 TO 2030

	1999	2015	2020	2030
MSATs Without Rule (tons)	1,341,572	707,877	724,840	844,366
MSATs With Proposed Vehicle Standards (tons)	N.A.	599,492	543,332	535,479
MSAT Reductions from Proposed Vehicle Standards (tons)	N.A.	108,385	181,509	308,887
Percentage Reduction	N.A.	15	25	37

c. PM<sub>2.5</sub>

EPA expects that the proposed cold-temperature vehicle standards would reduce exhaust emissions of direct PM<sub>2.5</sub> by over 20,000 tons in 2030 nationwide (see Table V.E-4 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.<sup>178</sup> 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 V.E-4.—ESTIMATED NATIONAL REDUCTIONS IN DIRECT PM<sub>2.5</sub> EXHAUST EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND TRUCKS, 2015 TO 2030

	2015	2020	2030
PM <sub>2.5</sub> Reductions from Proposed Vehicle Standards (tons)	7,037	11,803	20,096

2. Proposed Fuel Benzene Controls

The proposed fuel benzene controls would reduce benzene exhaust and

evaporative emissions from both on-road and nonroad mobile sources that are fueled by gasoline. In addition, the

proposed fuel benzene standard would reduce evaporative emissions from gasoline distribution and gas cans.

<sup>177</sup> Table IV.A-1 lists the MSATs included in this analysis.

<sup>178</sup> U.S. EPA. 2005. Cold-temperature exhaust particulate matter emissions. Memorandum from Chad Bailey to docket EPA-HQ-OAR-2005-0036.

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 PM.

Table V.E-5 shows national estimates of total benzene emissions from these source sectors with and without the proposed fuel benzene standard. These estimates do not include effects of the proposed vehicle or gas can standards (see section V.E.4 for the combined

effects of the controls). The proposed fuel benzene standard would reduce total benzene emissions from on-road and nonroad gasoline mobile sources, gas cans, and gasoline distribution by 12% in 2015.

TABLE V.E-5.—ESTIMATED REDUCTIONS IN BENZENE EMISSIONS FROM PROPOSED GASOLINE STANDARD BY SECTOR IN 2015

	Gasoline on-road mobile sources	Gasoline nonroad mobile sources	Gas cans	Gasoline distribution	Total
Benzene Without Rule (tons) .....	103,797	37,747	2,262	5,999	149,805
Benzene With Proposed Gasoline Standard (tons) .....	92,513	33,247	1,359	4,054	131,173
Benzene Reductions from Proposed Gasoline Standard (tons) .....	11,284	4,500	903	1,945	18,632
Percentage Reduction .....	11	12	40	32	12

3. Proposed Gas Can Standards

a. VOC

Table V.E-6 shows the reductions in VOC emissions that we expect from the

proposed gas can standard. In 2015, VOC emissions from gas cans would be reduced by 60% because of reduced permeation, spillage, and evaporative

losses. These estimates do not include the effects of a fuel benzene standard (see section V.E.4 for the combined effects of the proposed controls).

TABLE V.E-6.—ESTIMATED NATIONAL REDUCTIONS IN VOC EMISSIONS FROM GAS CANS, 2010 TO 2030

	1999	2010	2015	2020	2030
VOC Without Rule (tons) .....	318,596	279,374	296,927	318,384	362,715
VOC With Proposed Gas Can Standard (tons) .....	N.A.	250,990	116,431	125,702	144,634
VOC Reductions from Proposed Gas Can Standard (tons) .....	N.A.	28,384	180,496	192,683	218,080
Percentage Reduction .....	N.A.	10	61	61	60

b. Toxics

The proposed gas can standard would reduce emissions of benzene, naphthalene, toluene, xylenes, ethylbenzene, n-hexane, 2,2,4-

trimethylpentane, and MTBE. We estimate that benzene emissions from gas cans would be reduced by 65% (see Table V.E-7) and, more broadly, air toxic emissions by 61% (see Table V.E-8) in year 2015. These reductions do not

include effects of the proposed fuel benzene standard (see section V.E.4 for the combined effects of the proposed controls). Chapter 2 of the RIA provides details on the emission reductions of the other toxics.

TABLE V.E-7.—ESTIMATED NATIONAL REDUCTIONS IN BENZENE EMISSIONS FROM GAS CANS, 2010 TO 2030

	1999	2010	2015	2020	2030
Benzene Without Rule (tons) .....	2,229	2,118	2,262	2,423	2,757
Benzene With Proposed Gas Can Standard (tons) .....	N.A.	1,885	794	856	985
Benzene Reductions from Proposed Gas Can Standard (tons) .....	N.A.	233	1,468	1,567	1,772
Percentage Reduction .....	N.A.	11	65	65	64

TABLE V.E-8.—ESTIMATED NATIONAL REDUCTIONS IN TOTAL MSAT EMISSIONS FROM GAS CANS, 2010 TO 2030

	1999	2010	2015	2020	2030
MSATs Without Rule (tons) .....	39,581	34,873	37,076	39,751	45,284
MSATs With Proposed Gas Can Standard (tons) .....	N.A.	31,312	14,445	15,593	17,942
MSAT Reductions from Proposed Gas Can Standard (tons) .....	N.A.	3,561	22,631	24,158	27,342
Percentage Reduction .....	N.A.	10	61	61	60

Chapter 2 of the RIA describes how we estimated emissions from gas cans, including the key assumptions used and uncertainties in the analysis. We request

comments on the emissions inventory methodology used by EPA and we encourage commenters to provide relevant data where possible.

4. Total Emission Reductions From Proposed Controls

Sections V.E.1 through V.E.3 present the emissions impacts of each of the

proposed controls individually. This section presents the combined emissions impacts of the proposed controls.

a. Toxics

Air toxic emissions from light-duty vehicles depend on both fuel benzene content and vehicle hydrocarbon emission controls. Similarly, the air toxic emissions from gas cans depend

on both fuel benzene content and the gas can emission controls. Tables V.E-9 and V.E-10 below summarize the expected reductions in benzene and MSAT emissions, respectively, from our proposed vehicle, fuel, and gas can controls. In 2030, annual benzene emissions from gasoline on-road mobile sources would be 44% lower as a result of this proposal (see Figure V.E-1).

Annual benzene emissions from gasoline light-duty vehicles would be 45% lower in 2030 as a result of this proposal. Likewise, this proposal would reduce annual emissions of benzene from gas cans by 78% in 2030 (see Figure V.E-2). For MSATs from on-road mobile sources, Figure V.E-3 below shows a 33% reduction in MSAT emissions in 2030.

TABLE V.E-9.—ESTIMATED REDUCTIONS IN BENZENE EMISSIONS FROM PROPOSED CONTROL MEASURES BY SECTOR, 2015 TO 2030

Benzene	1999	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)
Gasoline On-road Mobile Sources .....	178,465	103,798	77,155	26,643	108,256	71,326	36,930	127,058	70,682	56,376
Gasoline Nonroad Mobile Sources .....	58,710	37,747	33,247	4,500	36,440	32,018	4,422	39,162	34,400	4,762
Gas Cans .....	2,229	2,262	492	1,770	2,423	531	1,892	2,757	610	2,147
Gasoline Distribution .....	5,502	5,999	4,054	1,945	6,207	4,210	1,997	6,207	4,210	1,997
Total .....	244,905	149,806	114,948	34,858	153,326	108,085	45,241	175,184	109,902	65,282

Figure V.E-1. Benzene Emissions from Gasoline On-Road Mobile Sources

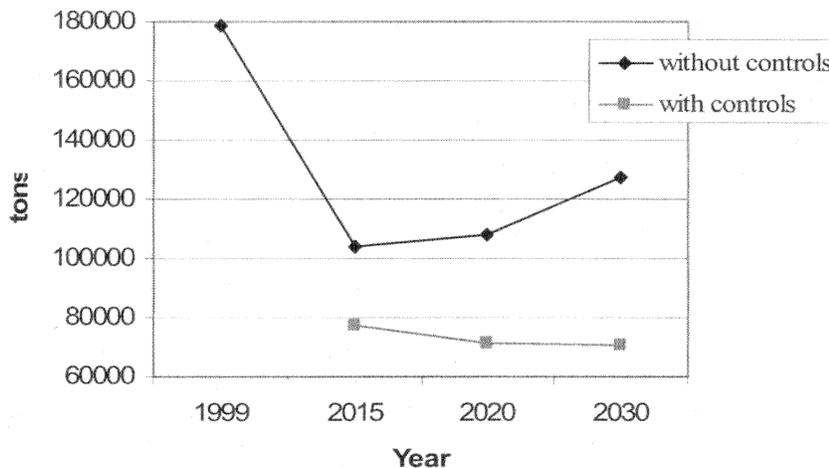


Figure V.E-2. Benzene Emissions from Gas Cans

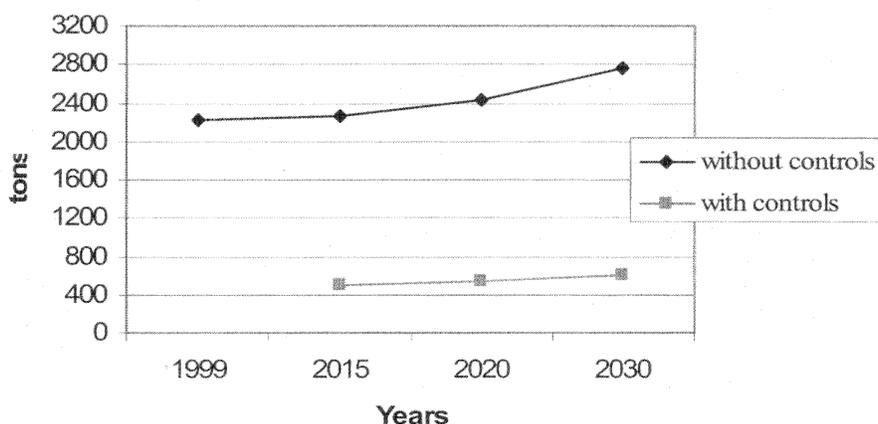
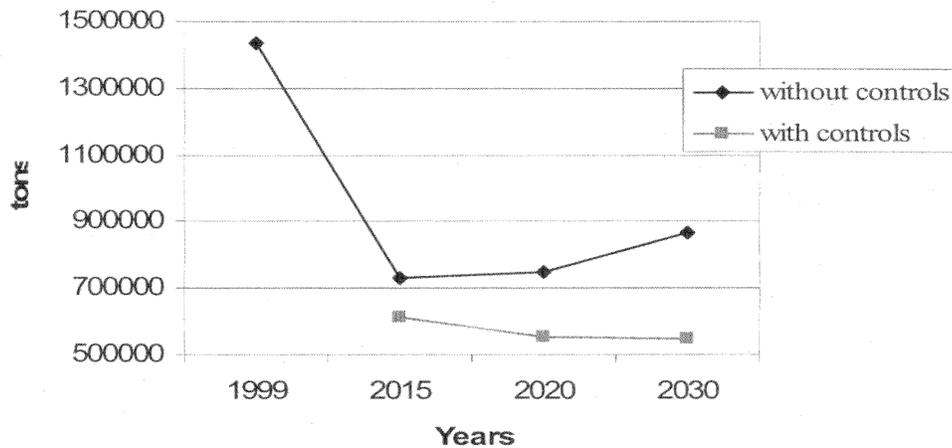


TABLE V.E-10.—ESTIMATED REDUCTIONS IN MSAT EMISSIONS FROM PROPOSED CONTROL MEASURES BY SECTOR, 2015 TO 2030

MSAT	1999	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)
Gasoline On-road Mobile Sources .....	1,415,502	731,283	613,227	118,056	745,769	555,541	190,228	865,767	548,298	317,469
Gasoline Nonroad Mobile Sources .....	673,922	432,953	428,506	4,447	390,468	386,095	4,373	405,119	400,408	4,711
Gas Cans .....	39,581	37,076	14,143	22,933	39,751	15,268	24,483	45,284	17,567	27,717
Gasoline Distribution .....	50,625	62,804	60,859	1,945	64,933	62,936	1,997	64,933	62,936	1,997
<b>Total .....</b>	<b>2,179,630</b>	<b>1,264,116</b>	<b>1,116,735</b>	<b>147,381</b>	<b>1,240,921</b>	<b>1,019,840</b>	<b>221,081</b>	<b>1,381,103</b>	<b>1,029,209</b>	<b>351,894</b>

Figure V.E-3. MSAT Emissions from Gasoline On-Road Mobile Sources



b. VOC

VOC emissions would be reduced by the hydrocarbon emission standards for

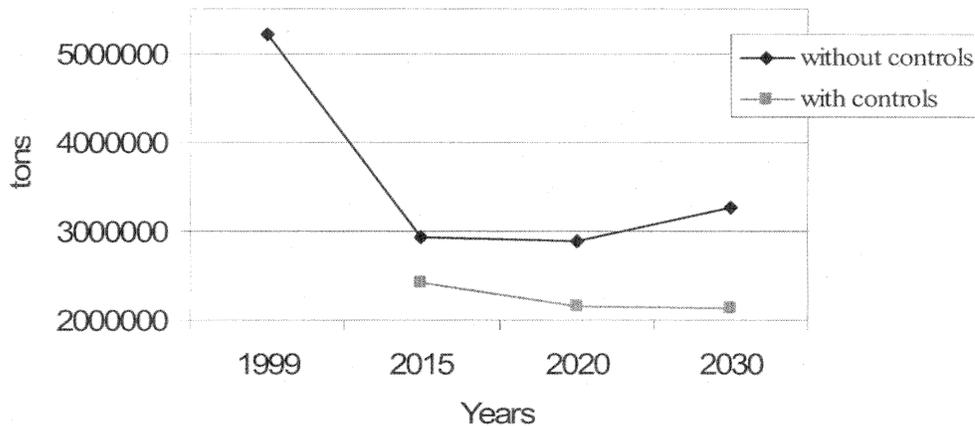
both light-duty vehicles and gas cans. As seen in the table and accompanying figure below, annual VOC emission

reductions from both of these sources would be 35% lower in 2030 because of proposed control measures.

TABLE V.E-11.—ESTIMATED REDUCTIONS IN VOC EMISSIONS FROM LIGHT-DUTY GASOLINE VEHICLES AND GAS CANS, 2015 TO 2030

	2015	2020	2030
VOC Without Rule (tons) .....	2,922,003	2,875,135	3,261,984
VOC With Proposed Vehicle and Gas Can Standards (tons) .....	2,421,633	2,145,969	2,130,464
VOC Reduction (tons) .....	500,370	729,168	1,131,520

Figure V.E-4. VOC Emissions from Proposed Light-Duty Vehicles and Gas Cans



c. PM<sub>2.5</sub>

We expect that only the proposed vehicle control would reduce emissions of direct PM<sub>2.5</sub>. As shown in Table V.E-4, we expect this control to reduce direct PM<sub>2.5</sub> emissions by about 20,000 tons in 2030. In addition, the VOC reductions from the proposed vehicle

and gas can standards would also reduce secondary formation of PM<sub>2.5</sub>.

*F. How Would This Proposal Reduce Exposure to Mobile Source Air Toxics and Associated Health Effects?*

The proposed benzene standard for gasoline would reduce both evaporative

and exhaust emissions from motor vehicles and nonroad equipment. It would also reduce emissions from gas cans and stationary source emissions associated with gasoline distribution. Therefore, it would reduce exposure to benzene 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 IV.B.2 of this preamble provides 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 proposed fuel benzene standard. However, in addition to the limitations of the national-scale modeling tools (discussed in section IV.A), this modeling did not account for the elevated hydrocarbon emissions from motor vehicles at cold temperatures, which we recently discovered and are further described in section VI and the RIA. The modeling also examined the gasoline benzene standard alone, without the proposed vehicle or gas can standards. Nevertheless, the modeling is useful as a preliminary assessment of the impacts of the fuel standard.

The fuel benzene standard being proposed in this rule would reduce both the number of people above the 1 in

100,000 increased cancer risk level, and the average population cancer risk, by reducing exposures to benzene from mobile sources. 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 would decrease by over 3 million in 2020 and by about 3.5 million in 2030, based on average census tract risks. The number of people above the 1 in 100,000 increased cancer risk level from exposure to benzene from all sources would decrease by over 4 million in 2020 and 5 million in 2030. It should be noted that if it were possible to estimate impacts of the proposed standard on “background” concentrations, the estimated overall risk reductions would be even larger. The proposed standard would have little impact on the number of people above various respiratory hazard index levels, since this potential non-cancer risk is dominated by exposure to acrolein.

Table V.F–1 depicts the impact on the mobile source contribution to nationwide average population cancer risk from benzene in 2020. Nationwide, the cancer risk attributable to mobile

source benzene would be reduced by over 8%. Reductions in areas not subject to reformulated gasoline controls are almost 13 percent relative to risks without the proposed control; and in some states with high fuel benzene levels, such as Minnesota and Washington, the risk reduction would exceed 17 percent. In Alaska, which has the highest fuel benzene levels in the country, reductions would exceed 30%. Reductions for other modeled years are similar. The methods and assumptions used to model the impact of the proposed control are described in more detail in the Regulatory Impact Analysis. Although not quantified in the risk analyses for this rule, controls proposed for portable fuel containers will also reduce exposures and risk from benzene, and cold temperature hydrocarbon standards for exhaust emissions will reduce cancer and noncancer risks for all gaseous mobile source air toxics. These reductions will vary geographically since reductions from vehicle control are higher at colder temperatures, and reductions from gas can controls are higher at higher temperatures.

TABLE V.F–1.—IMPACT OF PROPOSED FUEL BENZENE CONTROL ON THE MOBILE SOURCE CONTRIBUTION TO NATIONWIDE AVERAGE POPULATION CANCER RISK IN 2020

	U.S.	RFG areas	Non-RFG areas
Without Proposal .....	2.57×10 <sup>-6</sup>	3.64×10 <sup>-6</sup>	1.96×10 <sup>-6</sup>
0.62% Benzene Standard .....	2.35×10 <sup>-6</sup>	3.51×10 <sup>-6</sup>	1.72×10 <sup>-6</sup>
% Reduction .....	8.6	3.6	12.2

Table V.F–2 summarizes the change in median and 95th percentile benzene inhalation cancer risk from all outdoor sources in 2015, 2020, and 2030, with the fuel benzene controls proposed in

this rule. The reductions in risk would be larger if the modeling fully accounted for a number of factors, including: benzene emissions at cold temperature; exposure to benzene emissions from

vehicles, equipment, and gas cans in attached garages; near-road exposures; and the impacts of the control program on “background” levels attributable to transport.

TABLE V.F–2.—CHANGE IN MEDIAN AND 95TH PERCENTILE BENZENE INHALATION CANCER RISK FROM OUTDOOR SOURCES IN 2015, 2020, AND 2030 WITH THE FUEL BENZENE CONTROLS PROPOSED IN THIS RULE

	2015		2020		2030	
	median	95th	median	95th	median	95th
Current Controls .....	5.73×10 <sup>-6</sup>	1.38×10 <sup>-5</sup>	5.61×10 <sup>-6</sup>	1.35×10 <sup>-5</sup>	5.75×10 <sup>-6</sup>	1.41×10 <sup>-5</sup>
Proposed Benzene Standard .....	5.49×10 <sup>-6</sup>	1.32×10 <sup>-5</sup>	5.39×10 <sup>-6</sup>	1.29×10 <sup>-5</sup>	5.51×10 <sup>-6</sup>	1.35×10 <sup>-5</sup>
Percent Change .....	4.2	4.3	3.9	4.4	4.2	4.3

We did not model the air quality, exposure, and risk impacts of the proposed vehicle and gas can standards. However, the proposed vehicle standards would reduce exposure to several MSATs, including benzene. Like the proposed fuel standard, the vehicle standards would reduce the general population’s exposure to MSATs, as

well as people near roadways and in vehicles. Since motor vehicle emissions are ubiquitous across the U.S. and widely dispersed, reductions in exposure and risk will be approximately proportional to reductions in emissions.

The gas can standard will reduce evaporative emissions of several MSATs, including benzene. We expect

that these standards would significantly reduce concentrations of benzene and other MSATs in attached garages and inside homes with attached garages. Accordingly, exposure to benzene and other MSATs would be significantly reduced. As discussed in section IV.B.2, exposures to emissions occurring in attached garages can be quite high.

The proposed vehicle and gas can standards would also reduce precursors to ozone and PM. We have modeled the ozone impacts of the proposed gas can standard and the PM health benefits that would be associated with the direct PM reductions from the proposed vehicle standards. These results are discussed in sections IV.D and IX, respectively.

### *G. Additional Programs Under Development That Will Reduce MSATs*

#### 1. On-Board Diagnostics for Heavy-Duty Vehicles Over 14,000 Pounds

We are planning to propose on-board diagnostics (OBD) requirements for heavy-duty vehicles over 14,000 pounds. In general, OBD systems monitor the operation of key emissions controls to detect major failures that would lead to emissions well 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. In order to work towards this goal, the Agency signed a Memorandum of Agreement in 2004 with the California Air Resources Board which expresses 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. We expect the Agency's program will also begin in the 2010 time frame. These requirements would help ensure that the emission reductions we projected in the 2007 rulemaking for heavy-duty engines occur in-use.

#### 2. Standards for Small SI Engines

We are developing a proposal for Small SI engines (those typically used in lawn and garden equipment) and recreational 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 the emissions for these nonroad categories, and we anticipate that the new standards would provide significant further reductions in HC (and VOC-based toxics) emissions.

#### 3. Standards for Locomotive and Marine Engines

In addition, 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.<sup>179</sup> New standards for marine diesel engines would apply to engines less than 30 liters per cylinder in displacement (all engine 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<sub>x</sub> emissions. These standards would be based on the use of high efficiency catalyst aftertreatment and would also require fuel sulfur control. As discussed in our recent ANPRM, we are considering implementation as early as 2011.

### **VI. Proposed New Light-Duty Vehicle Standards**

#### *A. Why Are We Proposing New Standards?*

##### 1. The Clean Air Act and Air Quality

As described in section V of this preamble, the U.S. has made significant progress in reducing emissions from passenger cars and light trucks since the passage of the 1990 Clean Air Act Amendments. Many emission control programs adopted to implement the 1990 Clean Air Act Amendments are reducing and will continue to reduce air toxics from light-duty vehicles. These include our reformulated gasoline (RFG) program, our Supplemental Federal Test Procedure (SFTP) standards, our national low emission vehicle program (NLEV), and, most recently, our Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements.<sup>180</sup> While these vehicle programs were put in place primarily to reduce ambient concentrations of criteria pollutants and their precursors (NO<sub>x</sub>, VOC, CO, and PM), they have reduced and will continue to significantly reduce light-duty vehicle emissions of air toxics. For example, there are numerous chemicals that make up total VOC emissions, including several gaseous toxics (e.g., benzene, formaldehyde, 1,3-butadiene, and acetaldehyde). These toxics are all reduced by VOC emissions standards. It is the stringent control of hydrocarbons in particular that results in stringent control of gaseous toxics. There are no vehicle-based technologies of which we are aware that reduce these air toxics individually.

At the time of our 2001 MSAT rule, we had recently finalized the Tier 2

<sup>179</sup> 69 FR 39276, June 29, 2004.

<sup>180</sup> Unless otherwise noted, we use "light-duty vehicles" or "vehicles" to generally refer to passenger vehicles, light-duty trucks such as sport utility vehicles (SUVs) and pick-ups, and medium-duty passenger vehicles (MDPVs) which includes larger SUVs and passenger vans up to 10,000 pounds Gross Vehicle Weight Rating.

emissions standards and gasoline sulfur control requirements (described in more detail below in section V.D). As explained earlier, we concluded then under section 202(l) that the Tier 2 standards represented the greatest degree of emissions control achievable for those vehicles. However, we also committed to continue to consider the feasibility of additional vehicle-based MSAT controls in the future.

#### 2. Technology Opportunities for Light-Duty Vehicles

Since the 2001 MSAT rule, we have identified potential situations where further reductions of light-duty vehicle hydrocarbon emissions—and, therefore, mobile source air toxics—are technically feasible, cost-effective, and do not have adverse energy or safety implications. First, recent research and analytical work shows that the Tier 2 exhaust emission standards for hydrocarbons (which are typically tested at 75° F) do not, in the case of many vehicles, result in robust control of hydrocarbon emissions at lower temperatures. We believe that cold temperature hydrocarbon control can be substantially improved using the same technological approaches generally already in use in the Tier 2 vehicle fleet to meet the stringent standards at 75° F. Second, we believe that harmonization of evaporative emission standards with California would prevent backsliding by codifying current industry practices. Sections VI.B.1 and VI.B.2, below, provide our rationale for proposing new cold temperature and evaporative controls and describe the detailed provisions of our proposal. We request comment on all aspects of these proposals and encourage commenters to provide detailed rationales and supporting data where possible.

Aside from these proposed standards, we continue to believe that the remaining Tier 2 exhaust emission standards (i.e., those that apply over the standard Federal Test Procedure at temperatures between 68° F and 86° F) represent the greatest emissions reductions achievable as required under Clean Air Act section 202(l). We therefore are not proposing further emission reductions from these vehicles. (Please see section VI.D for further discussion.)

#### 3. Cold Temperature Effects on Emission Levels

##### a. How Does Temperature Affect Emissions?

With the possible exception of high-load operation, Tier 2 gasoline-powered vehicles emit the overwhelming

majority of hydrocarbon emissions in the first few minutes of operation following a cold start (i.e., starting the vehicles after the engine has stabilized to the ambient temperatures, such as overnight). This is true at all cold start temperatures, and the general trend is that hydrocarbon emissions progressively increase as engine start temperatures decrease. The level of hydrocarbon emissions produced by the engine will vary with start temperature, engine hardware design and most importantly, engine management control strategies. Furthermore, due to the heavy dependence on the aftertreatment system to perform the main emission reducing functions, any delayed or non-use of emission controls (hardware or software) will further increase the amount of hydrocarbon emissions emitted from the vehicle following the cold start.

Elevated hydrocarbon levels at cold temperatures, specifically, the non-methane hydrocarbons (NMHC) portion of total hydrocarbons (THC), also indicate higher emissions of gaseous air toxics. A detailed description of the relationship between NMHC and air toxics can be found in Chapter 2 of the RIA. Recent EPA research studies<sup>181</sup> on Tier 2 gasoline vehicles, and past EPA studies<sup>182</sup> on older generation gasoline vehicles, demonstrate that many air toxics (e.g., benzene) are a relatively constant fraction of NMHC. This relationship is observed regardless of vehicle type, NMHC emissions level, or temperature. The relationship remains relatively constant for different vehicles with different levels of NMHC emissions, and for the same vehicle at colder temperatures. Therefore, it can be concluded that reductions in NMHC will result in proportional reductions in gaseous air toxics which are components of HC. These observations and findings indicate that controlling NMHC is an effective approach to reducing toxics which are a component of NMHC, including benzene emissions.

In addition to control of air toxics, another benefit of regulating NMHC at cold temperatures is reductions in particulate matter (PM). PM is a criteria pollutant and for gasoline-fueled vehicles is an emerging area of interest on which we are continuing to collect data (see sections III.E and IV.F for more details on PM). We have limited data indicating that PM emissions can be significantly higher at cold temperatures

compared to emissions at the 68–86° F testing temperatures used in the FTP. Data also indicate that HC and direct PM emissions correlate fairly well as temperature changes and that some direct PM emissions reductions can be expected when VOCs are reduced. Also, from a technological standpoint, we can expect reductions in PM as manufacturers reduce over-fueling at cold temperatures for NMHC control. Although section 202(l) deals with control of air toxics, and not criteria pollutants like PM, this co-benefit of cold temperature control is significant.

#### b. What Are the Current Emissions Control Requirements?

There are several requirements currently in place that have resulted in significant NMHC reductions and provided experience with control strategies that apply across a broad range of in-use driving conditions, including cold temperatures. These requirements include the Tier 2 standards, the Supplemental Federal Test Procedure (SFTP) standards, the cold temperature carbon monoxide (CO) standard, and the California 50° F hydrocarbon standard.

The Tier 2 program (and, before that, the NLEV program) contains stringent new standards for light-duty vehicles that have resulted in significant hydrocarbon reductions. To meet these standards, vehicle manufacturers have responded with emissions control hardware and control strategies that have very effectively minimized emissions, particularly immediately following the vehicle start-up. In addition, the SFTP rule (effective beginning in model year 2001) significantly expanded the area of operation where stringent emission control was required, by adding a high load/speed cycle (US06) and an air conditioning cycle (SC03). Vehicle manufacturers responded with additional control strategies across a broader range of in-use driving conditions to successfully meet SFTP requirements.

We also have cold temperature carbon monoxide (CO) standards which began in model year 1994 for light-duty vehicles (LDVs) and light-duty trucks (LDTs).<sup>183</sup> This program requires manufacturers to comply with a 20° F CO standard. The 20° F cold CO test replicates the 75° F FTP drive cycle, but at the colder temperature. While the

recent Tier 2 program is primarily designed to reduce ozone, the cold CO requirement was enacted to address exceedances of the national ambient air quality standards (NAAQS) for CO, which were mostly occurring during the cold weather months. While the cold CO standard was considered challenging at its introduction, manufacturers quickly developed emission control strategies and today comply with the standard with generally large compliance margins. This indicates that manufacturers do in fact have experience with emission control strategies at colder temperatures.

Under the Low Emission Vehicle (LEV) programs, California implemented stringent emissions standards for a 50° F FTP test condition in addition to stringent 75° F standards. By creating a unique 50° F standard, California ensures that emission control strategies successfully used at 75° F are also utilized at the slightly cooler temperatures that encompass a larger range of California's expected climates. The 50° F non-methane organic gases (NMOG) standards are directly proportional to the 75° F certification standard; that is, they are two times the 75° F standard. These standards have resulted in proportional emissions improvements at 50° F for vehicles certified to the California standards, as observed in the manufacturer certification data. Manufacturers have met the standards and have successfully obtained these proportional improvements at 50° F by implementing the same emission control strategies developed for 75° F requirements.

#### c. Opportunities for Additional Control

As emissions standards have become more stringent from Tier 1 to NLEV, and now to Tier 2, manufacturers have concentrated primarily on 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. For California, the LEV II program contains a standard at 50° F (as just explained), which essentially requires proportional control of hydrocarbon emissions down to that temperature. On the national level, even though there is no explicit requirement, we expected that proportional reductions in hydrocarbon emissions would occur at other colder start temperatures—including the 20° F Cold CO test point—as a result of the more stringent NLEV and Tier 2 standards. We believe that there is no

<sup>181</sup> "VOC/PM Cold Temperature Characterization and Interior Climate Control Emissions/Fuel Economy Impact," Volume I and II, October 2005.

<sup>182</sup> "Characterization of Emissions from Malfunctioning Vehicles Fueled with Oxygenated Gasoline-Ethanol (E10) Fuel," Part I, II and III.

<sup>183</sup> 57 FR 31888 "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Cold Temperature Carbon Monoxide Emissions from 1994 and Later Model Year Gasoline-Fueled Light-Duty Vehicles and Light-Duty Trucks", Final Rule, July 17, 1992.

engineering reason why proportional control should not be occurring on a widespread basis.

However, reported annual manufacturer certification results (discussed in the next paragraph) indicate that for many engine families, very little improvement in hydrocarbon emissions was realized at the colder 20° F Cold CO test conditions, despite the improved emission control systems designed for the vehicle under normal 75° F test conditions. Thus although all vehicle manufacturers have been highly successful at reducing emissions at the required FTP start temperature range, in general, they do not appear to be capitalizing on NMHC emission control strategies and technologies at lower temperatures.

Certification reports submitted by manufacturers for recent model years of light duty vehicles in fact show a sharp rise in hydrocarbon<sup>184</sup> emissions at 20° F when compared to the reported 75° F hydrocarbon emission levels. Any rise in hydrocarbon emissions, specifically NMHC, will result in proportional rise in VOC-based air toxics<sup>185</sup>. 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. For example, on recent Tier 2 certified vehicles, the reported 20° F hydrocarbon levels on average were 10 to 12 times higher than the equivalent vehicle's measured 75° F hydrocarbon levels. Some vehicles which were certified to more stringent Tier 2 bins (bins 2, 3, and 4) demonstrated 20° F hydrocarbon levels no different than less stringent Tier 2 bins (bins 5, 6, 7, and 8), likewise suggesting no discernable attempt to use the 75° F hydrocarbon controls at the 20° F temperature. On the other hand, in some select cases, 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 occasionally practiced. One manufacturer's certification results reflected proportional improvements

<sup>184</sup> Most certification 20° F hydrocarbon levels are reported as 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 rule-making.

<sup>185</sup> "VOC/PM Cold Temperature Characterization and Interior Climate Control Emissions/Fuel Economy Impact", Volume I and II, October 2005.

across almost its entire vehicle lines (including vehicles up to 5665 GVWR), further supporting that proportional control is feasible.

*B. What Cold Temperature Requirements Are We Proposing?*

1. NMHC Exhaust Emissions Standards

We are proposing a set of standards that will achieve proportional NMHC control from the 75° F Tier 2 standards to the 20° F test point. The proposed standard would achieve the greatest degree of hydrocarbon emissions reductions feasible by fully utilizing the substantial existing emission control hardware required to meet Tier 2 standards. We believe these standards would be achievable through calibration and software control strategies on Tier 2 level vehicles without use of additional hardware. The proposed standards are shown in Table VI.B-1.

TABLE VI.B-1.—PROPOSED 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

We are proposing two separate sales-weighted fleet average NMHC levels: (1) 0.3 g/mile for vehicles at or below 6,000 pounds GVWR and (2) 0.5 g/mile for vehicles over 6,000 pounds, including MDPVs.<sup>186</sup> The new standard would not require additional certification testing beyond what is required today with "worst case" model selection of a durability test group.<sup>187</sup> NMHC emissions would be measured during

<sup>186</sup> 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 pickups above 8,500 pounds are not included in the MDPV category but are included in the heavy-duty vehicle category.

<sup>187</sup> The existing cold FTP test procedures are specified in 40 CFR Subpart C. In the proposed rule for fuel economy labeling, recently signed on January 10, 2006 (71, FR 5426, February 1, 2006), EPA is seeking comment on the issue of requiring manufacturers to run the heater and/or defroster while conducting the cold FTP test. As discussed in the fuel economy labeling proposed rule, we do not believe this requirement would have a significant impact on emissions.

the Cold CO test, which already requires hydrocarbon measurement.<sup>188</sup>

The separate fleet average standards are proposed to address challenges related to vehicle weight. We examined the certification data from interim non-Tier 2 vehicles (i.e., vehicles not yet phased in to the final Tier 2 program, but meeting interim standards established by Tier 2), and we determined that there was a general trend of increasing hydrocarbon levels with heavier GVWR vehicles. Heavier vehicles generally produce higher levels of emissions for several reasons. First, added weight results in additional work required to accelerate the vehicle mass. This generally results in higher emissions, particularly early in the test right after engine start-up. Second, the design of these vehicle emission control systems may incorporate designs for heavy work (i.e., trailer towing) that may put them at some disadvantage at 20° F cold starts. For example, the catalyst may be located further away from the engine so it is protected from high exhaust temperatures. This catalyst placement may delay the warm-up of the catalyst, especially at colder temperatures. Therefore, we believe a standard that is higher than the 0.3 g/mile level proposed for vehicles below 6,000 lbs GVWR, is what is technically feasible for heavier vehicles. The proposed 0.5 g/mile standard would apply for vehicles over 6000 lbs GVWR, which includes both HLDTs (6000 lbs to 8500 lbs) and MDPVs.

We are proposing the sales-weighted fleet average approach because it achieves the greatest degree of emission control feasible for Tier 2 vehicles, while allowing manufacturers flexibility to certify different vehicle groups to different levels and thus providing both lower cost and feasible lead times. We believe this is an appropriate approach 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 would have varying cold temperature capabilities. These capabilities won't be fully understood until manufacturers go through the process of evaluating each Tier 2 package for cold temperature emissions control potential. Also, Tier 2 is still being phased in and some Tier 2 vehicle emissions control packages are still being developed. A fleet average provides manufacturers with flexibility to balance challenging vehicle families with ones that more easily achieve the standards.

<sup>188</sup> 40 CFR Subpart C, § 86.244-94 requires the measurement of all pollutants measured over the FTP except NO<sub>x</sub>.

There are several ways fleet averaging can work. In Tier 2, we established bins of standards to which individual vehicle families were certified. Each bin contains a NO<sub>x</sub> standard, and these NO<sub>x</sub> standards are then sales-weighted to demonstrate compliance with the corporate average NO<sub>x</sub> standard. In other emissions control programs, such as the highway motorcycle program and the highway and nonroad heavy-duty engine programs, we have established a Family Emissions Limit (FEL) structure. In this approach, manufacturers establish individual FELs for each group of vehicles certified. These FELs serve as the standard for each individual group, and the FELs are averaged together on a sales-weighted basis to demonstrate overall compliance with the standards. For the proposed new cold temperature NMHC standards, we are proposing to use the FEL-based approach. We believe the FEL approach adds flexibility and should lead to cost-effective improvements in vehicle emissions performance. The FEL approach is discussed further in Section VI.B.4 below.

We are proposing to apply the new cold temperature NMHC standards to Tier 2 gasoline-fueled vehicles. We are not proposing to apply the standards to diesel vehicles, alternative-fueled vehicles, or heavy-duty vehicles, in general, due to a lack of data on which to base standards. Section VI.B., below, provides a detailed discussion of applicability.

As discussed above, we are expecting PM reductions at cold temperatures as a result of the control strategies we expect manufacturers to meet under the proposed cold temperature NMHC standards. We may consider the need for a separate PM standard under CAA section 202(a), as part of a future rulemaking, to further ensure that PM reductions occur under cold temperature conditions. We also request comments on what testing challenges exist for testing PM under cold conditions. We request that comments be supported by data where possible.

We request comments on the level of the new standards and the averaging approach we are proposing, and we urge commenters to include supporting information and data where possible.

## 2. Feasibility of the Proposed Standards

We believe the proposed standards are feasible, based on our analysis of the stringency of the standard provided below and the lead time and flexibilities described in section VI.B.3. We believe that the proposed standards could be achieved using a number of the technologies discussed in the following

section, but that none of these potential technologies performs markedly better than any other. Moreover, as explained in section VI.D, we do not believe that additional reductions would be feasible without significant changes in Tier 2 technology, and we are not yet in a position to fully evaluate the achievability of standards based on such technologies. We thus are not considering more stringent cold temperature NMHC standards. We request comment on our analysis of the feasibility of the proposed standards.

### a. Currently Available Emission Control Technologies

We believe that the cold temperature NMHC standards being proposed today for gasoline-fueled vehicles are challenging but within the reach of Tier 2 level emission control technologies. Our proposed determination of feasibility is based on the emission control hardware and strategies that are already in use today on Tier 2 vehicles. These emission control technologies are successfully used to meet the stringent Tier 2 standards for HC at the FTP temperature range of 68° F to 86° F, but generally are not fully used or activated at colder temperatures. As discussed in section VI.D, we are not proposing standards that would force changes to Tier 2 technology at this time. As discussed above, many current engine families are already achieving emissions levels at or below the proposed emission standards (see RIA Chapter 5), while other engine families are at levels greater than twice the proposed standard. The only apparent reason for the difference is the failure of some vehicles to use the Tier 2 control technologies at cold temperatures. While manufacturers could always choose to use additional hardware to facilitate compliance with the proposed standard, many of the engine families already at levels below the proposed standard do not necessarily contain any unique enabling hardware. These vehicles appear to achieve their results through mainly software and calibration control technologies. Thus, we believe our proposed standards can be met by the application of calibration and software approaches similar to those currently used at 50° F and 75° F, and we have estimated cost of control based on use of calibration and software approaches. Estimated costs are provided in section IX below, and in Chapter 8 of the RIA. As described in section VI.B.2.c, our own feasibility testing of a vehicle over 6000 lbs GVWR achieved NMHC reductions consistent with the proposed standard without the use of new hardware.

In addition, a 20° F cold hydrocarbon requirement has been in place in Europe since approximately the 2002 model year.<sup>189</sup> Many manufacturers currently have common vehicle models offered in Europe and the U.S. market. While the European standard is over a different drive cycle, unique strategies have been developed to comply with this standard. In fact, when the new European cold hydrocarbon standard was implemented in conjunction with a new 75° F standard (Euro4), many manufacturers responded by implementing NLEV level hardware and supplementing this hardware with advanced cold start emission control strategies. Although we are proposing a sales-weighted fleet average standard, the European standard is a fixed standard that cannot be exceeded by any vehicle model. Like the standard we are proposing, Europe also has made distinctions in the level of the standard reflecting that heavier weight vehicles cannot achieve as stringent a standard. Those manufacturers with European models shared with the U.S. market have the opportunity to leverage their European models or divisions in an attempt to transfer the emission control technologies that are used today for 20° F hydrocarbon control.

There are several different approaches or strategies used in the vehicles that are achieving proportional improvements in NMHC emissions at 20° F FTP. Several European models sold in the U.S. market that demonstrate excellent cold hydrocarbon performance are utilizing secondary air systems at the 20° F start temperature. These secondary air systems, sometimes called air pumps, inject ambient air into the exhaust immediately after the cold start. This performs additional combustion of unburned hydrocarbons prior to the catalytic converter and also accelerates the necessary heating of the catalytic converter. In the past and even recently, these systems have been used extensively to improve hydrocarbon performance at 75° F starts. As predicted in the Tier 2 Final Rule, a portion of the Tier 2 fleet is being equipped with secondary air systems in order to comply with Tier 2 standards.

Some manufacturers that currently have these systems available on their vehicles have indicated that they are simply not utilizing them at temperatures below freezing due to past engineering issues. The manufacturers that are using secondary air at 20° F, mainly European manufacturers, have indicated that these engineering

<sup>189</sup>European Union (EU) Type VI Test (–7° C) required for new vehicle model certified as of 1/1/2002.

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.<sup>190</sup> While not necessarily producing 20° F NMHC emission results better than other available technologies, vehicles equipped with this technology should be able to meet the proposed 20° F standard by capitalizing on this hardware.

Manufacturers have also used several other strategies to successfully produce proportional improvements in hydrocarbon emissions at 20° F. These include lean limit fuel strategies, elevated idle speeds, retarded spark timing, and accelerated closed loop times. Some software design strategies include fuel injection strategies detailed in past Society of Automotive Engineers (SAE) papers<sup>191</sup> that synchronize fuel injection timing with engine intake valve position to provide optimal fuel preparation. Spark delivery strategies have also been entertained that include higher energy levels and even redundant spark delivery to possibly complete additional combustion of unburned hydrocarbons. We expect that software and/or calibration changes, such as previously described, will generally perform as well or better than added hardware. This is because critical hardware such as the catalyst may not be immediately usable directly following the cold start. See RIA Chapter 5 for further discussion.

#### b. Feasibility Considering Current Certification Levels, Deterioration and Compliance Margin

Of the vehicles that were certified to Tier 2 and demonstrated proportional improvements in hydrocarbon emissions, approximately 20% of vehicles below 6,000 pounds GVWR had certification levels in the range of two to three times the 75° F Tier 2 bin 5 full useful life standard (.18 g/mile to .27 g/mile). These reported hydrocarbon 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. Due to rapid advances in emission control hardware technology, deterioration factors used today by manufacturers to demonstrate full useful life compliance are very low and

typically even indicate little or no deterioration over the life of the vehicle. The deterioration factors generated today by manufacturers are common across all required test cycles including cold temperature testing. The standards we are proposing will have a full useful life of 120,000 miles, consistent with Tier 2 standards. Additionally, manufacturers typically target certification emission levels that incorporate a 20% to 30% compliance margin primarily to account for in-use issues that may cause emissions variability. The 0.3 g/mile FEL standard would leave adequate flexibility for compliance margins and any emissions deterioration concerns. See RIA Chapter 5 for further discussion and details regarding current certification levels.

Given enough lead time, we believe manufacturers would be able to develop control strategies for each of their widely varying product lines utilizing the approaches outlined above without fundamentally changing the design of the vehicles.

#### c. Feasibility and Test Programs for Higher Weight Vehicles

While a few of the heavier vehicles achieved a standard similar to the lighter weight class, there were limited certification results available for Tier 2 compliant vehicles over 6000 lbs GVWR (due to the later Tier 2 phase-in schedule for these vehicles). To further support the feasibility of the standard for heavier vehicles, we conducted a feasibility study for Tier 2 vehicles over 6000 lbs GVWR to assess their capabilities with typical Tier 2 hardware. We were able to reduce HC emissions for one vehicle with models above and below 6,000 pounds GVWR by between 60–70 percent, depending on control strategy, from a baseline level of about 1.0 g/mile. The results are well within the 0.5 g/mile standard including compliance margin, and we even achieved a 0.3 g/mile level on some tests. We achieved these reductions through recalibration without the use of new hardware. The findings from the study are provided in detail in the RIA.

We believe the proposed standards are feasible while at the same time providing the greatest degree of emission reduction achievable through the application of available technology. Our feasibility assessment, provided above, is based on our analysis of the stringency of the standard 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 VI.B.3–6 describe the proposed

lead time and flexibility within the program structure, which also contribute to the feasibility of the proposed standards. Chapter 8 of the RIA provides our cost estimations per vehicle and on a nationwide basis, including capital and development costs. We believe the estimated costs are reasonable and the proposal is cost effective, as provided in section IX, below. Given the emission control strategies we expect manufacturers to utilize, we expect feasible implementation of technologies without a significant impact on vehicle noise, energy consumption, or safety factors. Although manufacturers would need to employ new emissions control strategies at cold temperatures, fundamental Tier 2 vehicle hardware and designs are not expected to change. In addition, we are providing necessary lead time for manufacturers to identify and resolve any related issues as part of overall vehicle development. We request comment on our analysis of the feasibility of the proposed standards.

### 3. Standards Timing and Phase-in

#### a. Phase-In Schedule

EPA must consider lead time in determining the greatest degree of emission reduction achievable under section 202(l) of the CAA. We are proposing to begin implementing the standard in the 2010 model year (MY) for LDVs/LLDTs and 2012 MY for HLDTs/MDPVs. The proposed implementation schedule, in Table VI.B–2, begins 3 model years after Tier 2 phase-in is complete for both vehicle classes. Manufacturers would demonstrate compliance with phase-in requirements through sales projections, similar to Tier 2. The 3-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 determine the product development plans necessary to meet the new standards. We believe that this phase-in schedule is needed to allow manufacturers to develop compliant vehicles without significant disruptions in the product development cycles. 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 recognize that the new cold temperature standards we are proposing could represent a significant new challenge for manufacturers and development time will be needed. The issue of NMHC control at cold temperatures was not anticipated by

<sup>190</sup> Memo to docket "Discussions Regarding Secondary Air System Usage at 20° F with European Automotive Manufacturers and Suppliers of Secondary Air Systems," December 2005.

<sup>191</sup> 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.

many entities, and research and development to address the issue is consequently at a rudimentary stage. 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. We believe a phase-in allows the program to begin sooner than would otherwise be feasible.

TABLE VI.B-2.—PROPOSED 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 HLDLT and MDPV .....	.....	.....	25%	50%	75%	100%

In considering a phase-in period, manufacturers have 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. If vehicle development is compressed into a narrow time window, significant numbers of new facilities would be needed. Manufacturers were further concerned that investment in new test facilities would be stranded at the completion of the initial development and phase-in period.

As stated earlier, durability test groups may be large and diverse and therefore require significant development effort and cold test facility usage for each model. Our proposed phase-in period accommodates test facilities and work load concerns by distributing these fleet phase-in percentage requirements over a 4-year period for each vehicle weight category. The staggered start dates for the phase-in schedule between the two weight categories should further alleviate manufacturers' concerns with needing to construct new test facilities. Some manufacturers may still determine that upgrades to their current cold facility are needed to handle increased workload. Some manufacturers have indicated that they would simply add additional shifts to their facility work schedules that are not in place today. Some manufacturers will already meet the first-year requirement based on current certification reporting, essentially providing an additional year for distributing the anticipated development test burden for the remaining fleet. The 4-year phase-in period provides ample time for vehicle manufacturers to develop a compliance schedule that is coordinated with their future product plans and projected product sales volumes of the different vehicle models.

We request comments on the proposed start date and duration of the phase-in schedule. We also request comment on allowing a volume-based offset during the phase-in period for cases where manufacturers voluntarily certify heavy-duty vehicles above 8,500 pound GVWR to the proposed cold temperature standards. This may provide incentive for voluntary certification of these heavier vehicles.

b. Alternative Phase-In Schedules

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. By introducing vehicles earlier than required, manufacturers would earn the flexibility to make offsetting adjustments, on a vehicle-year basis, to the phase-in percentages in later years. 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.

We are proposing that manufacturers may 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. We propose that the alternative phase-in could not 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).

An alternative phase-in schedule would be acceptable if it passes a specific mathematical test. 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 would 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 would need to be greater than or equal to 500, which is the sum from the primary phase-in schedule (4\*25 + 3\*50 + 2\*75 + 1\*100=500). For example, the equation for LDVs/LLDTs would be as follows:

$$(6 \times \text{API}_{2008}) + (5 \times \text{API}_{2009}) + (4 \times \text{API}_{2010}) + (3 \times \text{API}_{2011}) + (2 \times \text{API}_{2012}) + (1 \times \text{API}_{2013}) \geq 500\%$$

Where:

API is the anticipated phase-in percentage for the referenced model year.

California used this approach to an alternative phase-in for the LEVII program.<sup>192</sup> It provides alternative phase-in credit for both the number of vehicles phased in early and the number of years the early phase-in occurs.

As described above, the final sum of percentages for both LDVs/LDTs and HLDTs/MDPVs 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 LDVs/LDTs are introduced in the 2010 time frame (2012 for HLDTs/MDPVs), manufacturers would not be permitted 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

<sup>192</sup> Title 13, California Code of Regulations, Section 1961(b)(2).

LDVs/LDTs. To protect against this possibility, we are proposing that for any alternative phase-in schedule, a manufacturer's phase-in percentages\* years factor from the 2010 and earlier model years sum to at least 100 (2012 and earlier for HLDTs/MDPVs). 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. This would achieve early emissions reductions and provide an opportunity to gain experience in meeting the standards.

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 the recommendations of the Small Advocacy Review Panel (SBAR Panel), which we discuss in more detail later in section VI.E, manufacturers meeting EPA's definition of "small volume manufacturer" would be exempt from the phase-in schedules and would be required to simply comply with the final 100% compliance requirement. This provision would only apply to small volume manufacturers and not to small test groups of larger manufacturers.

#### 4. 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 predict deterioration. A test group is a basic classification within a durability group used to demonstrate compliance with FTP 75° F standards.<sup>193</sup> 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 proposing to require testing on a durability group basis for the cold temperature NMHC standard. We also propose to allow manufacturers the option of certifying on the smaller test group basis, as is allowed under current cold CO standards. Testing on a test group basis would 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 would be tested for certification.

For the new standard, manufacturers would declare a family emission limit (FEL) for each group either at, above, or below the fleet averaging standard. The FEL would be based on the certification NMHC level, including deterioration factor, plus the 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 certification resolution for the FEL would be one decimal point. This FEL approach would be similar to having bins in 0.1 g/mile intervals, with no upper limit. Similar to a bin approach, manufacturers would 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.

#### 5. Credit Program

As described above, we are proposing that manufacturers average the NMHC emissions of their vehicles and comply with a corporate average NMHC standard. In addition, we are proposing that when a manufacturer's average NMHC emissions of vehicles certified and sold falls below the corporate average standard, it could generate credits that it could save for later use (banking) or sell to another manufacturer (trading). Manufacturers would consume any credits if their corporate average NMHC emissions were above the applicable standard for the weight class.

EPA views the proposed 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, a manufacturer can 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 addition, ABT allows us to consider a more stringent emission standard than might otherwise be achievable under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. By enhancing the

technological feasibility and cost effectiveness of the proposed standard, ABT allows the standard to be attainable earlier than might otherwise be possible.

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).

#### a. How Credits Are Calculated

The corporate average for each weight class would be calculated by computing a sales-weighted average of the NMHC levels to which each FEL was certified. As discussed above, manufacturers 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 programs, manufacturers may opt to select an FEL above the test level. The FEL would be used in calculating credits. The number of credits or debits would 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, credits would be generated (below 0.5 g/mi for HLDTs/MDPVs). 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

We propose that manufacturers could 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 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 prior to 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 previously mentioned, we are also proposing that manufacturers

<sup>193</sup> 40 CFR 86.1803-01.

may 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 could use credits in any future year when its corporate average was above the standard, or it could trade (sell) the credits to other manufacturers. Because of separate sets of standards for the different weight categories, we are proposing that manufacturers compute their corporate NMHC averages separately for LDV/LLDTs and HLDTs/MDPVs. Credit exchanges between LDVs/LLDTs and HLDTs/MDPVs would be allowed. This will provide added flexibility for full-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 would allow manufacturers a way to address unexpected shifts in their sales mix. The NMHC emission standards in this proposed program are quite stringent and do not present easy opportunities to generate credits. Therefore, we are not proposing to discount unused credits. Further, the degree to which manufacturers invest the resources to achieve extra NMHC reductions provides true value to the manufacturer and 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 we are not proposing that the NMHC credits would have a credit life limit. However, we are proposing that they only be used to offset deficits accrued with respect to the proposed 0.3/0.5 g/mile cold temperature standards. We request comment on the need for discounting of credits or credit life limits and what those discount rates or limits, if any, should be.

#### e. Deficits Could 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—we are proposing that the manufacturer be allowed to carry that deficit forward into the next model year. Such a carry-forward could only occur after the manufacturer used any banked credits. If the deficit still existed and the manufacturer chose not to, or was unable to, purchase credits, the deficit could be carried over. At the end

of that next model year, the deficit would need to be covered with an appropriate number of credits that the manufacturer generated or purchased. Any remaining deficit would be subject to an enforcement action.

To prevent deficits from being carried forward indefinitely, we propose that manufacturers would not be permitted to run a deficit for two years in a row. 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 VI.B.6.a, we are not proposing 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. We plan to revisit the need for and feasibility of standards as data become available.

During discussions with manufacturers, we discussed a voluntary program for chassis-certified complete heavy-duty vehicles. We believe that there may be opportunities within the framework of a cold temperature NMHC program to allow for emissions credits from chassis-certified heavy-duty vehicles above 8,500 pounds GVWR to be used to meet the proposed standards. It is possible that some control strategies developed for meeting cold NMHC emissions standards could also be applied to these vehicles above 8,500 pounds GVWR.

One approach would be to allow manufacturers to certify heavy-duty vehicles voluntarily to the 0.5 g/mile cold NMHC standards proposed for HLDTs/MDPVs. To the extent that heavy-duty vehicles achieve FELs below the 0.5 g/mile standard, manufacturers could earn credits which could be applied to any vehicle subject to the proposed standard. It is unclear, however, if this approach would provide a meaningful opportunity for credit generation, given the stringency of the standard. We would expect that most heavy-duty vehicles would have

emissions well above the 0.5 g/mile level, based on the additional weight of the vehicle. We request comment on this approach, as well as others for voluntary certification and credit generation.

It may be possible to establish a voluntary standard above 0.5 g/mile for purposes of generating credits, but we would need data on which to base this level of the standard. Suggestions on an appropriate level of a voluntary standard are welcomed, as well as any data that support such a recommendation. Comments on testing protocols, such as use of the vehicle's adjusted loaded vehicle weight (ALVW) or loaded vehicle weight (LVW), are also encouraged. We believe such a voluntary program could provide significant data that would help us evaluate the feasibility of a future standard for these vehicles.

#### 6. Additional Vehicle Cold Temperature Standard Provisions

We request comments on all of the following proposed provisions.

##### a. Applicability

We are proposing to apply the new cold temperature standards to all gasoline-fueled light-duty vehicles and MDPVs sold nationwide. While we have significant amounts of data on which to base our proposals for gasoline-fueled light-duty vehicles, we have very little data for light-duty diesels. For 75° F FTP standards, the same set of standards apply, but in the 20° F context we know very little about diesel emissions due to a lack of data. Currently, diesel vehicles are not subject to the cold CO standard, so there are no requirements to test diesel vehicles at cold temperatures. There are sound engineering reasons, however, to expect cold NMHC emissions for diesel vehicles to be as low as or even lower than the proposed standards. This is because diesel engines operate under leaner air-fuel mixtures compared to gasoline engines, and therefore 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. A comprehensive assessment of appropriate standards for diesel vehicles would require a significant amount of investigation and analysis of issues such as feasibility and costs. This effort would be better suited to a future rulemaking. Therefore, at this time, we are not proposing to apply the cold NMHC standards 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 if data indicate that there may be instances of high NMHC emissions from diesels at cold temperatures. We have proposed cold temperature FTP testing for diesels as part of the Fuel Economy Labeling rulemaking, including NMHC measurement.<sup>194</sup> This testing data would allow us to assess NMHC certification type data over time. However, this wouldn't include development testing manufacturers would need to do in order to meet a new diesel cold temperature standard.

In addition, there currently is no cold CO testing requirement for alternative fuel vehicles. There are little data upon which to evaluate NMHC emissions when operating on alternative fuels at cold temperatures. For fuels such as ethanol, it is difficult to develop a reasonable proposal due to a lack of fuel specifications, testing protocols, and current test data. Other fuels such as methanol and natural gas pose similar uncertainty. Therefore, we are not proposing a cold NMHC testing requirement for alternative fuel vehicles. We will continue to investigate these other technologies and request comment on standards for vehicles operating on fuels other than gasoline.

We are proposing that flex-fuel vehicles would still require certification to the applicable cold NMHC standard, though only when operated on gasoline. For multi-fuel vehicles, manufacturers would need to submit a statement at the time of certification that either confirms the same control strategies used with gasoline would be used when operating on ethanol, or that identifies any differences as an Auxiliary Emission Control Device (AECDD). Again, dedicated alternative-fueled vehicles, including E-85 vehicles, would not be covered.

For heavy-duty gasoline-fueled vehicles, we have no data, 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 are not proposing cold temperature NMHC standards for these vehicles at this time. We request comments and data on these vehicles and plan to revisit this issue when sufficient data is available.

b. Useful Life

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.<sup>195</sup> Consistent with the current definition of useful life in the Tier 2 regulations, for all LDVs/LDTs and HLDTs/MDPVs, we are proposing new full useful life standards for cold temperature NMHC standards. Given that we expect that manufacturers will make calibration or software changes to existing Tier 2 technologies, it is reasonable for there to be the same useful life as for the Tier 2 standards themselves. For LDV/LLDT, the full useful life values would 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.<sup>196</sup>

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 would not be required to submit vehicle test data for high altitude. Instead, manufacturers would be required to submit an engineering evaluation indicating that common calibration approaches are utilized at high altitude. Any deviation from sea level in emissions control practices would be required to be included in the auxiliary emission control device (AECDD) descriptions submitted by manufacturers at certification. Additionally, any AECDD specific to high altitude would require engineering

emission data for EPA evaluation to quantify any emission impact and validity of the AECDD.

d. In-Use Standards for Vehicles Produced During Phase-In

As we have indicated, the standards we are proposing would 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, it may be 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. Therefore, similar to the approach used in Tier 2, we are proposing 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.<sup>197</sup> 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.

We propose that the in-use standards 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. It also assumes that once a test group is certified to the new standards, it will be carried over to future model years. The tables below provide the proposed schedule for the availability of the in-use standards.

TABLE VI.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

<sup>194</sup> "Fuel Economy Labeling of Motor Vehicles; Revisions to Improve Calculation of Fuel Economy Estimates," Proposed Rule, 71, FR 5426, February 1, 2006.

<sup>195</sup> 40 CFR 86.1803-01.

<sup>196</sup> 40 CFR 86.1805-04.

<sup>197</sup> "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.

TABLE VI.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	2014	2015
	2011	2012	2013	2014	2015	2016
	2012	2013	2014	2015	2016	
	2013	2014	2015			

## 7. Monitoring and Enforcement

Under the proposed programs, manufacturers could either report that they met the relevant corporate average standard in their annual reports to the Agency, or they could show via the use of credits that they have offset any exceedance of the corporate average standard. Manufacturers would also report their credit balances or deficits. EPA would monitor the program.

As in Tier 2, the averaging, banking and trading program would be enforced through the certificate of conformity that manufacturers must obtain in order to introduce any regulated vehicles into commerce.<sup>198</sup> The certificate for each test group would require all vehicles to meet the emissions level to which the vehicles were certified, and would be conditioned upon the manufacturer meeting the corporate average standard within the required time frame. If a manufacturer failed to meet this condition, the vehicles causing the corporate average exceedance would be considered to be not covered by the certificate of conformity for that engine family. A manufacturer would be subject to penalties on an individual vehicle basis for sale of vehicles not covered by a certificate.

EPA would review the manufacturer's sales to designate the vehicles that caused the exceedance of the corporate average standard. We would designate as nonconforming those vehicles in those test groups with the highest certification emission values first, continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. In a test group where only a portion of vehicles would be deemed nonconforming, we would determine the actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group. Manufacturers would be liable for penalties for each vehicle sold that is not covered by a certificate.

We are proposing to condition certificates to enforce the requirements that manufacturers not sell credits that

they have not generated. A manufacturer that transferred credits it did not have would create an equivalent number of debits that it would be required to offset by the reporting deadline for the same model year. Failure to cover these debits with credits by the reporting deadline would be a violation of the conditions under which EPA issued the certificate of conformity, and nonconforming vehicles would not be covered by the certificate. EPA would identify the nonconforming vehicles in the same manner described above.

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, we propose to hold both the buyer and the seller liable. 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 are not proposing any new compliance monitoring activities or programs for vehicles. These vehicles would be subject to the certification testing provisions of the CAP2000 rule. We are not proposing to require 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 SFTP program). 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 would not be permitted to address Selective Enforcement Auditing or in-use testing failures. The enforcement of the

averaging standard would occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity would be conditioned upon compliance with the averaging provisions. The certificate would be void ab initio if a manufacturer failed to meet the corporate average standard and did not obtain appropriate credits to cover their shortfalls in that model year or in the subsequent model year (see proposed deficit carryforward provision in section VI.B.5.e.). Manufacturers would 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 request comments on the above approach for compliance monitoring and enforcement.

### C. What Evaporative Emissions Standards Are We Proposing?

We are proposing to adopt a set of numerically more stringent evaporative emission standards for all light-duty vehicles, light-trucks, and medium-duty passenger vehicles. The proposed standards are equivalent to California's LEV II standards, and these proposed standards are shown in Table VI.C-1. The proposed standards would represent about a 20 to 50 percent reduction (depending on vehicle weight class and type of test) in diurnal plus hot soak standards from the Tier 2 standards that will be in effect in the years immediately preceding the implementation of today's proposed standards.<sup>199</sup> As with the current Tier 2 evaporative emission standards, the proposed standards vary by vehicle weight class. The increasingly higher standards for heavier weight class vehicles account for larger vehicle sizes

<sup>199</sup> 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).

<sup>198</sup> "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.

and fuel tanks (non-fuel and fuel emissions).<sup>200</sup>

TABLE VI.C-1.—PROPOSED 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 Proposed Standards

Evaporative emissions from light-duty vehicles and trucks will represent about 35 percent of the light-duty VOC inventory and about 4 percent of the benzene inventory in 2020. As described earlier, we are proposing to reduce the level of the evaporative emission standards applicable to diurnal and hot soak emissions from these vehicles by about 20 to 50 percent. These proposed standards are meant to be effectively the same as the evaporative emission standards in the California LEV II program. Although the California program contains evaporative emissions standards that appear more stringent than EPA Tier 2 standards if one looks only at the level of the standard, we believe they are essentially equivalent because of differences in testing requirements. For these same reasons, some manufacturers likewise view the programs as similar in stringency. (See section VI.C.5 below for further discussion of such test differences, e.g., test temperatures and fuel volatilities.) Thus, some manufacturers have indicated that they will produce 50-state evaporative systems that meet both sets of standards (manufacturers sent letters indicating this to EPA in 2000).<sup>201 202 203</sup> In addition, a review of recent model year certification results indicates that essentially all manufacturers certify 50-state systems, except for a few limited cases where manufacturers have not yet needed to certify a LEVII vehicle in California due to the phase-in schedule.

Also, in recent discussions, manufacturers have restated that they plan to continue producing 50-state evaporative systems in the future. Based on this understanding, we do not project additional VOC or air toxics reductions from the evaporative standards we are proposing today.<sup>204</sup> Also, we do not expect additional costs since we expect that manufacturers will continue to produce 50-state evaporative systems. Therefore, harmonizing with California's LEV-II evaporative emission standards would be an "anti-backsliding" measure—that is, it would prevent potential future backsliding as manufacturers pursue cost reductions.<sup>205</sup> It would thus codify (*i.e.*, lock in) the approach manufacturers have already indicated they are taking for 50-state evaporative systems.

We believe this proposed action would be an important step to ensure that the federal standards reflect the lowest possible evaporative emissions, and it also would 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 proposed standards will assure that manufacturers continue to capture the abilities of available fuel system materials to minimize evaporative emissions.

We also considered the possibility of whether it is feasible to achieve further evaporative emission reductions from motor vehicles. In this regard, it is important to note that California's LEV II program includes partial zero-emission vehicle (ZEV) 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 proposed standards).<sup>206</sup> The credits would include full ZEV credit for a stored hydrogen fuel cell vehicle and 0.2 credits for (among other categories for partial credit) a partial zero emission vehicle (PZEV).<sup>207</sup> Currently, only a fraction of California's certified vehicles (gasoline powered, hybrid, and compressed natural gas vehicles) meet California's optional PZEV standards, but this number is expected to increase in coming years.<sup>208 209</sup> These limited PZEV vehicles require additional evaporative emissions technology or hardware (*e.g.*, modifications to fuel tank and secondary canister) than we expect to be needed for vehicles meeting the proposed standards. At this time, we need to better understand the evaporative system modifications (*i.e.*, technology, costs, lead time, etc.) potentially needed for other vehicles in the fleet to meet PZEV-level standards before we can rationally evaluate whether to adopt more stringent standards. For example, at this point we cannot even 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. However, we intend to consider

<sup>200</sup> 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.

<sup>201</sup> DaimlerChrysler, Letter from Reginald R. Modlin to Margo Oge of U.S. EPA, May 30, 2000. A copy of this letter can be found in Docket No. EPA-HQ-OAR-2005-0036.

<sup>202</sup> Ford, Letter from Kelly M. Brown to Margo Oge of U.S. EPA, May 26, 2000. A copy of this letter can be found in Docket No. EPA-HQ-OAR-2005-0036.

<sup>203</sup> General Motors, Letter from Samuel A. Leonard to Margo Oge of U.S. EPA, May 30, 2000. A copy of this letter can be found in Docket No. EPA-HQ-OAR-2005-0036.

<sup>204</sup> 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.

<sup>205</sup> Anti-backsliding provisions can satisfy the requirement in section 202 (l) (2) that emission reductions of hazardous air pollutants be the greatest achievable. *Sierra Club v. EPA*, 325 F. 3d at 477.

<sup>206</sup> California Air Resources Board, Fact Sheet, LEV-II Amendments to California's Low-Emission Vehicle Regulations, February 1999

<sup>207</sup> PZEV meets California super ultra low emission vehicle exhaust emission standards and have near zero evaporative emissions. California Air Resources Board, News Release, ARB Modifies Zero Emission Vehicle Regulation, April 24, 2003.

<sup>208</sup> California Air Resources Board, Fact Sheet, California Vehicle Emissions, April 8, 2004.

<sup>209</sup> California Air Resources Board, Consumer Information: 2006 California Certified Vehicles, November 7, 2005.

more stringent evaporative emission standards in the future, and revisiting this issue in a future rulemaking will allow us time to obtain the important necessary additional information for such standards.

## 2. Evaporative Standards Timing

We are proposing to implement today's evaporative emission standards in model year 2009 for LDVs/LLDTs and model year 2010 for HLDTs/MDPVs. Today's proposed rule is not expected to be finalized until February 2007, at which time many manufacturers already will 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. Since the proposed standards are an anti-backsliding measure and we believe that manufacturers already meet these standards, there is no need for additional lead time beyond the implementation dates proposed. We request comment on this proposed schedule.

## 3. Timing for Multi-Fueled Vehicles

As discussed earlier in this section, manufacturers appear to view the Tier 2 and LEV II evaporative emission programs as similar in stringency, and thus, they have indicated that they will produce 50-state evaporative systems that meet both sets of standards. For multi-fueled vehicles capable of operating on alternative fuel (e.g., E85 vehicles—fuel is 85% ethanol and 15% gasoline) and conventional fuel (e.g., gasoline),<sup>210</sup> this commitment for 50-state systems would still apply. However, a few multi-fueled vehicles were certified only on the conventional fuel (gasoline) for the California LEV II program even though they had 50-state evaporative emission systems. For such cases, manufacturers did not intend to sell these vehicles for operation on the alternative fuel (e.g. E85) in California (only for operation on conventional fuel in California), but they did certify and plan to sell these vehicles in the federal Tier 2 program for operation on the alternative and conventional fuels.<sup>211</sup> For these few types of multi-fueled vehicles, manufacturers are potentially at risk of not complying with the

<sup>210</sup> 40 CFR 86.1803–01 defines multi-fuel as capable of operating on two or more different fuel types, either separately or simultaneously.

<sup>211</sup> For the Tier 2 program, multi-tier vehicles must meet the same standards on conventional and alternative fuel.

proposed new evaporative emission certification standards (which are equivalent to California LEV II certification standards) when operating on the alternative fuel.

For such multi-fueled vehicles or evaporative emission systems, manufacturers would need a few additional years of lead time to adjust their evaporative systems to comply with the proposed evaporative emission certification standards when operating on the alternative fuel. Thus, to reduce the compliance risk for these types of multi-fueled vehicles (or evaporative families) when they first certify to the more stringent evaporative standards, the proposed evaporative emission certification standards would apply to the non-gasoline portion of multi-fueled vehicles beginning in the fourth year of the program—2012 for LDVs/LLDTs and 2013 for HLDTs/MDPVs. The proposed evaporative emission certification standards would be implemented in 2009 for LDVs/LLDTs and 2010 for HLDTs/MDPVs for the gasoline portion of multi-fueled vehicles and vehicles that are not multi-fueled. We believe this additional three years of lead time would provide sufficient time for manufacturers to make adjustments to their new evaporative systems for multi-fueled vehicles, which are limited product lines.

The provisions for in-use evaporative emission standards described below in section VI.C.4 would not change for multi-fueled vehicles. We believe that three 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 (other vehicles that are not multi-fueled) is sufficient to resolve any issues for multi-fueled vehicles. Therefore, the proposed evaporative emission standards would apply both for certification and in-use beginning in 2012 for LDVs/LLDTs and 2013 for HLDTs/MDPVs.

## 4. In-Use Evaporative Emission Standards

As described earlier in this section, we are proposing to adopt evaporative emission standards that are equivalent to California's LEV II standards for all light duty vehicles, light trucks, and medium duty passenger vehicles. 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 period in order to account for

potential variability in-use during the initial years of the program when technical issues are most likely to arise.<sup>212</sup> 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).<sup>213 214</sup> 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 proposed standards (which are equivalent to the LEV II standards), and thus, we propose to adopt a similar, interim in-use compliance provision for federal vehicles. As with the LEV II program, this provision would enable manufacturers to make adjustments for unforeseen problems that may occur in-use during the first three years of a new evaporative family. Like California, we believe that a three-year period is enough time to resolve these problems, because it allows manufacturers to gain real world experience and 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 propose to apply the Tier 2 standards in-use for only the first three model years after an evaporative family is first certified under today's proposed standards instead of the 1.75 multiplier implemented in the California LEV II program. Since the proposed evaporative emission certification standards (equivalent to LEV II standards) would be implemented in model year 2009 for LDVs/LLDTs and model year 2010 for HLDTs/MDPVs, these same certification

<sup>212</sup> 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.

<sup>213</sup> 1.75 times the 3-day diurnal plus hot soak and 2-day diurnal plus hot soak standards.

<sup>214</sup> 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.

standards would apply in-use beginning in model year 2012 for LDVs/LLDTs and model year 2013 for HLDTs/MDPVs.<sup>215</sup>

5. Existing Differences Between California and Federal Evaporative Emission Test Procedures

As described above, the California LEV II evaporative emission standards are numerically 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.<sup>216</sup> (We are retaining these Tier 2 durability requirements for the proposed 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 VI.C-2, combined with 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.<sup>217</sup> 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 VI.C-2.—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 to 96 .....	65 to 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 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.<sup>218</sup>

D. Opportunities for Additional Exhaust Control Under Normal Conditions

In addition to the cold temperature NMHC and evaporative emission standards we are proposing, we evaluated an additional option for reducing hydrocarbons from light-duty vehicles. This option would further align the federal light-duty exhaust emissions control program with that of California. We are not proposing this option today for the reasons described below. 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 proposed today.<sup>219</sup>

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 vehicle standards, the availability and costs of the technology, and noise, energy and safety factors. The cold temperature NMHC program proposed 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 other existing vehicle emissions control program. We are not proposing long-term (i.e., controls that require longer lead time to implement) at this time because we lack the information necessary to assess appropriate long-term controls. 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 program, known as Tier 2, focused on reducing NOx emissions from the light-duty fleet. The California program, which is the second generation of their low emission vehicle (LEV) program and is known as LEV-II, focuses primarily on reducing hydrocarbons by tightening the light-duty NMOG standards. Both programs are expected to present the manufacturers with significant challenges, and 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 challenges in the coming years. Bringing essentially all passenger vehicles under the same emission control program regardless of their size, weight, and application is a major engineering challenge. The Tier 2 program represents a comprehensive, integrated package of exhaust, evaporative, and fuel quality standards which will achieve significant reductions in

<sup>215</sup> For example, evaporative families first certified to the proposed LDV/LLDT evaporative emission standards in the 2011 model year would 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 would be limited to the first three years after introduction of a vehicle), and 2014 and later model year vehicles of such evaporative families would be required to meet the

proposed LDV/LLDT evaporative emission standards in-use.

<sup>216</sup> Manufacturers are required to develop deterioration factors using a fuel that contains the highest legal quantity of ethanol available in the U.S.

<sup>217</sup> 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.

<sup>218</sup> EPA may require comparative data from both federal and California tests.

<sup>219</sup> 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).

NMHC, NO<sub>x</sub>, 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 early 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 proposal 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*

Prior to issuing a proposal for this proposed 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 propose to include lead time transition and hardship provisions that would be applicable to small volume manufacturers as described below in section VI.E.1 and VI.E.2. For further discussion of the Panel process, see section XII.C of this proposed rule and/or the Final Panel Report.

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),<sup>220</sup> and alternative fuel vehicle converters.<sup>221</sup> 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

<sup>220</sup> 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.

<sup>221</sup> 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.

SVMs have similar characteristics as described below in section VI.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 proposal today is consistent with the Panel's recommendation.

#### 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 VI on technology needed to meet the proposed standards).<sup>222 223</sup> Moreover, percentage phase-in requirements pose a dilemma for an entity such as a SVM that has a limited product line. For example, it is challenging for a 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, manufacturers with sales less than 15,000 vehicles per year (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 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 4 year phase-in period. Since these entities could need additional lead time flexibility and proposed standards for light-duty vehicles and light light-duty trucks would begin in model year 2010 and would end in model year 2013 (25%, 50%, 75%, 100% phase-in over 4

<sup>222</sup> For example, as described later in section VI.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.

<sup>223</sup> SVMs (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.

years), we propose that the SVM provision would be 100 percent in model year 2013. Also, since the proposed standard for heavy light-duty trucks and medium-duty passenger vehicles would start in 2012 (25%, 50%, 75%, 100% phase-in over 4 years), we propose that the SVM provision would be 100 percent in model year 2015.

In regard to evaporative emission standards, the Panel recommended that since the proposed 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 light-duty vehicles and light-duty trucks, we propose that SVMs meet the evaporative emission standards in model year 2011. For a model year 2010 implementation date for heavy light-duty trucks and medium-duty passenger vehicles, we propose that SVMs comply in model year 2012.

## 2. Hardship Provisions

In addition, the Panel recommended that 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 proposing this provision to provide what could prove to be a needed safety valve for these entities. SVMs would 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 propose that 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 would work with the applicant to ensure that all other remedies available under this rule are exhausted before granting additional relief. To avoid the very existence of the hardship provision prompting SVMs to delay development, acquisition and application of new

technology, we want to make clear that we would expect this provision to be rarely used. Our proposed rule contains numerous flexibilities for all manufacturers and it delays implementation dates for SVMs, which effectively provides them more time. We would expect small volume manufacturers to prepare for the applicable implementation dates in today's proposed rule.

## 3. Special Provisions for Independent Commercial Importers (ICIs)

Although the SBAR panel did not specifically recommend it, we are proposing to allow 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 bar 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<sub>x</sub> fleet average standards, and today we propose to apply 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, we would permit 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, we would permit 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 would permit the manufacturer to obtain a certificate for vehicles using such a FEL, but would 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 would 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 comply with the fleet average standard. We also cannot reasonably assume that an ICI that certifies and produces vehicles one year, would certify or even be in business the next. Consequently, we propose that ICIs not be allowed to utilize the deficit carryforward provisions of the proposed ABT program.

## VII. Proposed Gasoline Benzene Control Program

### A. Overview of Today's Proposed Fuel Control Program

As discussed in sections I, IV, and V above, people experience elevated risk of cancer and other health effects as a result of inhalation of air toxics. Mobile sources are responsible for a significant portion of this risk. As required by section 202(l) of the Clean Air Act, EPA has evaluated options to reduce MSAT emissions by setting standards for motor vehicle fuel. We have determined that there are fuel-related technologies available to feasibly reduce MSAT emissions and that these reductions are achievable, considering cost, energy, and other factors. These feasible reductions would be in addition to those resulting from actions taken by the industry in response to the earlier fuel-related MSAT programs described in section V above. Accordingly, we believe a fuel control program is necessary and appropriate to reduce air toxics emissions from motor vehicles to the greatest extent achievable (in addition to the programs proposed elsewhere in this notice to reduce MSAT emissions by changes to gasoline-powered motor vehicles and gas cans). This section of the preamble describes our proposed fuel control program.

The section begins with a detailed description of today's proposed program. In summary, we propose that beginning January 1, 2011, refiners would meet an average gasoline benzene content standard of 0.62% by volume on all their gasoline (reformulated and conventional) nationwide.<sup>224</sup> We also propose that refiners could generate benzene credits and use or sell them as a part of a nationwide averaging, banking, and trading (ABT) program.

<sup>224</sup> The State of California has a similar benzene standard and gasoline sold there is not covered by this proposal. For more information, see California Code of Regulations, Title 13 Section 2262.

We believe that the proposed benzene standard, combined with the proposed ABT program, would result in the largest feasible overall reductions in benzene emissions of any potential fuel-based MSAT control program. Finally, as an aspect of achieving the greatest emission reductions, we also propose special compliance flexibility for approved small refiners.

This section then describes in detail how we arrived at the proposed program. We discuss a range of potential approaches to reducing MSATs through changes in fuel, concluding that benzene emissions would be significantly more responsive to fuel changes than emissions of any other fuel-related MSAT. This is followed by discussion of alternate methods of reducing benzene emissions, resulting in the proposed approach of directly controlling benzene content. We also discuss how we arrived at the proposed level of 0.62 volume percent (vol%) for the benzene standard. We discuss why we believe that incorporating the proposed ABT program would be crucial for the effectiveness of the overall benzene control program and describe how the system would work. Finally, we review the recommendations of the special panel that was convened to assess the potential for disproportionate impacts of the proposed program on small refiners, and present our reasoning for the special small refiner provisions we are proposing today.

Today's proposed action would fulfill several statutory and regulatory goals for gasoline-related MSAT emissions, which are discussed in more detail in this section. The program would meet our commitment in the MSAT1 program to consider further MSAT control. The program would also allow EPA to streamline the regulatory provisions for the air toxics performance requirements of the reformulated gasoline (RFG) and Anti-dumping programs. The expected levels of benzene control by individual refiners under this proposal, combined with other gasoline controls such as sulfur, RVP, and VOC controls, mean that compliance with these provisions is expected to lead to compliance with the annual average requirements for benzene and toxics performance for RFG and the annual average Anti-dumping toxics performance for conventional gasoline. EPA is therefore proposing that upon full implementation in 2011, the regulatory provisions for the benzene control program would become the single regulatory mechanism used to implement these RFG and Anti-dumping annual average toxics requirements, replacing the current RFG

and Anti-dumping annual average provisions (although the 1.3 vol% benzene cap would still apply for RFG). The proposed benzene control program would also replace the MSAT1 requirements. In addition, the program would satisfy certain fuel MSAT conditions of the Energy Policy Act of 2005. By consciously designing this proposed program to address these separate but related goals, we would significantly consolidate and simplify the existing national fuel-related MSAT regulatory program.

Finally, this section concludes with a detailed summary of our assessment of the technological feasibility for different types of refineries, and the refining industry as a whole, to meet the program as proposed. We request general and specific comment on all aspects of the proposed program, and we request that comments include supporting data whenever possible.

#### *B. Description of the Proposed Fuel Control Program*

Today's proposed program has three main components, the development of each of which is further described later in this section:

##### *—A gasoline benzene content standard.*

We propose that an annual average gasoline benzene standard of 0.62 vol% be implemented beginning January 1, 2011. This single standard would apply to all gasoline, both reformulated (RFG) and conventional (CG) nationwide (except for gasoline sold in California, which is already covered by a similar state program).

##### *—An averaging, banking, and trading (ABT) program.*

From 2007–2010 refiners could generate benzene credits by taking early steps to reduce gasoline benzene levels. Beginning in 2011 and continuing indefinitely, refiners could generate credits by producing gasoline with benzene levels below the 0.62% average standard. Refiners could apply the credits towards company compliance, “bank” the credits for later use, or transfer (“trade”) them to other refiners nationwide (outside of California) under the proposed program. Under this program, refiners could use credits to achieve compliance with the benzene content standard, regardless of their actual gasoline benzene levels.<sup>225</sup>

##### *—Hardship provisions.*

Refiners approved as “small refiners” would have access to special temporary relief provisions. In addition, any refiner

<sup>225</sup> However, the per-gallon benzene cap (1.3 vol%) in the RFG program would continue to apply separately.

facing extreme unforeseen circumstances or extreme hardship circumstances could apply for similar temporary relief.

#### *C. Development of the Proposed Gasoline Benzene Standard*

EPA believes that benzene control is by far the most effective fuel-based means of achieving MSAT emissions control, as described in this section. There are other options that can target individual MSATs or reduce overall VOCs and thereby reduce MSATs as well. We have evaluated these other options, as discussed below, and our analysis indicates that the potential MSAT reductions would be considerably smaller and more expensive.

##### *1. Why Are We Focusing on Controlling Benzene Emissions?*

We considered controlling emissions of several MSATs through changes to fuel parameters. There are only a limited number of MSATs that are affected through fuel changes, each of which we discuss below. For several reasons, we have concluded that the most effective and appropriate means of reducing fuel-related MSATs is to reduce the benzene emissions attributable to gasoline.

Benzene emissions can be reduced much more significantly through fuel changes than can emissions of other MSATs. Relatively small changes in gasoline can result in very significant reductions in benzene emissions. This relative responsiveness of benzene emissions to fuel controls (specifically to control of gasoline benzene content, as discussed in the next section) is coupled with little negative impact on other important characteristics of gasoline or refining processes. A related and critical advantage of fuel control of benzene emissions, as compared to fuel control of emissions of other MSATs as discussed below, is that controlling benzene emissions does not significantly increase emissions of other MSATs.<sup>226</sup>

In determining an appropriate approach to fuel-related MSAT control, a key consideration was octane value.

<sup>226</sup> A key tool in evaluating the potential for fuel changes to affect MSAT emissions is EPA's Complex Model. This model relates changes in gasoline parameters with emissions of specific MSATs and was developed for refiners and EPA to assess compliance with the RFG, Anti-dumping, and MSAT1 programs. (See section V.D.1 above.) Given a set of gasoline parameters, it estimates the emissions of an average vehicle based on a large set of fuel effects data. We further discuss the Complex Model, as well as other sources of information the relationships between fuel changes and MSAT emissions, in chapter 6 of the RIA.

Among potential approaches to fuel-related MSAT emission reduction, only benzene emission reduction can avoid major losses in octane value and the negative cost and environmental consequences discussed below of replacing that lost octane value. Finished gasoline must meet minimum specifications for octane value; these specifications are tied to the operational needs of motor vehicles. Thus, refiners must be keenly aware of how any changes in gasoline production might reduce the octane value of their fuel, what approaches to restore the octane value might be available, and the costs in material and operational changes of any selected approach.

There are a limited number of approaches refiners have at their disposal to restore gasoline octane value lost through control of MSAT emissions. These approaches vary in their economics and effectiveness, and their availability may be limited by the specific configuration of a given refinery. However, all methods of replacing octane value have cost implications, and as shown in the next paragraph, air toxics implications as well.

In the case of changes in gasoline production that are intended to reduce MSAT emissions, it is also important to consider whether restoring any lost octane might itself significantly increase other MSAT emissions. Some methods of replacing octane value can increase other MSATs. For example, increasing aromatics would increase benzene emissions; adding MTBE would increase formaldehyde emissions; and adding ethanol would increase acetaldehyde emissions. Given the very large MSAT emission reduction associated with benzene control, these impacts on other MSATs are relatively insignificant. However, in the case of changes in other fuel qualities (e.g., aromatics control), the relative impacts on other MSATs would be greater.

We encourage comment on our decision to propose a program that directly controls gasoline benzene content, including comments on each of the alternate approaches to MSAT control discussed in the following paragraphs.

#### a. Other MSAT Emissions

As alternatives to the proposed program focusing on benzene emission reductions, we considered other MSATs that are responsive to fuel-based emission control. Each of these is discussed next.

Polycyclic Organic Matter, or POM, is composed of a number of combustion products of gasoline. According to the

Complex Model, POM emissions are a function of exhaust VOC. Several fuel parameters including volatility and sulfur content affect VOC emissions. As discussed below, little data exists about the potential impacts of changes in gasoline volatility and sulfur content on VOC, and thus POM, emissions from new Tier 2-compliant vehicles. In any event, because POM is only a tiny fraction of vehicle VOC emissions, we expect that further changes in these fuel parameters would have only small effects on POM. As a result, we are not proposing fuel controls to address POM emissions in today's action.

Emissions of the compound 1,3-butadiene can be reduced by reducing the olefin content of gasoline. However, olefin reduction yields relatively small reductions in 1,3-butadiene and can increase VOC emissions. In addition, olefin reduction significantly affects octane, with the negative cost and MSAT emissions consequences of octane replacement. We are thus not proposing to address 1,3-butadiene emissions through fuel changes.

Emissions of the compound formaldehyde can only be effectively reduced by reducing use of the octane enhancer methyl tertiary butyl ether (MTBE). This is because formaldehyde increases significantly as a combustion product when MTBE is added to gasoline. Formaldehyde also increases to a lesser extent when ethanol is added to gasoline, as described below. For a number of years, MTBE has been used as a cost-effective way to meet mandated fuel oxygenate requirements and to boost octane. In recent years, many states have banned the use of MTBE because it has leaked from storage tanks and caused significant groundwater contamination. More recently, in the wake of the removal of the oxygenate requirement in the Energy Policy Act of 2005, many refiners are taking action to remove MTBE from their gasoline as soon as possible. As a result, MTBE use and the resulting formaldehyde emissions are expected to continue to decline, and no additional federal action appears warranted at this time.

The compound acetaldehyde is a combustion product of gasoline when ethanol is added. Controlling acetaldehyde would require reductions in the use of ethanol as a gasoline additive. However, the Energy Policy Act of 2005 (section 1501) includes a renewable fuels program that will increase use of ethanol in gasoline nationwide. That Act requires a study of the Act's impacts on public health, air quality, and water resources. We accordingly intend to defer further

evaluation of acetaldehyde emissions to the analyses associated with the Energy Policy Act.

#### b. MSAT Emission Reductions Through Lowering Gasoline Volatility or Sulfur Content

We also considered two approaches to fuel-related MSAT control that would involve increasing the stringency of two existing emission control programs. Both were originally promulgated primarily to address ozone but also have the effect of reducing some MSAT emissions by virtue of their control of VOC emissions. As explained in section V, the Tier 2 program included the pairing of lower vehicle emissions standards with large reductions in gasoline sulfur levels. The low sulfur fuel helped enable development of more advanced catalytic aftertreatment systems needed to meet the stringent tailpipe standards. These actions will result in large reductions of VOC, NO<sub>x</sub>, and air toxics emissions. In development of today's proposal, we considered whether further reductions in fuel sulfur would bring significant additional reductions in MSAT emissions.

The second program considered for additional stringency was the gasoline volatility program, which was implemented in 1989 to address evaporative VOC emissions from gasoline vehicles. Reducing the volatility of gasoline can reduce evaporative VOC emissions as well as exhaust emissions. Evaporative VOC emissions include benzene. As a result, in developing this proposal we have considered whether further reductions in gasoline volatility may be effective in further reducing MSAT emissions.

In the cases of both further reductions in RVP and sulfur reductions below the current 30 ppm standard, the available data is not sufficient to conclude that additional control of either would be a valuable MSAT emission reduction strategy. Historic data suggest that reducing both RVP and sulfur content would reduce overall VOC emissions from vehicles, in turn reducing both MSATs and ozone formation. However, vehicles complying with the stringent new Tier 2 emission standards have dramatically lower VOC emissions than earlier vehicles. Furthermore, it is likely that VOC emissions for these vehicles would react differently to RVP and sulfur control than older vehicles, as new catalysts and control systems may have more or less sensitivity to these variables. Since the dominant effect on MSAT emissions of changing these fuel parameters is through their impact on total VOC mass, it is not possible to

properly assess the impact of changes in these fuel parameters on MSAT emissions without additional data. We have begun collecting data on some of these new vehicles, but more work will be required before we can draw conclusions about the effectiveness of these fuel controls in reducing MSAT emissions. Therefore, we are not proposing additional control of gasoline volatility or sulfur at this time, but will continue to evaluate them for possible future action. We request comments on these potential fuel controls as emission reduction strategies, in particular for MSAT emissions, including any data that does or does not support the effectiveness of such controls.

#### i. Gasoline Sulfur Content

In general, reducing gasoline sulfur levels increases the effectiveness of the catalytic converter at destroying unburned fuel and other VOCs in vehicle exhaust. Catalytic converters contain a variety of physical and chemical structures that act as reaction sites for conversion of raw exhaust gases into less harmful ones before they are emitted into the atmosphere. Over time, sulfur compounds in the exhaust gases interfere with these processes, making the catalyst less effective under normal driving conditions.<sup>227</sup> Since many air toxics are part of the exhaust VOCs, reduction of fuel sulfur would be expected to reduce air toxics emissions. As with the Tier 2 program, however, desulfurizing gasoline further would reduce gasoline octane. Most options for recovering this lost octane (e.g., increasing aromatics) would result in some offsetting MSAT emissions increases.

EPA primarily uses two computer models for examining emissions impacts when considering changes in fuel properties: the Complex Model and the MOBILE model. The Complex Model (CM) was developed as a compliance tool that refiners use to ensure their gasoline meets its baseline requirements under the RFG, Anti-dumping, and MSAT1 programs. Given a set of fuel parameters, it estimates the emissions of an average vehicle using regression relationships drawn from a large set of fuel effects data. The CM contains data on test fuels with sulfur levels as low as 5 ppm, but is based on the Auto/Oil research programs of the early 1990s, and reflects performance of vehicles on the road during that time period. With a sulfur reduction from 30 ppm to 10 ppm applied to average 2003

conventional gasoline, the CM projects a decrease of approximately 1% for exhaust benzene, NO<sub>x</sub> and CO.

MOBILE was developed to estimate aggregate emissions on a county, state, or national scale. It uses a fuel effects dataset that includes the CM dataset with some updates, along with driving data, to predict emissions inventories of pollutants for a specified time period and area of the country. MOBILE6.2 contains updates from a small number of LEV and ULEV vehicles in addition to the CM dataset, but applies a lower limit of 30 ppm to fuel sulfur content being modeled to avoid extrapolation beyond the range of available emissions data.

Based primarily on the above models, the analyses done for the Tier 2 rulemaking suggested benzene emission reductions on the order of 9% could be expected in 2020 as a result of the fuel sulfur reduction expected from that program alone (the final Tier 2 program included low sulfur gasoline as well as tightened vehicle standards).<sup>228</sup> A recent study done on vehicles meeting LEV, TLEV, and ULEV standards indicates that sulfur reductions from 30 to 5 ppm may reduce NMHC by more than 10%, bringing similar reductions in air toxics.<sup>229</sup> Additional analyses done by EPA on sulfur reductions in this range suggest VOC emission reductions on the order of 5% may be expected, with refining costs estimated at about a half cent per gallon. Given these analyses using available data, using sulfur reductions as air toxics control alone would not be as cost-effective as other options in this proposal. Further discussion of the feasibility and costs are available in Chapters 6 and 9, respectively, of the RIA.

Since our models do not reflect the significant improvements in emissions control technology over the past decade, more fuel effects studies are necessary on newest-technology vehicles before going forward with sulfur control. A small cooperative test program is currently underway between EPA and the Alliance of Automobile Manufacturers to evaluate the effects of reducing sulfur below 10 ppm on Tier 2 Bin 5 compliant vehicles.

In addition to potential air toxics reductions from adjustment of gasoline sulfur to 10 ppm, reducing sulfur may also provide significant VOC and NO<sub>x</sub> emission reductions. These emission reductions may be important for states in complying with the National

Ambient Air Quality Standards (NAAQS) for ozone. Since the implementation of the RFG program, several states and localities have made their own unique fuel property requirements in an effort to further improve air quality.<sup>230</sup> As a result, by summer 2004 the gasoline distribution and marketing system in the U.S. had to differentiate between more than 12 different fuel specifications, when storing and shipping fuels between refineries, pipelines, terminals, and retail locations. These unique fuels decrease nationwide fungibility of gasoline, which can lead to local supply problems and amplify price fluctuations.<sup>231, 232</sup> In addition to the existing state fuel programs, we are aware of a number of other states considering new programs (although in the context of the recently enacted Energy Policy Act it is unclear what will occur). While the timeline for state action on new fuel formulations could be prior to any nationwide ultra-low sulfur standard, implementation of such a standard could help diminish issues related to small-market fuel programs in the long term.

From the perspective of gasoline production, reducing sulfur to ultra-low levels does not happen completely independently of other fuel parameters. The emissions benefits of further sulfur reduction gained in vehicle aftertreatment may be offset by unintended changes in other gasoline properties. The refining process modifications required to bring sulfur to ultra-low levels begin to have a stronger effect on other components of gasoline, such as olefins (the effect of which is discussed in the previous section). These impacts must be further evaluated before moving forward with a proposal of additional sulfur reductions for the purpose of air toxics reduction. These issues are also discussed in more detail in Chapter 6 of the RIA.

Refiners with whom we have met have generally expressed disapproval of further sulfur control. The Tier 2 gasoline sulfur program requires refiners to meet an average standard of 30 ppm. In response many have invested in and brought online desulfurization units, which would not have the capacity to

<sup>230</sup> These changes have focused almost exclusively on additional RVP control, with just one program also controlling sulfur to 30 ppm earlier than required by EPA.

<sup>231</sup> EPA, Study of Unique Gasoline Fuel Blends ("Boutique Fuels"), Effects on Fuel Supply and Distribution and Potential Improvements, EPA420-P-01-004

<sup>232</sup> GAO, Special Gasoline Blends Reduce Emissions and Improve Air Quality, but Complicate Supply and Contribute to Higher Prices, GAO-05-421

<sup>227</sup> For further discussion on sulfur effects on emissions, see the Tier 2 Regulatory Impact Analysis, EPA 420-R-99-023.

<sup>228</sup> Tier 2 Regulatory Impact Analysis, EPA 420-R-99-023

<sup>229</sup> AAM-Honda fuel effects study, 2000

reach a new, lower standard of 10 ppm in many cases. Modifications would have to be made to units that have recently been installed to comply with the current gasoline sulfur requirements. In some cases these units might have to be replaced with new units. EPA requests comments on the magnitude of the impact of a new, lower sulfur standard, including the potential effect on refiners that have recently installed desulfurization units.

On the automotive side, sulfur reduction may encourage further development of lean-burn or direct-injection gasoline technology. Leaner combustion of gasoline results in greater fuel economy and less VOC and carbon dioxide emissions, but generally produces more engine-out nitrogen oxides. Reducing fuel sulfur to 10 ppm would improve feasibility and reduce cost of next-generation aftertreatment designed to control these higher levels of nitrogen oxides. EPA will continue to evaluate further gasoline sulfur reductions, and seeks comment on it, especially with data supporting or opposing such action.

#### ii. Gasoline Vapor Pressure

According to the Complex Model and the MOBILE model, reducing fuel vapor pressure reduces evaporative as well as exhaust VOC emissions. Reducing VOC emissions in turn reduces MSAT emissions. A portion of this MSAT emission decrease through VOC control would likely be offset through an increase in the relative concentration of MSAT emissions. As volatility is decreased, non-aromatic compounds are removed from the gasoline, increasing the concentration of aromatics. Furthermore, these non-aromatic compounds are higher in octane, which would have to be offset—perhaps with still further increases in aromatics. Such increases in aromatics would lead to an increase in the relative concentration of benzene in VOC emissions. However, since changing vapor pressure has an effect on evaporative emissions, reducing vapor pressure can also reduce evaporative benzene from stationary sources related to gasoline distribution and marketing. Moreover, reducing overall VOC emissions reduces ground level ozone in urban areas, which itself has a significant impact on health and welfare.

Currently, in reformulated gasoline (RFG) areas, fuel is limited to roughly 7.0 psi Reid vapor pressure (RVP) in the summer season in order to meet the VOC performance standard. Additional vapor pressure controls considered for this proposal would regulate RVP levels to 7.0 or 7.8 in some conventional

gasoline (CG) ozone nonattainment areas, resulting in an impacted volume of gasoline equal to about 50% of that of current federal RFG. Further details of these analyses are covered in Chapter 6 of the RIA.

As with the sulfur analyses above, EPA also uses the Complex Model and MOBILE to estimate emissions impacts of changes in gasoline vapor pressure. In terms of the fuel parameter itself, this process is somewhat simpler than modeling sulfur effects since the range of vapor pressures useful in conventional vehicles has been well-defined for a number of years and is not expected to change. However, parallel to the arguments made above for sulfur, data on the effects of RVP changes on air toxics in these models is dated and does not represent newest technology. Since our models do not reflect improvements in emissions control technology for the Tier 2 program, more fuel effects studies must be carried out before making decisions on further gasoline vapor pressure controls. The cooperative test program between EPA and the Alliance of Automobile Manufacturers described above is also examining some of the effects of changes in RVP.

Looking beyond emissions benefits, more stringent national vapor pressure standards could also help avoid additional small market (“boutique”) fuels. Several states and localities have adopted their own seasonal requirements for vapor pressure in an effort to improve air quality, contributing to constraints on gasoline supply and potential for price volatility.<sup>233 234</sup>

Feedback from refiners on further volatility control has highlighted concerns with the summer-winter butane balance and resulting potentially adverse supply implications. Currently, refiners who produce large quantities of RFG must remove a significant amount of the light-end components from their fuel in the summer to meet the vapor pressure specifications. These light components, primarily butanes, are often stored and then blended back into gasoline in the winter when higher fuel vapor pressures are needed for drivability reasons. Several refiners have indicated that a new rule adding a number of reduced RVP areas would cause the amount of butanes removed in

summer to exceed what is useable in winter, resulting in a net loss of volume from the annual pool and a need to make up supply at additional expense. EPA will continue to evaluate further gasoline volatility reductions, and seeks comment on it, especially with data supporting or opposing such action.

#### c. Toxics Performance Standard

While we are not proposing it, we considered and are seeking comment on the merits of expressing the standard as an air toxics performance standard rather than as a benzene content standard. Such a standard would be analogous to the current MSAT1 standard, but more stringent and with an ABT component. In theory, a toxics performance standard could provide broader environmental benefits by addressing other toxics in addition to benzene. However, because controlling benzene is more cost-effective than controlling emissions of other MSATs, refiners are unlikely to reduce emissions of other MSATs whether or not the standard is in the form of a toxics performance standard or a benzene content standard. Setting a toxics performance standard at an appropriate level also requires us to predict future changes in fuel properties in addition to benzene, and to be able to establish as precisely as possible the effects of those fuel properties on emissions of several MSATs. In addition, a toxics emission performance standard is more complex to implement and enforce than a benzene content standard. For all of these reasons, as discussed more fully below, we believe a benzene content standard offers more certain environmental results and less complexity. However, we seek comment on the overall merits of an air toxics performance standard, including comments specifically on the tradeoff between the complexity of complying with a performance standard and the additional environmental benefits it could provide.

Based on our analysis for this proposal, fuel benzene control is by far the most effective and cost-effective means of achieving MSAT emission reductions. This is consistent with our experience with the MSAT1 and other air toxics control programs, which have shown that even when refiners have the flexibility to choose among different fuel changes to achieve MSAT control, reduction in benzene content is the predominant choice. Only when other fuel changes that impact MSAT emission performance are mandated (e.g., sulfur control, oxygenate use) have refiners made fuel changes other than benzene content to control MSAT

<sup>233</sup> EPA, Study of Unique Gasoline Fuel Blends (“Boutique Fuels”), Effects on Fuel Supply and Distribution and Potential Improvement, EPA420-P-01-004.

<sup>234</sup> GAO, Special Gasoline Blends Reduce Emissions and Improve Air Quality, but Complicate Supply and Contribute to Higher Prices, GAO-05-421.

emissions. As a result, even if we were to express the proposed standard as an air toxics performance standard rather than a benzene content standard, we would expect the outcome to be the same—benzene content control with corresponding benzene emission reductions and no changes in other MSAT emissions. Our analysis of the feasibility and cost of the program would be identical as well. If future fuel parameters are significantly different than we have projected in this analysis such that emissions of other MSATs decrease, then a toxic performance standard would result in less benzene control than would be achieved by the benzene content standard we propose today, with a corresponding overall reduction in cost. If future fuel parameters are significantly different such that emissions of other MSATs increase, then refiners would need to reduce benzene content to levels that are not feasible considering cost, but overall toxics performance would be maintained.

If we were to set an air toxics performance standard, the accuracy of the model used in estimating the real world effects of the many different fuel parameters on MSAT emissions also becomes of critical importance. To the extent fuel changes are projected to result in air toxics emission reductions that are not in fact borne out in-use, then the standard will have less benefit. There was a great deal of work done in the early 1990's to develop the Complex Model for the reformulated gasoline program. It estimates VOC, NO<sub>x</sub>, and certain MSAT emissions (benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and POM) as a function of eight fuel properties (RVP, oxygen, aromatics, benzene, olefins, sulfur, E200, and E300) for 1990 technology vehicles. However, a similar set of comprehensive data does not yet exist for new Tier 2 vehicles. Some of the fuel effects that were found to be statistically significant in the Complex Model may not be significant for Tier 2 vehicles (e.g., distillation properties). Others that impacted MSAT emissions primarily through their impact on VOC emissions may be of much less importance, due to the much lower VOC emissions of Tier 2 vehicles.<sup>235</sup> To the extent that the Complex Model gives air toxics credit for fuel changes that are later found to be much smaller or not valid at all, a toxics performance standard could result in less fuel benzene control and less in-use MSAT control. Of all the fuel

changes from past modeling, we would have the greatest confidence that the benzene relationships are unlikely to change significantly. This is due to the direct relationship between benzene fuel content and benzene evaporative and exhaust emissions, and due to the magnitude of these impacts. Thus, we would have the greatest confidence that the MSAT emission reductions projected from a fuel benzene content standard will be realized in-use.

In addition, if we were to set an air toxics performance standard, it would be important to have a clear understanding of the changes in fuel properties anticipated in the future independent of today's proposal. Significant changes in the composition of gasoline are anticipated over the next several years as a result of the Energy Policy Act of 2005 (EPAAct). MTBE is being removed from gasoline, ethanol use is increasing dramatically, and the oxygenate mandate for RFG is being eliminated. To the extent that these changes would result in reductions in modeled MSAT emission performance automatically, then refiners could comply with an air toxics performance standard with less benzene control than would be achieved under today's proposed benzene standard, and with lower overall costs. Conversely, to the extent that these changes would result in increases in modeled MSAT emission performance, an air toxics performance standard would require refiners to take additional measures to maintain overall MSAT performance, but these measures may not be cost-effective.

Although a toxics performance standard could theoretically give refiners more flexibility than a program focusing only on benzene emissions, we do not believe that such flexibility would be meaningful in actual practice. As discussed above, in order to comply with a new total MSAT standard, we expect that refiners would rely almost exclusively on benzene control. However, if their emission performance for other MSATs changed in the future (due to such factors as changes in oxygenate use, octane needs, or crude oil quality), refiners could find themselves unable to maintain overall MSAT performance using cost-effective controls.

For all these reasons, we are not proposing to address fuel-related MSAT emissions with a toxics performance standard, but we seek comment on this option.<sup>236</sup> We also seek comment on the

merits of applying an air toxics performance standard in addition to a fuel benzene content standard, and how such a dual standard could be implemented. From a theoretical standpoint, this dual standard might serve as a backstop to ensure overall toxics performance is maintained. However, it is not clear how such an approach could be realistically implemented, especially in the context of ABT programs that apply to both.

#### d. Diesel Fuel Changes

We are also not proposing today to reduce MSATs by changing diesel fuel. The existing major diesel fuel sulfur programs being implemented in the next few years for highway and nonroad diesel fuel will have a very large impact on reducing MSAT emissions “ specifically diesel particulate matter and exhaust organic gases. We have found in the on-highway diesel engine rulemaking that these are the greatest reductions achievable and reiterate that finding here. (See also section V.D.1.f above.) We are not aware of other changes to diesel fuel that could have a significant effect on emissions of any other MSATs. We welcome comment on our decision to focus this proposed program exclusively on changes to gasoline.

## 2. Why Are We Proposing To Control Benzene Emissions By Controlling Gasoline Benzene Content?

In the previous section, we describe how we decided to focus today's proposed fuel program on gasoline benzene emissions. This section describes our decision to propose to reduce benzene emissions through a gasoline benzene content standard. We also describe our consideration of two other potential approaches to reducing benzene emissions, both of which would indirectly reduce gasoline benzene content: a standard to control the gasoline content of all aromatic compounds; and a standard to control benzene emissions.

### a. Benzene Content Standard

For several reasons we have decided that a benzene content standard would be the most cost-effective and most certain way to reduce gasoline benzene emissions (and thereby MSAT emissions in general). First, a small change in gasoline benzene content results in large reductions in benzene emissions “ benzene typically

current MSAT 1 program, and (consistent with section 1504(b)(2) of the EPAAct) greater overall reductions of air toxics from reformulated gasoline than would be obtained under amended section 211(k)(1)(B) as well.

<sup>235</sup> This is one reason why the Energy Policy Act of 2005 requires EPA to create an updated gasoline emissions model by 2009.

<sup>236</sup> As explained further in section VII.C.5 below, based on the use of the currently available models, the proposed rule would result in greater overall reduction of air toxics from all gasoline than the

represents around 1 percent of gasoline, but this contributes about 25 percent of benzene exhaust and evaporative emissions.<sup>237</sup> Second, we have high confidence in the benzene emission reductions that would result from fuel benzene control. Historical data across a range of vehicles and engine types continues to support the relationship between fuel benzene content and benzene emissions. Even if Tier 2 vehicles react differently, the relationship is unlikely to change significantly. Third, because a relatively small change in gasoline properties is needed to achieve the desired result, reducing benzene content does not have a large impact on octane value. Benzene itself does contribute to the octane value of gasoline, but the small loss of octane from reducing benzene content is much less than the octane loss from reducing other aromatics for the same benzene emission effect, as discussed below, and the consequences of refiners having to replace that octane value are also much less. (This is why, as noted earlier, we anticipate that refiners would seek to comply with any toxics standard by reducing benzene levels in any case.) Fourth, we believe that a direct benzene content standard would best ensure real benzene emission reductions, including both exhaust and evaporative benzene emissions. We discuss this conclusion below, in the context of the potential alternative of a benzene emission standard.

#### b. Gasoline Aromatics Content Standard

Because benzene emissions are formed from benzene and other aromatics that are present in gasoline, we considered a standard that would limit the aromatics content of gasoline. However, we believe that reducing benzene emissions through a more general reduction in gasoline aromatics content would be much less cost-effective than direct benzene reduction. Non-benzene aromatics account for on average about 30 percent of gasoline (typically ranging between about 20 percent and 40 percent), and this fraction contributes about 30 percent of benzene emissions. In contrast, benzene only makes up about 1 percent of gasoline but is responsible for about 25 percent of benzene emissions. The remaining benzene emissions are formed from other compounds. Based on the Complex Model, it would require about a 20 percent reduction in non-benzene aromatics to achieve the same benzene emission reductions as the proposed benzene content standard. As we discussed earlier, a major

consequence of removing a significant amount of the aromatics in gasoline is the need to replace the large loss in octane value. As a result, it is much more costly for refiners to reduce benzene emissions through aromatics control than through benzene control. We have not evaluated the cost of aromatics control recently, but when we did so for the RFG rule in the early 1990s, the cost was about 5 times more to achieve the same benzene reduction through aromatics control than through benzene control.<sup>238</sup> In recent years a variety of factors have reduced the use of MTBE as an octane booster; we expect that this trend will raise the relative cost of aromatics control even further.

In addition, aromatics reductions would have to be offset with other high-octane compounds, such as ethanol and ethers (e.g., ETBE and MTBE). Increasing other high-octane compounds tends to significantly increase other air toxics emissions (like acetaldehyde or formaldehyde). Consequently, the benzene emission reductions would be substantially offset by increases in other toxics. For these reasons, aromatics control has historically only been cost-effective for refiners when other requirements are placed on them, such as state or federal oxygenate mandates that also serve to boost octane value. For this same reason, we anticipate that further aromatics reductions will occur as a result of the near doubling of the use of ethanol in gasoline due to the renewable fuels standard contained in the EPA Act. Given a mandate for ethanol use and the cost associated with it, refiners can reduce their refining costs by further reducing aromatics.

Aromatics control would also affect other recent fuel control programs. For example, many refineries depend on the reforming process that produces aromatics to also supply much or all of the hydrogen needed for gasoline and diesel desulfurization processes. Reducing aromatics thus would indirectly reduce hydrogen supply, which would then likely require refiners to either purchase hydrogen or build hydrogen production facilities.

At the same time, although it would not be constrained, we do not believe that in the absence of aromatics control, refiners would be likely to increase gasoline aromatics content in the future. Aromatics are a relatively valuable gasoline component, and refiners are generally careful not to make changes

that would increase aromatics content more than is needed for octane purposes. In addition, as mentioned previously, the Renewable Fuel Standard that will be promulgated under the new Energy Policy Act will, by boosting ethanol use, increase the octane of the gasoline pool. We expect that this, in turn, will prompt refiners to reduce their use of aromatics for octane enhancement. Also, higher gasoline prices recently have reduced the demand for premium grade gasoline, which generally has higher aromatics levels. To the extent that this trend continues, we expect that it will tend to further reduce the levels of aromatics in the overall gasoline pool.

For all of these reasons, we believe that reducing benzene emissions through a benzene content standard would be much superior to doing so through an aromatics content standard. However, there may be other benefits associated with aromatics control in addition to benzene emissions. EPA is working to improve its understanding of the effect of mobile source emissions on ambient PM, especially secondary PM. For example, there is limited data that suggest that aromatic compounds (toluene, xylene, and benzene) react photochemically in the atmosphere to form secondary particulate matter (in the form of secondary organic aerosol (SOA)), although our current modeling tools do not fully reflect this. One caveat regarding this work is that a large number of gaseous hydrocarbons emitted into the atmosphere having the potential to form SOA have not yet been studied in this way. It is possible that hydrocarbons which have not yet been studied produce some of the SOA species which are being used as tracers for other gaseous hydrocarbons. This means that the current interpretation of the available studies may over-estimate the amount of SOA formation in the atmosphere. We seek comment on the potential benefits, costs, and other implications of aromatics control for consideration in the future.

#### c. Benzene Emission Standard

In addition to the benzene or aromatics fuel content standards discussed above, we have considered reducing benzene emissions through a benzene emission standard. The primary argument for such an approach is that it would focus on the environmental outcome we are interested in “ reduced benzene emissions “ while providing refiners some flexibility in how that goal was met.

In order to fully discuss this option, it is useful to clarify how such a

<sup>238</sup> Final Regulatory Impact Analysis for Reformulated Gasoline, AEP4420-R-93-017, December 1993.

<sup>237</sup> Based on the Complex Model.

benzene emission standard would be implemented. Instead of directly measuring gasoline content to determine compliance, as would be the case with a benzene (or aromatics) content standard, compliance would be determined using EPA's Complex Model or an updated version of it. Several parameters of a refiner's gasoline (including benzene and aromatics content) would be used as inputs into the model. Based on these and other assumed properties of the gasoline, the model would estimate the expected level of benzene emissions from that gasoline formulation.

As compared to a program based on the direct measurement of benzene content in gasoline, we believe that one relying on modeled estimates of benzene emissions would be difficult to set today. As with the toxics performance standard we considered above, gasoline parameters and their effects on MSAT emissions will be changing in the future due to the Energy Policy Act, changes in crude oil supplies, and perhaps other unknown factors. In addition, the effects of fuel changes on MSAT emissions from the new Tier 2 vehicles now entering the light-duty fleet are poorly represented in our modeling. Thus, it would be difficult to accurately predict future gasoline parameters and set an appropriate benzene emission standard that ensured the greatest emission reduction achievable, especially a standard that could remain stable for a number of years. As benzene content has been and is sure to remain by far the most important fuel parameter in estimating benzene emissions, a benzene content standard provides greater assurance of actual benzene emission reduction in-use.

Even if it were practical to set a long-term benzene emission standard, such an approach would be problematic for other reasons. As we have stated, the only significant option for reducing benzene emissions other than reducing benzene content is reducing aromatics content. Since we do not believe that requiring control of gasoline aromatics is appropriate at this time, a benzene emission standard would not result in appreciably different emission reductions than would result from a benzene content standard. However, given that aromatics control is a less effective means of reducing benzene emissions and has a more disruptive effect on octane values (as just discussed), requiring more aromatics control could dramatically increase the cost of compliance. Finally, although a benzene emission standard might be assumed to offer additional flexibility to

refiners, we do not believe that such flexibility would actually exist. Faced with a dependence on aromatics to meet octane requirements, and in some cases to provide hydrogen supply for desulfurization of gasoline and diesel fuel, we believe that refiners would choose benzene content reduction over aromatics reductions even when they theoretically had the choice to do otherwise. Experience with the MSAT1 emissions performance standard has confirmed this. However, as mentioned previously, gasoline parameters do change, octane requirements can decrease, ethanol will supply additional octane, and therefore aromatic reductions may occur in the future regardless. Were this to occur, a benzene emission standard set today could allow benzene content to increase in the future. Given the additional complexity and uncertainty associated with a benzene emission standard, we have therefore elected to propose a benzene content standard exclusively. We request comment on this approach and on a benzene emission standard.

### 3. How Did We Select the Level of the Proposed Gasoline Benzene Content Standard?

#### a. Current Gasoline Benzene Levels

In selecting an appropriate level for the proposed benzene content standard, we began by evaluating the current status of the industry regarding gasoline benzene. Benzene content varies widely among refineries, depending on such factors as refinery configuration and proximity to benzene markets. The national average benzene level was 1.6 vol% in 1990. Due to the 0.95 vol% requirement of the 1995 RFG program, the introduction of gasoline oxygenate requirements, and other factors, benzene levels have since declined. By 2003, RFG averaged 0.62 vol% benzene. (See section V.D.1 above.)

Benzene levels have also declined for CG over the same period, to an average of 1.14 vol%. This is in part because when faced with investing in new processes to comply with the RFG benzene standard, some refiners found it economical to install more benzene extraction capacity than was needed to meet the standard. As a result, in many cases, these refiners have also controlled benzene from CG.

#### b. The Need for an Average Benzene Standard

Even before considering the level of the benzene content standard, we first needed to consider the standard's potential form. A standard for this purpose could be expressed as a per-

gallon benzene limit, which would ensure that no gasoline exceeded a specified benzene level. In contrast, a benzene content standard could be expressed as a flexible average level, allowing some of the existing variability in current benzene levels to remain while reducing overall benzene levels. For several reasons, it became clear that an average standard was the most appropriate for this program.

As mentioned above, there is a great diversity in the benzene content of gasoline currently produced at refineries across the country. In 2003, the annual average benzene content of refineries ranged nationally from under 0.5 vol% to above 3.5 vol%. This variation among refineries is also reflected in large regional differences in average gasoline benzene content, as illustrated below (Tables VII.C-2 and VII.F-1).

In addition to average benzene levels varying widely across refineries and regions, per-gallon benzene levels for individual batches produced by a refinery also vary dramatically depending on the crude oil supply and the refinery streams used to produce a particular batch. This variation occurs as a result of a wide range of day-to-day decisions necessary in producing marketable gasoline within a refinery on a continuous basis. We reviewed actual batch data for a typical refinery producing both RFG and CG with an average benzene content of 1.6 vol% for all its gasoline, and batch benzene levels ranged from under 0.1 to 3.0 vol% for CG. The range for RFG is typically narrower due to the existing 1.3 vol% per gallon cap, but still shows significant batch to batch fluctuations. Batches that refiners produce with benzene higher than 1.3 vol% are marketed as CG.

We considered controlling benzene emissions with a fixed, per-gallon benzene content standard to be met at all refineries. By capping gasoline benzene content in this way, the program would ensure that all gasoline nationwide would have benzene levels below the selected upper limit. However, as we developed the rule, it became clear that with the large variation in benzene levels among refineries and regions (reflecting the variation in the economics of reducing benzene), a per-gallon standard would have to be so high (to account for maximum, legitimate potential variability) as to leave most refineries with little or no need to reduce benzene. Moreover, the burden of the national control program would fall almost entirely on the refineries where the challenges of control would be greatest, and where the most lead time would be

required for compliance. With many refineries able to comply without making any changes, we do not believe such a program would represent the greatest reduction feasible, as the Clean Air Act requires.

The typical fluctuations in benzene content among batches at individual refineries, as discussed above, also indicate the need for refiners to have a degree of flexibility in producing gasoline, as would be provided by an average benzene standard. Restrictions on day-to-day fluctuations would not significantly affect average benzene levels, but would certainly increase costs as refiners invested in avoiding occasionally higher benzene batches. We believe that allowing refiners to average batches with fluctuating benzene over a year's time, as we propose, would result in a more cost-effective program.

Most importantly, it is clear that with the incorporation of a carefully-designed benzene credit averaging, banking, and trading (ABT) program, a more stringent benzene standard would be feasible, and implementation could occur earlier. Thus, we are proposing a 0.62 vol% annual average standard to begin in 2011. Under the proposed ABT program, refiners could generate early credits by making early reduction efforts prior to 2011. Refiners would have an incentive to do so, because the credits generated could be used to postpone more expensive final investments in benzene control technology. In this way, the ABT program would allow the economic burden of the benzene standard to be more efficiently distributed among refiners and over time. The proposed ABT program would result in lower benzene levels in all areas of the country compared to today's levels, as described in more detail below in section VII.D.

#### c. Potential Levels for the Average Benzene Standard

We evaluated a range of potential standards on a national refinery annual average basis from 0.52 to 0.95 vol% benzene.<sup>239</sup> Our refinery-by-refinery model incorporates data on individual refineries whenever possible and estimates the likely technological approaches that refiners would choose for each refinery to comply with each potential standard at the least cost. The model chooses among several technological options that are the most common and effective methods available to refiners to reduce gasoline

benzene content. (Section VII.F below and Chapter 6 of the RIA have more detailed discussions of benzene reduction technologies).

All of the methods that we considered focus on reducing benzene content in the reformat stream, which is the product of the reformer unit. The role of the reformer unit is to increase gasoline octane, which it does by generating aromatic compounds from simpler hydrocarbons. Benzene is one of the aromatic compounds produced by the reformer. Reformate accounts for 30–40% of gasoline volume and can contain as much as 12% benzene. As a result, reformate contributes the majority of the total benzene content of gasoline. For these reasons, treatment of reformate is usually the most effective and economical means of reducing benzene content. Several proven and commercially available technologies exist for reducing benzene creation in the reformer and removing it from the reformat product.

The least stringent standard we evaluated, a national average of 0.95 vol% benzene, would not require any changes at most refineries. For the refineries where action would be needed, we project that most could be brought into compliance by reducing creation of benzene in the reformer using the simplest and least costly of the technology options evaluated. We do not believe that a standard at this level would meet the statutory requirements of section 202(l) of the Clean Air Act to achieve the greatest reductions achievable considering cost and other factors since, as discussed below, greater reductions are feasible at reasonable cost, and without adverse energy or safety implications.

As the most stringent case, we evaluated a national average benzene content standard of 0.52 vol%. Our analysis indicates that a standard at this level would require all refiners to invest in the most effective technologies used today that remove the benzene from their reformat product streams (benzene saturation and benzene extraction, as discussed below). If the ABT program were fully utilized (all credits generated were used), we believe all refiners might comply with this average standard. Because of the almost universal need for refineries to use the most expensive reformat-based benzene control technologies, we believe a standard of 0.52 vol% would be very challenging economically for many refineries, and we believe that such a standard would not be achievable taking costs into consideration, as we are required to do under section 202(l). In addition, if, as

appears likely, “perfect” credit trading did not occur, some refiners would have to use additional, more extreme approaches that would be even more costly and would require more difficult compromises in the operation of the refineries. (We discuss these technological and operational approaches to benzene reduction in more detail in section VII.F below and in Chapter 6 of the RIA.)

In 2003, the average benzene level in RFG was 0.62 vol%.<sup>240</sup> We believe an annual average benzene standard of 0.62 vol% applied to all gasoline (both CG and RFG) would be feasible considering cost and other factors. Furthermore, implementing an average benzene standard of 0.62 vol% would achieve several other important program goals. At this level, the same benzene standard could be applied to both RFG and CG nationwide, and our analysis shows that the RFG benzene reductions already achieved by the industry to date would not be lost. We expect that refiners currently producing RFG with benzene levels below 0.62 vol% would continue to be committed to producing low-benzene gasoline based on prior investment in benzene extraction equipment or ABT credit incentives. Additionally, as discussed below in VII.C.5, a gasoline benzene standard of 0.62 vol% would achieve sufficient mobile source air toxic reductions allowing this program to supersede the additional MSAT requirements under EPCRA. Finally, an average benzene standard applied to both CG and RFG, would allow for a uniform nationwide ABT program providing additional flexibility and reduced compliance costs to refiners, resulting in the greatest achievable reductions within the meaning of section 202(l).

At a national average standard of 0.62 vol%, we estimate that a number of refiners would produce gasoline with significantly lower fuel benzene levels, creating enough benzene credits to allow refiners in less economically favorable positions to purchase these credits on an on-going basis and use them for compliance purposes. We project that further reductions would occur not only in CG, but also in RFG, despite the fact that RFG is already averaging 0.62 vol%. As discussed in section IX below and in Chapter 9 of the RIA, as the stringency is pushed below 0.62 vol%, the overall program costs would begin to rise more steeply. This is because in meeting a lower average standard, there would be fewer

<sup>239</sup> For this evaluation we used both refinery linear programming (LP) models and a refinery-by-refinery model developed specifically for this rule.

<sup>240</sup> Volume-weighted average benzene level based on January 1, 2003 to December 31, 2004 RFG batch reports.

refineries able to comply at low cost, resulting in fewer credits being generated. This in turn would require more investment among refiners with higher costs of compliance.

We also considered a program that would apply separate benzene content standards to RFG and CG. In the context of any nationwide ABT program that allowed trading across both RFG and CG, separate standards for these two gasoline pools would not be fundamentally different from the proposed unified standard. The only impact would be to somewhat change which refiners generated credits and which used credits, and to what degree. For separate RFG and CG standards to have a meaningful impact in comparison to today's proposed program, separate trading programs for each of the two gasoline pools would be required. Our modeling shows that without the credits generated by RFG producers in a nationwide trading program, it would not be possible to set as stringent a standard for CG. The higher-benzene refineries that would most need credits to meet a stringent average standard are a subset of refineries that produce CG. As a result, in a program with separate RFG and CG pools, we would expect to set a slightly more stringent standard for RFG alone, but we would need to set a substantially relaxed standard for CG. The net result would be, at best, the same nationwide average benzene reductions in the RFG and CG pools that would be expected under a unified standard. However, there would be a clear risk that the reduced generation of credits by lower-cost refineries would lead to either a significant increase in the cost of the program (because higher-cost refineries would need to make refinery changes earlier) or the potential for fewer reductions through the process of setting the levels for the separate CG and RFG standards. Conversely, with a

unified standard and nationwide ABT, we believe that the program would achieve the maximum economical reduction in all areas and greater overall benzene reduction over the CG and RFG pools.

In addition, we considered a somewhat less stringent national average standard than the proposed 0.62 vol% (e.g., 0.65 or 0.70 vol%). Such standards would still achieve significant benzene emission reductions. However, we are concerned that a less stringent standard would not satisfy our statutory obligation for the most stringent standard feasible considering cost and other factors. Furthermore, such standards would not allow us to accomplish several important programmatic objectives. Given that the average benzene content of RFG in 2003 was already 0.62 vol%, such higher standards would not provide the certainty that the air toxics performance of RFG would decline in the future. This would then trigger the provisions in the 2005 EPAct to adjust the MSAT1 baseline for RFG. The only way of avoiding this situation would be to maintain separate standards for RFG and CG where the RFG standard was still more stringent than 0.62 vol% and credits could not be used from CG to comply. As discussed above, having separate standards with separate ABT programs raises additional cost and feasibility issues.

For all of the above reasons, we believe that a refinery annual average benzene content standard of 0.62 vol% applying to all gasoline nationwide (excluding California), in conjunction with an appropriately-designed ABT system, would maximize benzene emission reductions considering cost and other factors.

Section 202(l)(2) also requires that we consider lead time in determining the greatest reductions achievable. We are proposing that the standard of 0.62

vol% become effective on January 1, 2011. Because the final rule will be completed in early 2007, this would allow about 4 years for refiners to plan and execute the necessary capital projects and operational changes needed to meet the program requirements. We discuss our assessment of necessary lead time in section VII.F below. We believe that this proposed level for the standard, the proposed ABT program, and the proposed implementation date together meet the statutory requirement that the program results in the greatest emission reduction achievable considering costs and other factors.

We encourage comment on our selection of this level for the standard, especially with data and analysis that support the comments.

d. Comparison of Other Benzene Regulatory Programs

In addition to the benzene content standard of the RFG program, California and several countries have regulatory limits on the benzene content of gasoline. Table VII.C-1 shows the basic provisions of each of these programs.

Canada has limits similar to those covering U.S. RFG. In Canada, producers may either comply with a 1.0 vol% flat limit or an averaging standard of 0.95 vol%, with a per-gallon cap of 1.5 vol%. The European Union regulates fuel to the same level in all its member countries, currently a per-gallon cap of 1.0 vol%. Japan has the same limit as the E.U., while South Korea will be moving from a cap of 1.5 to 1.0 vol% in 2006.

California is the only state that has implemented a benzene standard, and it is similar to the standard we are proposing today. California's average standard is 0.7 vol%, with a per-gallon cap of 1.1 vol%. Together, these standards result in an average 0.62 vol% in-use gasoline benzene level.

TABLE VII.C-1.—OTHER GASOLINE BENZENE CONTROL PROGRAMS

	Federal RFG	California phase 3 RFG	Canada	South Korea	Japan	European Union
Average Std (vol%) .....	0.95 <sup>a</sup>	0.7	0.95	.....	.....	.....
Per-gallon Cap (vol%) .....	1.3	1.1	1.5	1.5 <sup>b</sup>	1.0	1.0

<sup>a</sup> Producers may also comply with a per-gallon cap of 1.0.  
<sup>b</sup> Limit to be lowered to 1.0 in 2006.

4. How Do We Address Variations in Refinery Benzene Levels?

a. Overall Reduction in Benzene Level and Variation

As explained above, there is currently a wide variation in gasoline benzene

levels across the country. According to summer 2003 batch data (proposed baseline<sup>241</sup>), average benzene content

<sup>241</sup> For the purpose of our analyses, we selected 2003 to represent current (baseline) conditions because it reflected the most recent batch data available. The refinery-by-refinery model used to

ranged from 0.41 to 3.81 vol%, including both RFG and CG. The current

predict refinery behavior (discussed later in section IX) is based on inputs from the linear programming (LP) model, which is set up to only model the summer season. As a result, we have used summer 2003 as our baseline period.

variation in benzene levels is primarily attributable to differences in crude oil quality, different refinery configurations, and differences in refinery operations. Our analysis of the proposed program, summarized below, concludes that average benzene levels would be reduced in all areas of the country (PADDs<sup>242</sup>) and variation among refineries would also be reduced. We believe that under the proposed rule, virtually all refineries would reduce their benzene levels and that no

refineries would increase their benzene levels. Upon implementation of the proposed 0.62 vol% benzene standard in 2011, we believe that some refiners would reduce benzene levels to below the standard while others would reduce benzene levels but would need to rely partially or largely on credits generated and traded under the proposed ABT program, as described below. Refiners' compliance strategies would ultimately be driven by economics. For many it would be economical to reduce gasoline benzene levels to 0.62 vol% or below.

For others it would be economical to make some reduction in gasoline benzene levels and rely partially upon credits. For some refineries already below the standard, no benzene reduction efforts would be necessary. For the limited number of remaining technologically-challenged refineries it would be most economical to rely wholly upon credits. Regardless of the compliance strategies selected, under the proposed program, benzene levels and variation would be reduced nationwide.

TABLE VII.C-2.—BENZENE LEVELS IN GASOLINE PRODUCED CURRENTLY AND UNDER THE PROPOSED PROGRAM

	Number of refineries by gasoline benzene level (vol%)						Benzene level (vol%) *			
	<0.5	0.5-1.0	1.0-1.5	1.5-2.0	2.0-2.5	>=2.5	Min	Max	Range **	Avg ***
<b>Starting Gasoline Benzene Levels***</b>										
PADD 1 .....	4	3	3	0	2	0	0.41	2.19	1.77	0.62
PADD 2 .....	0	5	8	11	1	1	0.60	2.85	2.25	1.32
PADD 3 .....	4	18	10	7	0	2	0.41	3.10	2.69	0.86
PADD 4 .....	0	1	4	6	3	2	0.60	3.56	2.96	1.60
PADD 5**** .....	0	0	1	3	2	2	1.36	3.81	2.44	2.06
Total .....	8	27	26	27	8	7	0.41	3.81	3.39	0.97
<b>Benzene Levels After Program Implementation</b>										
PADD 1 .....	4	5	1	2	0	0	0.41	1.96	1.54	0.51
PADD 2 .....	1	22	1	2	0	0	0.49	1.95	1.46	0.73
PADD 3 .....	10	27	3	0	1	0	0.36	2.07	1.71	0.55
PADD 4 .....	0	8	7	1	0	0	0.53	1.94	1.40	0.95
PADD 5**** .....	0	4	2	2	0	0	0.54	1.84	1.30	1.04
Total .....	15	66	14	7	1	0	0.36	2.07	1.71	0.62

\* Starting benzene levels based on summer 2003 batch data.  
 \*\* Range in benzene level (MIN-MAX).  
 \*\*\* Average volume-weighted benzene level.  
 \*\*\*\* PADD 5 excluding California.

As shown in Table VII.C-2, average benzene levels would be reduced by 36%, from 0.97 vol% (baseline) to 0.62 vol% once the program is fully implemented. Variation in benzene level, measured in terms of range, would be reduced by 50% (from 3.39 vol% to 1.71 vol%). In addition the areas with the highest starting benzene levels and variation (PADDs 2, 3, 4 and 5) would experience the greatest reductions.

In conclusion, we project that under the proposed program all areas of the country would see reductions in average benzene level and variation among refineries would also be reduced. Refiners would have several motivations for making the benzene reductions projected by our analysis. First, reducing actual benzene levels could be the most economically-favorable compliance strategy. Secondly, reducing benzene levels would help reduce or

eliminate the uncertainty associated with relying on credits. Finally, reducing benzene levels could generate credits that would be valuable to the refining industry.

b. Consideration of an Upper Limit Standard

We believe that the proposed program would provide significant benefits in all areas of the nation. Nevertheless, we recognize that some commenters are likely to be concerned that under a flexible ABT program it is possible that some refiners could maintain their current benzene levels or even increase them and comply through the use of credits. If such a refinery dominated a particular market, then even though nationally there would be significant benzene reductions, they might not occur in that market. While our analysis does not lead us to believe that such an outcome would happen, we have

nevertheless considered whether an upper limit on benzene (in addition to the average standard) would be valuable to prevent that outcome from happening.<sup>243</sup> We considered two different forms of an upper benzene limit to complement the average standard: a per-gallon cap standard and a maximum average standard.

i. Per-Gallon Cap Standard

A cap would require that each gallon (or batch) of gasoline produced or imported not contain more than a specified concentration of benzene. Such a standard would force those refineries with the highest benzene levels to make physical changes to their gasoline instead of having the option of relying exclusively on credits. In addition to formally limiting the maximum benzene content sold anywhere in the country, such a cap would also be straightforward to enforce

<sup>242</sup> The Department of Energy divides the United States into five Petroleum Administration for

Defense Districts, or PADDs. The states included in each PADD are defined at 40 CFR 80.41.

<sup>243</sup> Upper limits on benzene are a part of comparable programs in California and in other countries.

at any point in the distribution system. Note that we are proposing that the existing per-gallon cap of 1.3 vol% benzene would remain in effect for RFG under this rule. EPA invites comment on whether the RFG benzene cap should be retained.

The primary disadvantage of adding a rigid cap is that it would not allow for occasional, short-term fluctuations in benzene content. Refiners are faced with a range of unexpected or planned circumstances that could cause temporary spikes in benzene content, including equipment malfunctions and periodic maintenance. Although the 1.3 vol% cap would remain for RFG, to apply a cap in this range to CG would eliminate a necessary market for higher benzene batches.<sup>244</sup> With no ability to market the gasoline, the refiner would be forced to suspend gasoline production. This could in turn force the shutdown of the entire refinery, sacrificing supply of all products. To attempt to avoid this situation, refiners would need to invest more heavily in benzene control than needed to meet the average standard, simply to provide back-up control to protect against short-term fluctuations. For some higher-benzene refineries, a cap could make complying with the program prohibitively expensive.

Consequently, we concluded that if we were to impose a per-gallon cap, it would have to be high enough to allow most refineries to continue to operate even in such upset situations (in order to account for legitimate maximum potential daily variability), thereby providing little overall benefit.<sup>245</sup> Alternatively, we would have to allow exceptions to the per-gallon cap for such upset situations, which would be burdensome to implement and also result in little overall benefit.

If refineries with higher-benzene refineries need to invest in greater benzene control in order to protect against unpredictable upsets, their costs would be even higher relative to those of lower-benzene refineries. As in the case of a program with no ABT at all, the statutory requirement to balance the degree of feasible emission reduction with cost (and other factors) would have the counterproductive effect of requiring a less stringent overall program.

<sup>244</sup> As explained in section VII.C.5 below, CG provides a limited safety valve for occasional batches of high-benzene RFG due to the Anti-dumping provisions.

<sup>245</sup> In California and other countries with benzene control programs, the refining industry tends to be more homogeneous than in the U.S. as a whole and face different market situations, resulting in different considerations regarding upper limits.

At the same time, the per-gallon cap would appear to provide no overall additional reduction in benzene levels. Despite the increased costs, particularly for higher-benzene refineries, our analysis indicates that little additional emission reduction would result (primarily because the higher-benzene refineries represent a relatively small fraction of nationwide gasoline production). Instead, as discussed below, emission reductions are expected to simply shift from one region of the country to another, with no change in the overall emission reductions. Because of this, and due to the potential deleterious cost impacts, we are not proposing a per-gallon cap benzene standard.

#### ii. Maximum Average Standard

Another means of ensuring some reduction by those refineries with the highest benzene concentrations would be to impose a maximum average standard. An annual maximum average standard for each refinery would limit the average benzene content of its actual production over the course of the year, regardless of the extent to which credits may have been used for compliance. While slightly less restrictive than a per-gallon cap standard in that some shorter-term fluctuations in benzene levels could occur, a maximum average standard would still limit the flexibility otherwise available through the ABT program. Our modeling shows that a number of refineries would need to invest substantially more to ensure compliance with both the average and maximum average standards. With the addition of a maximum average standard, we expect emission reductions to simply shift from one region of the country to another with no net change in overall emission reductions. For example, when analyzing a 1.3 vol% maximum average standard, benzene levels were lowered in two PADDs and raised in three PADDs compared to our proposed program yet the overall emission reductions remained the same.<sup>246</sup> Since we believe that a maximum average standard would increase costs but not achieve any greater emission reduction, we are not proposing such a standard.

We believe that the proposed ABT program, in combination with the proposed 0.62 vol% benzene standard without a cap or maximum average limit, would result in the maximum feasible reduction in benzene emissions, considering costs, energy, and safety issues. The proposed ABT program would provide refineries with compliance flexibility while ensuring that the

<sup>246</sup> This program comparison is discussed further in Chapter 9 of the RIA (Table 9.6–7).

national program achieves significant overall benzene emission reductions.

We invite comment on our conclusions about having an upper limit in addition to an average standard.

#### 5. How Would the Proposed Program Meet or Exceed Related Statutory and Regulatory Requirements?

Three fuels programs (RFG, Anti-dumping and MSAT1) currently contain direct controls on the toxics performance of gasoline.<sup>247</sup> Based on our analyses of the proposed program, including the proposed ABT program, we expect that meeting the proposed fuel benzene content standard combined with other fuel controls would also lead to compliance with the toxics requirements of all these programs.

The RFG program, implemented in 1995, contains a fuel benzene standard that requires a refinery's or importer's RFG to average no greater than 0.95 vol% benzene annually.<sup>248</sup> In addition, RFG has a per-gallon benzene cap of 1.3 vol%. Each refinery's or importer's RFG must also achieve at least a 21.5% annual average reduction in total toxics emissions compared to 1990 baseline gasoline.<sup>249</sup> The Anti-dumping regulations require that a refinery's or importer's CG produce no more exhaust toxics emissions on an annual average basis than its 1990 gasoline.<sup>250</sup> This program keeps refineries from shifting fuel components responsible for elevated toxic emissions into CG as a way to comply with the RFG standards. Section V.D.1 above describes these programs in more detail.

The MSAT1 program, implemented in 2002, was overlaid on the RFG and Anti-dumping programs.<sup>251</sup> As explained in section V.D above, it was not designed to further reduce MSAT emissions, but to lock in overcompliance on toxics performance that was being achieved in RFG and CG under the RFG and Anti-dumping programs. The MSAT1 rule requires the annual average toxics performance of a refinery's or importer's gasoline to be at least as clean as the average performance of its gasoline during the three-year baseline period 1998–

<sup>247</sup> Other gasoline fuel controls, such as sulfur, RVP or VOC performance standards, indirectly control toxics performance by reducing overall emissions of VOCs.

<sup>248</sup> 40 CFR 80 Subpart D. Refiners also have the option of meeting a per gallon limit of 1.0 vol%.

<sup>249</sup> Emissions determined using the Complex Model, as defined in 40 CFR 80.45.

<sup>250</sup> CFR 80 Subpart E, emissions determined using the Complex Model.

<sup>251</sup> 40 CFR 80 Subpart J.

2000.<sup>252</sup> Compliance with MSAT1 is determined separately for each refinery's or importer's RFG and CG.

Today's proposed 0.62 vol% benzene content standard would apply to all of a refinery's or importer's gasoline "that is, the total of its RFG and CG production or imports. This level of benzene control would far surpass the RFG standard of 0.95 vol%, and would put in place a benzene content standard for CG for the first time.<sup>253</sup> As described further in Chapter 6 of the RIA, we analyzed the expected overall toxics performance under today's proposed program of benzene and vehicle standards using currently-available models and compared it to toxics performance under the pre-existing standards.<sup>254</sup> When RFG and CG toxics emissions are evaluated at this new level of benzene control, it is clear that the benzene standard proposed today would result in the MSAT1 toxics emissions performance requirements being surpassed (i.e., bettered) not only on average nationwide, but for every PADD.<sup>255</sup>

To address compliance with statutory requirements currently in effect through the RFG and Anti-dumping programs, we carried out a refinery-by-refinery analysis of toxics emissions performance using the Complex Model (the same model used for determining compliance with these programs). We used 2003 exhaust toxics performance for CG and 2003 total toxics performance for RFG as benchmarks, which are at least as stringent as the relevant toxics performance baselines. We applied changes to each refiner's fuel parameters for today's proposed standards and the gasoline sulfur standard phased in this year (30 ppm average, 80 ppm max). The results indicate that all refineries maintained or reduced their emissions of toxics over 2003. We expect large reductions in sulfur for almost all refineries under the gasoline sulfur program, and large reductions in CG benzene levels along with modest reductions in RFG benzene levels. We do not expect backsliding in sulfur levels by the few refiners previously below 30 ppm because they had been producing ultra-low sulfur gasoline for reasons related to refinery configuration. Furthermore, because of

its petrochemical value and the credit market, we do not expect any refiners to increase benzene content in their gasoline.

In addition, we expect significant changes in oxygenate blending over the next several years, but these are very difficult to predict on a refinery-by-refinery basis. Regardless of how individual refineries choose to blend oxygenates in the future, we believe their gasoline will continue to comply with baseline requirements. This is because all RFG is currently overcomplying with the statutory requirement of 21.5% annual average toxics reductions by a significant margin. Similarly, most CG is overcomplying with its 1990 baselines by a significant margin. Furthermore, we believe most refiners currently blending oxygenates will continue to do so at the same or greater level into the future.

EPA is thus proposing that upon full implementation in 2011 the regulatory provisions for the benzene control program would become the single regulatory mechanism used to implement these RFG and Anti-dumping annual average toxics requirements, replacing the current RFG and Anti-dumping annual average provisions. However, the 1.3 vol% maximum benzene cap would remain in place for RFG under 40 CFR 80.41; we are requesting comment on the need to retain this requirement for RFG. The proposed benzene control program would also replace the MSAT1 requirements.

Section 1504(b) of the Energy Policy Act of 2005 (EPA Act) requires that the MSAT1 toxics emissions baselines for RFG be adjusted to reflect 2001–2002 fuel qualities, which would make them slightly more stringent than the 1998–2000 baselines originally used in the MSAT1 program. However, as provided for in the Act, this action becomes unnecessary and can be avoided if today's proposed program achieves greater overall reductions of toxics emissions from RFG (i.e., PADDs 1 and 3) than would be achieved by this baseline year adjustment. Therefore, in addition to comparing the proposed standard to the current MSAT1 program, we also compared it to the

program as the standards would be modified by the EPA Act.

We performed an analysis of aggregate toxics emissions for the relevant baseline periods as well as for future years with and without the proposed program. This analysis was carried out using MOBILE6.2 because that model accounts for changes in the vehicle fleet, which is important when modeling future years. Results are shown in Table VII.C–3. Since this modeling approach was intended to compare emissions from different fuels and fleet year mixes, the emissions figures generated here are different from those used for gasoline compliance determination.

The first row shows mg/mi air toxics emissions in 2002 under the MSAT1 refinery-specific baseline requirements. The second row shows how these would change by updating the RFG baselines to 2001–02 as specified in EPA Act. Since significant changes are expected in the gasoline pool between 2002 and the proposed implementation time of the fuel standard, such as gasoline sulfur reductions and oxygenate changes, we decided to model a "future baseline" to allow comparison with the proposed standard at the time it would become effective in 2011. As a result, the third row shows the projected mg/mi emissions in 2011 under the EPA Act baseline adjustments, but without today's proposed program. The large reductions in air toxics emissions between the EPA Act baseline and this 2011 baseline are primarily due to nationwide reduction in gasoline sulfur content to 30 ppm average and significant phase-in of Tier 2 vehicles into the national fleet.

An important comparison is made between rows three and four, where the estimated toxics emissions under the proposed fuel standard only are compared to the projected emissions without the proposed standard. The fourth row shows small reductions for RFG and more significant reductions for CG with the introduction of the proposed benzene standard in 2011. We also evaluated the effects of the vehicle standard also proposed today on toxics emissions at two points in time, shown in the last two rows of the table.

<sup>252</sup> Emissions determined using the Complex Model, as defined in 40 CFR 80.45.

<sup>253</sup> Proposed program retains the 1.3 vol% maximum benzene cap for RFG required by 40 CFR 80.41.

<sup>254</sup> As discussed previously, the existing models contain limited data on the impacts of fuel changes on 2004 and later technology vehicles, making such

projections difficult. However, we do not believe the conclusions would change for these reasons: (1) The fuel effect changes modeled here related to benzene, for which we expect data for new technology vehicles to show similar trends as those for older vehicles; (2) much of the projected change in future emissions are due to changes in vehicle technology, not fuel changes; and (3) for this analysis we need only look at the relative changes,

and given the magnitude of the projected effects we do not expect that the direction of the result would change even if significantly different values for absolute emissions were submitted.

<sup>255</sup> The analysis shows an even greater benefit in overall toxics reductions when the combined effect of the benzene standard and the vehicle standards are considered.

TABLE VII.C-3.—ESTIMATED ANNUAL AVERAGE TOTAL TOXICS PERFORMANCE OF LIGHT DUTY VEHICLES IN MG/MI UNDER CURRENT AND PROPOSED PROGRAMS <sup>a</sup>

Regulatory scenario	Fleet	RFG by PADD			CG by PADD				
	Year	I	II	III	I	II	III	IV	V
MSAT1 Baseline <sup>b</sup> (1998–2000) ...	2002	108	124	89	104	135	96	137	152
EPA Act Baseline <sup>b</sup> (RFG: 2001–2002) .....	2002	103	121	85	104	135	96	137	152
EPA Act Baseline, 2011 <sup>c</sup> .....	2011	67	79	51	62	79	54	77	96
Proposed program, 2011 <sup>c</sup> (Fuel standard only) .....	2011	66	78	50	59	74	51	71	85
Proposed program, 2011 <sup>c</sup> (Fuel + vehicle standards) .....	2011	63	76	47	55	72	47	67	81
Proposed program, 2025 <sup>c</sup> (Fuel + vehicle standards) .....	2025	39	46	30	35	44	31	42	50

<sup>a</sup> 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.

<sup>b</sup> 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.

<sup>c</sup> Future year scenarios include (in addition to the controls proposed today, where stated) effects of the Tier 2 vehicle and gasoline sulfur standards and vehicle fleet turnover with time, as well as rough estimates of the renewable fuels standard and the phase-out of ether blending.

Based on these analyses, we believe the fuel program proposed in this notice, as well as the combined fuel and vehicle program, would also achieve greater overall toxics reductions than would be achieved under the EPA Act were the RFG baseline period updated to 2001–2002.

In summary, today's proposed action for fuels would fulfill several statutory and regulatory goals related to control of gasoline mobile source air toxics emissions. The proposed program (in conjunction with the proposed vehicle standards) would meet our commitment in the MSAT1 rulemaking to consider further MSAT control. It would also result in air toxics emission reductions greater than required under all pre-existing gasoline toxics programs, as well as under the baseline adjustments specified by the Energy Policy Act. By designing this program to address these separate but related goals, we would be able to achieve a benefit in addition to the emissions reductions: A significant consolidation and simplification of regulation of gasoline MSATs.

As part of today's action, in addition to the streamlining of toxics requirements, we propose that the gasoline sulfur program become the sole regulatory mechanism used to implement gasoline NO<sub>x</sub> requirements. Gasoline producers are required to show reductions from their RFG relative to the 1990 Clean Air Act baseline gasoline NO<sub>x</sub> emissions, as determined using the Complex Model. Conventional gasoline must comply with Anti-dumping individual NO<sub>x</sub> baselines for each refinery, similar to the Anti-dumping toxics standards. A refinery-by-refinery NO<sub>x</sub> analysis parallel to that described above indicated that with the final

implementation of the gasoline sulfur program (January 1, 2006), all gasoline will continue to meet or exceed the NO<sub>x</sub> requirements of the RFG and Anti-dumping programs.

As discussed elsewhere in this preamble, we believe that today's proposed nationwide program would achieve significant reductions in gasoline-related benzene emissions. The program would also have the effect of preempting states from regulating gasoline benzene content. The program is proposed under Clean Air Act section 211(c), which includes preemption of state fuel programs in section 211(c)(4).<sup>256</sup> The existing RFG benzene program, also authorized under section 211(c)(1), preempts states in RFG areas from regulating benzene. Today's nationwide program expands this preemption to all states except California, which is exempt from this preemption.

#### *D. Description of the Proposed Averaging, Banking, and Trading (ABT) Program*

##### 1. Overview

As mentioned earlier, we are proposing a specially-designed ABT program to allow EPA to set a more stringent nationwide gasoline benzene standard than otherwise possible. The proposed ABT program would allow refiners and importers to use benzene credits generated or obtained under the provisions of the ABT program to comply with the 0.62 vol% refinery average standard in 2011 and indefinitely thereafter. Benzene credits could be generated by refineries that

<sup>256</sup> See discussion of statutory authority in section I.C. of this preamble.

make qualifying early baseline reductions prior to 2011 and by refineries and importers that overcomply with the 0.62 vol% standard in 2011 and beyond. All credits generated could be used internally towards company compliance ("averaged"), "banked" for future use, and/or transferred ("traded") to another refiner or importer.

The majority of the ABT credit provisions we are proposing are similar to those offered in the gasoline sulfur program, with a few exceptions. The major difference is that in the proposed program, credit use would not be restricted by an upper limit (discussed in VII.C.4.b above) and in fact would be encouraged by extended credit life and nationwide credit trading provisions. We are able to propose a flexible ABT program and a gradual phase-in of the 0.62 vol% benzene because there is no corresponding vehicle standard being proposed that is dependent on gasoline benzene content. A program with fewer restrictions would help ensure that the overall proposed benzene control program would result in the greatest achievable benzene reductions, considering cost and other factors.

Because of the wide variation in current benzene levels among refineries, we recognize that some refiners would be better situated than others, technologically and financially, to respond to the proposed benzene standard. As we discuss below, we believe that the credit trading provisions of the ABT program would be well suited to moderate the financial impacts that could otherwise occur with the proposed benzene control program.

However, in other air quality programs, we have used other trading

mechanisms to address the varying impacts of such programs on different regulated entities. For example, in EPA's Acid Rain program a limited number of "emissions allowances" are allocated among entities, which can then be banked and traded. We invite comment on this and other alternative credit approaches that might be appropriate to gasoline benzene control.

The following paragraphs provide more details on our proposed benzene ABT program. We encourage comments on the design elements we have proposed for the program. If you believe that alternative approaches would make the program more effective, please share your specific comments and recommendations with us.

## 2. Standard Credit Generation (2011 and Beyond)

We are proposing that standard benzene credits could be generated by any refinery or importer that overcomplies with the 0.62 vol% gasoline benzene standard on an annual volume-weighted basis in 2011 and beyond. For example, if in 2011 a refinery's annual average benzene level was 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. The credits would be expressed as gallons of benzene. Likewise, if in 2012 the same refinery produced the same amount of gasoline with the same benzene content they would earn the same amount of credits. The standard credit generation opportunities for overcomplying with the standard would continue indefinitely.

The refinery cost model discussed further in section IX.A, predicts which refineries would reduce benzene levels in an order of precedence based on cost until the 0.62 vol% refinery average standard is achieved. The model also predicts which refineries would overcomply with the standard in 2011 and beyond and in turn generate standard credits.<sup>257</sup> Credits would be generated by two main sources.

First, standard credits would be generated by refineries whose current gasoline benzene levels are already below the 0.62 vol% standard. According to the model, 19 refineries are predicted to maintain current gasoline benzene levels and overcomply

with the standard without making any additional process improvements. These refineries would generate approximately 42 million gallons of benzene credits per year without making any investment in technology. Additionally, the model predicts that 5 other refineries would reduce gasoline benzene levels even further below 0.62 vol% resulting in deeper overcompliance and an additional 6 million gallons of benzene credits per year.

Second, standard credits would be generated by refineries whose current gasoline benzene levels are above 0.62 vol% but are predicted by the model to overcomply with the standard based on existing refinery technology, access to capital markets, and/or proximity to the benzene chemical market. The model predicts that 34 refineries with gasoline benzene levels above 0.62 vol% would make process improvements to reduce benzene levels below the standard and in turn generate approximately 40 million gallons of benzene credits per year.

For the refineries which the model predicts to make process changes to overcomply with the standard, the incremental cost to overcomply is relatively small or even profitable in some cases of benzene extraction.<sup>258</sup> As expected, refineries with the lowest compliance costs would have the greatest incentive to overcomply based on the value of the credits to the refining industry.

## 3. Credit Use

We are proposing that refiners and importers could use benzene credits generated or obtained under the provisions of the ABT program to comply with the 0.62 vol% gasoline benzene standard in 2011 and indefinitely thereafter. Refineries and importers could use credits to comply on a one-for-one basis, applying each benzene gallon credit to offset the same volume of benzene produced 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 under-compliance 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.

We believe that individual refineries would rely differently upon credits, depending on their unique refinery situations. As mentioned earlier, the current range in gasoline refinery technologies and starting benzene levels would make it significantly more expensive for some refineries to comply with the standard based on actual reduced benzene levels than others. As such, some technologically-challenged refiners may choose to rely largely or entirely upon credits because it would be much more economical than making process improvements to reduce benzene levels. Other refiners may choose to make incremental process improvements to reduce refinery benzene levels and then rely partially on credits to fully comply. Still others may choose to reduce benzene levels to at or around 0.62 vol% and maintain an "emergency supply" of credits to address short-term spikes in benzene levels due to refinery malfunctions. Overall, the proposed credit trading program would encourage low-cost refineries to comply or overcomply with the standard while allowing high-cost refineries to rely upon credits to comply. This would reduce the total economic burden to the refining industry.

### a. Credit Trading Area

We are proposing a nationwide credit trading program with no geographic restrictions on trading. In other words, a refiner or importer could obtain benzene credits and use them towards compliance regardless of where the credits were generated. We believe that restricting credit trading could reduce refiners' incentive to generate credits and hinder trading essential to this program. As explained in Chapter 6 of the RIA, if PADD restrictions were placed on credit trading, there would be an imbalance between the supply and demand of credits.

In other fuel standard ABT programs (e.g., the highway diesel sulfur program), credit trading restrictions were necessary to ensure there was adequate low-sulfur fuel available in each geographic area to meet the corresponding vehicle standard. Since there is no vehicle emission standard being proposed that is dependent on gasoline benzene content, we do not believe there is a need for geographic trading restrictions. As mentioned above, we project that under the proposed ABT program, all areas of the country (i.e., all PADDs) would

<sup>257</sup> The refinery cost model assumes that all credits generated are used each year. To the extent that this does not occur, more refiners would have to invest in technology to comply, increasing the cost of the program.

<sup>258</sup> Despite the low costs of benzene extraction, without a benzene control standard refiners are reluctant to invest in capital-intensive processes such as extraction. This is because many other projects involving capital investments that they may be considering typically have a better or more certain payout (past price volatility in the benzene chemical market can discourage future investment). Thus, refiners tend to postpone capital projects such as extraction even if they may appear to be profitable today.

experience a large reduction in gasoline benzene levels as a result of the standard.

As discussed earlier, California gasoline would not be subject to the proposed benzene standards. However, California refiners that produce gasoline that is used outside of California would be able to generate credits on that gasoline (and use credits to achieve compliance on their non-California gasoline if necessary). Likewise, as proposed, refiners outside of California that produce gasoline that is used in California would not be allowed to use that gasoline as the basis for any credit generation, or compliance with the proposed benzene standard. However, we request comment on whether and how credits could be allowed to be generated on California gasoline benzene reductions and applied to the benzene compliance for non-California gasoline.

EPA seeks comment on the proposed nationwide trading provision, its effect on incentives for refiners to generate credits, and environmental impacts.

#### b. Credit Life

We are proposing limited credit life to enable proper enforcement of the program and to encourage trading of credits. Since the proposed standard is a refinery gate standard (i.e., enforced as the fuel leaves the refinery) with no enforceable downstream standard, it is critical that EPA be able to conduct enforcement at the refinery. A reasonable limitation on credit life would allow EPA to verify the validity of credits through record retention. Credit information must be independently verifiable such that, in the event of violations involving credits, the liable party is identifiable and accountable. EPA enforcement activities are limited by the five-year statute of limitations in the Clean Air Act. As a consequence, credit life greater than five years creates potentially serious enforcement difficulties. This is particularly important given the ongoing changes in business relationships, ownership, and merger practices that are characteristic of the refining industry. In addition, since credit trading plays an essential role in moderating program costs, it is important that refiners have an incentive to trade credits rather than hoard them. Instituting a credit expiration date would promote trading because refiners would be forced to "use it or lose it." In summary, we believe the proposed credit life provisions, described in more detail below, are limited enough to satisfy enforcement

and trading concerns yet sufficiently long to provide program flexibility.

We are proposing that standard credits generated in 2011 and beyond would have to be used within five years of the year in which they were generated. For example, credits generated based on 2011 gasoline production would have to be used towards compliance with the 2016 calendar year or earlier, otherwise they would expire. Standard credits traded to another party would still have to be used during the same five-year period because credit life is tied to the date of generation, not the date of transfer.

We are proposing that early credits generated prior to 2011 (discussed in the paragraphs to follow) would have a three-year credit life from the start of the program. In other words, early credits would have to be applied to the 2011, 2012, and/or 2013 compliance years or they would expire.

These proposed credit life provisions are similar to those finalized in the gasoline sulfur program, except the early credit life is three years instead of two. We are proposing a three-year early credit life because it corresponds with the number of early credits projected to be generated according to our refinery cost model.<sup>259</sup> Additionally, we predict that three years would be more than sufficient time for all early credits generated to be utilized. We believe that this certainty that all credits could be utilized would strengthen refiners' incentive to generate early credits and subsequently establish a more reliable credit market for trading.

In addition to the above-mentioned provisions, we are proposing that credit life may be extended by two years for early credits and/or standard credits generated by or traded to approved small refiners. We are offering this provision as a mechanism to encourage more credit trading to small refiners. Small refiners often face special technological challenges, so they would tend to have more of a need to rely on credits. At the same time, they often have fewer business affiliations than other refiners, so they could have difficulty obtaining credits. We believe this provision would be equally beneficial to refiners generating credits. This additional credit life for credits traded to small refiners would give refiners generating credits a greater opportunity to fully utilize the credits before they expire. For example, a refiner who was holding on to credits for emergency purposes or other reasons later found to be unnecessary, could

trade these credits at the end of their life to small refiners who could utilize them for two more years. However, EPA is concerned that extending credit life beyond the five-year statute of limitations in the Clean Air Act (net 7-year credit life for standard credits generated by or traded to small refiners) could create significant enforceability problems. Consequently, EPA seeks comment on provisions that could be included in the regulations that would address this enforceability concern regarding the extended credit life for small refiner standard credits.

As discussed in Section X.A, we are also seeking comment on different ways of structuring the program that may be able to allow for unlimited credit life since, unlike in the gasoline sulfur program, there is no vehicle standard being proposed that is dependent on fuel quality. We considered that unlimited credit life could further promote credit generation and allow refiners to maintain an ongoing supply of credits in the event of an emergency. However, for several reasons we have elected to propose a limited credit life based on the context of the rest of the proposed program. If unlimited credit life were to discourage trading of credits, this could force refineries with more expensive benzene control technologies to comply and thus increase the total cost of the program. In addition, unlimited credit life would make it more difficult to verify compliance with the standard. One way of addressing this concern would be to require refiners to retain credit records indefinitely. Even then, given the fluid nature of refiner and importer ownership in recent years, in many cases it would still be difficult to verify the validity of historical credit generation and use. Since the proposed benzene standard would be enforced solely at the refinery, it is critical that such enforcement be as simple and straightforward as possible. Nonetheless, as discussed in Section X.A, it may be possible to design the overall program in such a way to address these concerns and still allow for infinite credit life.

In conclusion, we are proposing a reasonably limited credit life for both early and standard benzene credits. We seek comment on unlimited credit life. Please share with us any additional ideas you may have on how unlimited credit life could be beneficial to this program and/or how associated recordkeeping and enforcement issues could be mitigated.

<sup>259</sup> Derivation of three-year early credit lag is found in Chapter 6 of the RIA (section 6.5.3.1).

## 4. Early Credit Generation (2007–2010)

To encourage early application of and innovation in benzene control technology, we are proposing that refiners could generate early benzene credits from June 1, 2007 to December 31, 2010 by making qualifying reductions from their pre-determined refinery baselines. A discussion of how refinery baselines are established and

what constitutes a qualifying benzene reduction is found in the subsections to follow. The early credits generated under this program would be interchangeable with the standard credits generated in 2011 and beyond and would follow the above-mentioned credit use provisions.

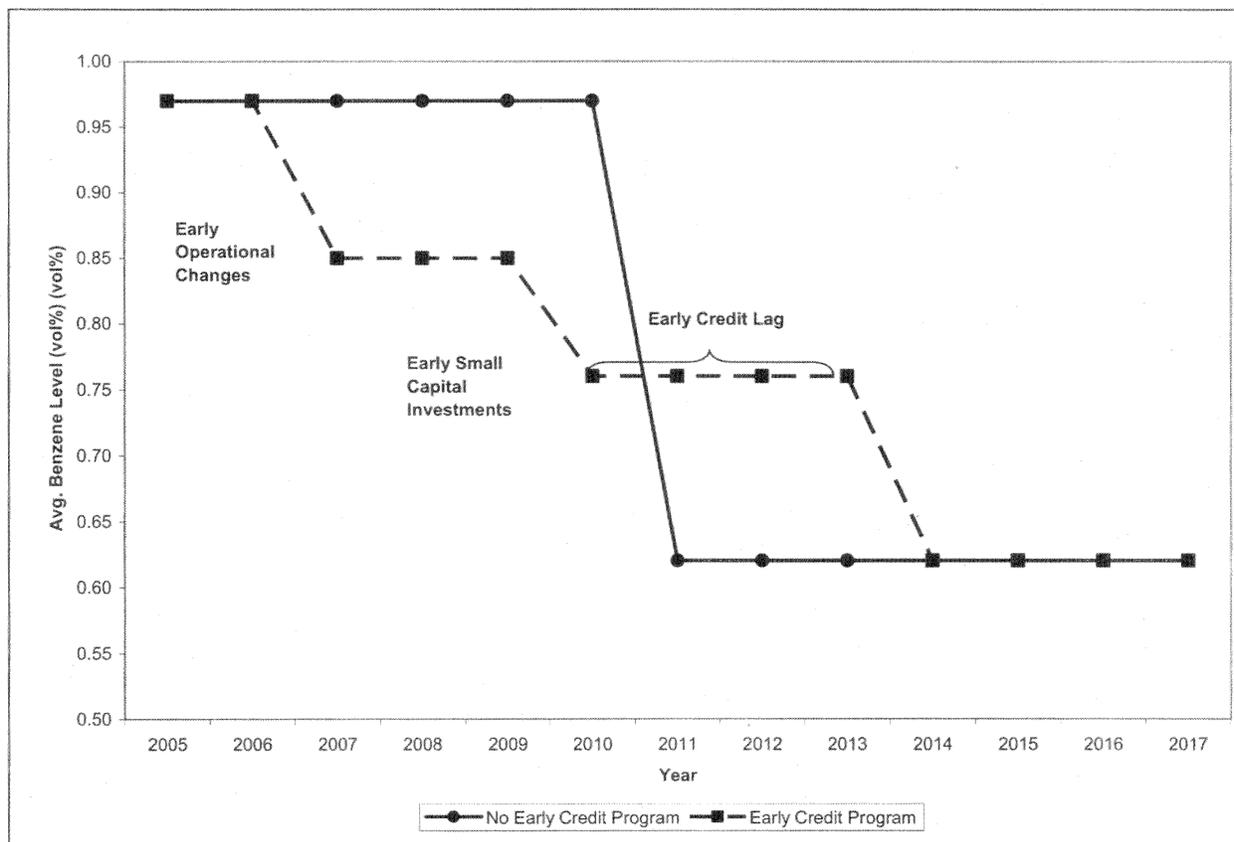
The early reductions we are projecting to occur would be the initial steps of each refinery's ultimate benzene control

strategy, but completed earlier than required. We project that from mid-2007 to 2010, refiners could implement operational changes and/or make small capital investments to reduce gasoline benzene. These actions would create a two-step phase down in gasoline benzene prior to 2011 as shown in Figure VII.D-1.

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Figure VII.D-1

Average Gasoline Benzene Level vs. Year



BILLING CODE 6560-50-C

The credits generated under the early credit program could be used to provide refiners with additional lead time to make their investments. If properly implemented, we project that the delay could be as much as three years as described in Chapter 6 of the RIA. Accordingly, we are proposing a three-year early credit life, as discussed earlier. The additional lead time would allow the refining industry to spread out demand for design, engineering,

construction and other related services, reducing overall compliance costs.

Importers would not be permitted to generate early credits, for several reasons.<sup>260</sup> First, unlike refineries, importers would not need additional lead time to comply with the standard, since they would not be investing in benzene control technology. Additionally, because importer

<sup>260</sup> As discussed in section VIII.1 below, foreign refiners may generate early credits under the proposed 40 CFR 80.1420 provisions.

operations are more variable than refinery operations, importers could potentially redistribute the importation of foreign gasoline based on benzene level to generate early credits without making a net reduction in gasoline benzene. This type of scheme could result in a large number of early credits being generated with no net benzene emission reduction value. This is not expected to occur for refineries because they are already operating at high capacity and do not have the flexibility

to quickly increase, decrease, or shift production volumes. Additionally, under the proposed program, refineries are prohibited from moving benzene-rich blendstocks around to generate early credits as described below.

We believe that refiners would have several motivations for making early benzene reductions. For refiners who have a series of technology improvements to make, early innovative improvements would help the refiner get one step closer to compliance. Early reductions would also generate credits which could be used to postpone subsequent investments. For refiners capable of making early advancements to reduce their benzene levels below 0.62 vol%, the early credits generated would not be needed for their own future use. For these refiners, trading early credits to other refiners may be a way to offset the cost of their early capital investment(s).

#### a. Establishing Early Credit Baselines

We are proposing that any refiner planning on generating early credits would have to obtain an individual refinery benzene baseline in order to provide a starting point for calculating early credits.

Refinery benzene baselines would be defined as the annualized volume-weighted benzene content of gasoline produced at a refinery from January 1, 2004 to December 31, 2005. We are proposing a two-year baseline period to account for normal operational fluctuations in benzene level. We propose using the 2004 and 2005 calendar years because we believe this would represent the most current batch gasoline data available prior to today's proposal.

We would require refiners to submit individual baselines for each refinery that is planning to generate early benzene credits. Refinery benzene baselines would be calculated using the 2004–2005 batch data submitted to us under the RFG and Anti-dumping requirements.<sup>261</sup> We propose that joint ventures, in which two or more refiners collectively own and operate one or more refineries, be treated as separate refining entities for early credit generation purposes.

Refiners would be required to submit their refinery baselines in writing to EPA. We propose that refiners could begin applying for 2004–05 benzene baselines as early as March 1, 2007. There would be no single cut-off date for applying for a baseline; however, a refiner planning on generating early

credits would need to submit a baseline application at least 60 days prior to beginning credit generation. We are proposing a shorter notification period for this rule (past rules were 120 days) to accommodate our proposed early credit generation start date of June 1, 2007. EPA would review all baseline applications and notify the refiner of any discrepancies found with the data submitted. If we did not respond within 60 days, the baseline would be considered to be approved, subject to later review by EPA.

Under the proposed program, refiners would be prohibited from moving gasoline and gasoline blendstock streams from one refinery to another in order to generate early credits. This type of transaction would result in artificial credits with no associated emission reduction value. If traded and used towards compliance, these artificial credits could negatively impact the benefits of the program. We considered basing credit generation for multi-refinery refiners on corporate benzene baselines instead of individual refinery baselines, but determined that this could hinder credit generation. If a valid reduction was made at one refinery and an unrelated expansion occurred at another facility during this time, the credits earned based on a corporate baseline could be reduced to zero. Instead, we propose to validate early credits based on existing reporting requirements (e.g., batch reports and pre-compliance reporting data). We seek comment on this approach.

#### b. Early Credit Reduction Criteria (Trigger Points)

We are proposing that to generate early credits, refiners would first need to reduce gasoline benzene levels to 0.90 times their refinery benzene baseline during a given averaging period. The purpose of setting an early credit generation trigger point is to ensure that changes in benzene level are representative of real process improvements. Without a trigger point, refineries could generate “windfall” early credits based on normal year to year fluctuations in benzene level associated with MSAT1. These artificial credits would compromise the environmental benefits of an ABT program because they would have no real associated benzene emission reduction value.

In designing the early credit generation program, we considered a variety of different types of trigger points. We performed sensitivity analyses around absolute level trigger points (refineries must reduce gasoline benzene levels to a certain

concentration), fixed reduction trigger points (refineries must reduce gasoline benzene levels by a certain concentration), and percent reduction trigger points (refineries must reduce gasoline benzene by a percentage). Based on our analysis found in Chapter 6 of the RIA, we found absolute level trigger points to be too restrictive for high benzene level refineries that could benefit from reductions the most. We also found fixed reduction trigger points to be too restrictive to low benzene level refineries which would be penalized for already being “cleaner.” Percent reduction trigger points were found to be consistently limiting towards all refineries, regardless of starting benzene level. As such, we propose to conclude that a percent reduction trigger point would be the most appropriate early credit validation tool to address the wide range in starting benzene levels.

To determine an appropriate value for the percent reduction trigger point, we considered a range of reductions from 5–40% and examined the resulting early credit generation outcomes. We found that as the value of the percent reduction trigger point increased, the potential for windfall credit generation decreased, but unfortunately so did the number of early credits generated from legitimate refinery modifications. To address this competing relationship between windfall and early credit generation, we are proposing a 10% reduction trigger point. We believe that this trigger point is restrictive enough to prevent most windfall credit generation, but not too restrictive to discourage refineries from making early benzene reductions. The proposed 10% reduction trigger point roughly coincides with the average fluctuation in benzene level in 2004 as discussed in Chapter 6 of the RIA. A 10% reduction trigger point for early credits was also finalized in the gasoline sulfur rulemaking, which also affected the entire gasoline pool and had to encompass a variety of unique refinery situations.<sup>262</sup> EPA requests comments on the proposed trigger point and seeks alternate recommendations for validating early credits.

#### c. Calculating Early Credits

We are proposing that once the 10% reduction trigger point was met, refineries could generate early credits based on the entire reduction. In terms of benzene levels, a refinery would first have to reduce its average benzene level to 0.90 times its original baseline benzene level during a given averaging period in order to generate credits. For

<sup>261</sup> RFG, 40 CFR 80.75; Anti-dumping, 40 CFR 80.105.

<sup>262</sup> 40 CFR 80.305.

example, if in 2008 a refinery reduced its annual benzene level from a baseline of 2.00 vol% to 1.50 vol% (below the trigger of  $0.90 \times 2.00 = 1.80$  vol%), its 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. The credits would be expressed in gallons of benzene.

#### 5. Additional Credit Provisions

##### a. Credit Trading

The potential exists for credits to 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. As in past programs, we propose that should this occur both the seller and purchaser would 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. This would allow the credit market to properly allocate any such risk.

As with ABT programs in other rules, we are proposing that credits should be transferred directly from the refiner or importer that generated them to the party that would use them for compliance purposes. This would ensure that the parties purchasing them would be better able to assess the likelihood that the credits were valid, and would aid in compliance monitoring. An exception would exist where a credit generator transferred credits to a refiner or importer who could not use all the credits, in which event that transferee could transfer the credits to another refiner or importer. However, based on the increased difficulty in assuring the validity of credits as the credits change hands more than once, we are proposing that credits could only be transferred a limited number of times. We are requesting comment on the maximum number of allowable trades, in the range of 2 to 4 trades. After the maximum number of trades, such credits would have been used or terminated.

We propose no prohibitions against brokers facilitating the transfer of credits from one party to another. Any person could act as a credit broker, whether or not such person was a refiner or importer, so long as the title to the credits was transferred directly from the generator to the user. Further discussion of these credit trading provisions and

alternative options is found in section X.A below.

##### b. Pre-Compliance Reporting Requirements

In order to provide an early indication of the credit market for refiners planning on relying upon benzene credits as a compliance strategy in 2011 and beyond, we are requesting that refiners submit pre-compliance reports to us in 2008, 2009, and 2010. EPA would then summarize this information (in such a way as to protect confidential business information) in a report available to the industry. This is similar to the way pre-compliance reports are used for the ultra-low sulfur diesel program. In addition, we are proposing that refiners provide us with a final summary pre-compliance report in 2011, to allow for a complete account of early credit generation.<sup>263</sup> The reports would be due annually by June 1st and would contain refiners' most up-to-date implementation plans for complying with the 0.62 vol% benzene standard. More specifically, we would require refiners to annually submit to us engineering and construction plans and the following data:

- Actual/projected gasoline production volume and average benzene level for the June 1, 2007 through December 31, 2007 annual averaging period, and for the 2008–2015 annual averaging periods.
- Actual/projected early credits generated during the June 1, 2007 through December 31, 2007 annual averaging period, and for the 2008–2010 annual averaging periods (June 1 through December 31, 2007 and 2008–2014 for small refiners).
- Standard credits projected to be generated during the 2011–2015 annual averaging periods (2015 for small refiners).
- Credits projected to be needed for compliance during 2011–2015 annual averaging periods (2015 for small refiners).

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 today's proposed program. A detailed understanding of how individual refiners and the industry at large are progressing toward final implementation of the proposed standards would help identify early concerns and allow timely action if

<sup>263</sup> Based on their proposed January 1, 2015 compliance date, small refiners would be required to submit annual pre-compliance reports to us in 2008 through 2014 with a final summary pre-compliance report in 2015.

necessary to prevent the development of major problems.

##### 6. Special ABT Provisions for Small Refiners

Approved small refiners would follow all the above-mentioned ABT provisions with the exception of special credit generation provisions which accommodate their 2015 compliance start date. Early credits could be generated by small refiners from June 1, 2007 to December 31, 2014 for refineries that reduce their average gasoline benzene level to 0.90 times their original 2004–2005 baseline level. Standard credits could also be generated by small refiners beginning January 1, 2015 and continuing indefinitely for refineries that overcomply with the standard by producing gasoline with an annual average benzene content below 0.62 vol%. Additionally, all credits generated by or traded to approved small refiners would have an additional two-year credit life as described above in VII.D.3.b.

##### *E. Regulatory Flexibility Provisions for Qualifying Refiners*

##### 1. Hardship Provisions for Qualifying Small Refiners

In developing our proposed MSAT program, we evaluated the need and the ability of refiners to meet the proposed benzene standards as expeditiously as possible. We believe it is feasible and necessary for the vast majority of the program to be implemented in the proposed time frame to achieve the air quality benefits as soon as possible. However, based on information available from small refiners, we believe that refineries owned by small businesses generally face unique hardship circumstances, compared to larger refiners. Thus, we are proposing several special provisions for refiners that qualify as "small refiners" to reduce the disproportionate burden that the proposed standards would have on these refiners. These provisions are discussed in detail below.

##### a. Qualifying Small Refiners

EPA is proposing several special provisions that would be available to companies that are approved as small refiners. Small refiners generally lack the resources available to larger companies that help large companies, including those large companies that own small-capacity refineries, to raise capital for investing in benzene control equipment. These resources include shifting internal funds, securing financing, or selling assets. Small refiners are also likely to have more

difficulty in competing for engineering resources and completing construction of the needed benzene control equipment (and any necessary octane recovery) equipment in time to meet the standards proposed today. Therefore, we are proposing small refiner relief provisions in today's action as an aspect of realizing the greatest emission reductions achievable.

Since small refiners are more likely to face hardship circumstances than larger refiners, we are proposing temporary provisions that would provide additional time to meet the benzene standards for refineries owned by small businesses. This approach would allow the overall program to begin as early as possible, while still addressing the ability of small refiners to comply.

#### i. Regulatory Flexibility for Small Refiners

As explained in the discussion of our compliance with the Regulatory Flexibility Act below in section XII.C and in the Initial Regulatory Flexibility Analysis in Chapter 14 of the RIA, we considered the impacts of today's proposed 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 (SBAR) Panel convened by EPA, 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 this proposed rule.

For the SBREFA process, EPA conducted outreach, fact-finding, and analysis of the potential impacts of our regulations on small businesses. Based on these discussions 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 today's proposed program.

One indication of this disproportionate hardship for small refiners is the higher per-gallon capital costs projected for the removal of benzene from gasoline under the proposed program. Refinery modeling of refineries owned by refiners likely to qualify as small refiners, and of non-small refineries, indicates that small refiners could have significantly higher costs to apply some technologies. For two of the technologies that we believe that refiners would use to reduce their benzene levels, routing the six carbon hydrocarbon compounds around the reformer and isomerizing these compounds, we anticipate that small

refiners' costs would likely be similar to non-small refiners, as very little capital investment would need to be made for these technologies. However, for technologies such as benzene saturation and benzene extraction, we anticipate that the costs to small refiners would be higher. Due to the poorer economies of scale, benzene saturation is expected to cost small refiners about 2.2 cents per gallon (while it is projected that benzene saturation would cost a non-small refinery about 1.3 cents per gallon).<sup>264</sup> Likewise, benzene extraction is estimated to cost those refineries able to use this technology about 0.1 cents per gallon; however, for small refiners benzene extraction is expected to cost about 0.5 cents per gallon.

The Panel also noted that the burden imposed on the small refiners by the proposed benzene standard could vary from refiner to refiner. Thus, the Panel recommended that more than one type of burden reduction be offered so that most, if not all, small refiners could benefit. We have continued to consider the issues that were raised during the SBREFA process and have decided to propose the provisions recommended by the Panel.

#### ii. Rationale for Small Refiner Provisions

Generally, we structured these proposed provisions to reduce the burden on small refiners while still achieving the air quality benefits that this program would provide. We believe that the proposed regulatory flexibility provisions for small refiners are a necessary aspect of standards reflecting the greatest achievable emission reductions considering costs and lead time, because they would appropriately adjust potential costs and lead time for the dissimilarly situated small refiner industry segment, and at the same time allow EPA to propose a uniform benzene standard for all refineries.

First, the proposed compliance schedule for this program, combined with flexibility for small refiners, would achieve the air quality benefits of the program as soon as possible, while still ensuring that small refiners that choose to comply by raising capital for benzene reduction technologies would have adequate time to do so. As noted above, most small refiners have limited

additional sources of income or capital beyond refinery earnings for financing and typically do not have the financial backing that larger and generally more integrated companies have. Therefore, they could benefit from additional time to accumulate capital internally or to secure capital financing from lenders.

Second, providing small refiners more time to comply would increase the availability of engineering and construction resources to them. Some refiners would need to install additional processing equipment to meet the proposed benzene standard. We anticipate that there could be increased competition for technology services, engineering resources, and construction management and labor. In addition, vendors would be more likely to contract with the larger refiners first, as their projects would offer larger profits for the vendors. Temporarily delaying compliance for small refiners would spread out the demand for these resources and probably reduce any cost premiums caused by limited supply.

Third, we are anticipating that many small refiners may choose to comply with the proposed benzene standard by purchasing credits. Having additional lead time (which could also result in additional time to generate credits for some small refiners) could help to ensure that there would be sufficient credits available and that there would be a robust credit trading market. Furthermore, offering two years of additional credit life for credits traded to small refiners, as discussed in section VII.D.3.b, would improve credit availability.

Lastly, we recognize that while the proposed benzene standard may be achieved using the four technologies suggested above, new technologies may also be developed that may reduce the capital and/or operational costs. Thus, we believe that allowing small refiners some additional time for newer technologies to be proven out by other refiners would have the added benefit of reducing the risks faced by small refiners. The added time would likely allow for small refiners to benefit from the lower costs of these technologies. This would help to offset the potentially disproportionate financial burden facing small refiners.

We discuss below the provisions that we are proposing to help mitigate the effects on small refiners. Small refiners that chose to make use of the small refiner delayed provision would also delay, to some extent, the benzene emission reductions that would otherwise have been achieved. However, the overall impact of these postponed reductions would be

<sup>264</sup> Smaller refineries are less likely to be able to take advantage of economies of scale. For example, a portion of the capital costs invested for a benzene control unit is fixed (i.e., engineering design costs) resulting in similar costs for each investment project. However, when amortized over the volume of fuel processed by a small versus large unit, the per-gallon capital costs are higher for the smaller unit, resulting in poorer economies of scale.

reasonable, for several reasons. Small refiners represent a relatively small fraction of national gasoline production. Our current estimates (of refiners that we expect would qualify as small refiners) indicate that these refiners produce about 2.5 percent of the total gasoline pool. In addition, these small refiners are generally dispersed geographically across the country and the gasoline that they produce is sometimes transported to other areas, so the limited loss in benzene emissions reduction would also be dispersed. Finally, absent small refiner flexibility, EPA would likely have to consider setting a less stringent benzene standard or delaying the overall program (until the burden of the program on many small refiners was diminished), which would serve to reduce and delay the air quality benefits of the overall program. By providing temporary relief to small refiners, we are able to adopt a program that would reduce benzene emissions in a timely and feasible manner for the industry as a whole.

The proposed small refiner provisions should be viewed as a subset of the hardship provisions described in section VII.E.2.b. Rather than dealing with many refineries on a case-by-case basis through the general hardship provisions (described later), we limit the number by proposing to provide predetermined types of relief to a subset of refineries based on criteria designed to identify refineries most likely to be in need of such automatic relief.

#### b. How Do We Propose To Define Small Refiners for the Purpose of the Hardship Provisions?

The definition of small refiner for this proposed program is in most ways the same as our small refiner definitions in the Gasoline Sulfur and Highway and Nonroad Diesel rules. These definitions, in turn, were based on the criteria use by the Small Business Administration. However, we are proposing to clarify some ambiguities about the definition that have existed in the past.

A small refiner would need to demonstrate that it met all of the following criteria:

Produced gasoline from crude during calendar year 2005.

Small refiner provisions would be limited to refiners of gasoline from crude because they would be the ones that bore the investment burden and therefore the inherent economic hardship. Therefore, blenders and importers would not be eligible, nor would be additive component producers.

Small refiner status would be limited to refiners that owned and operated the

refinery during the period from January 1, 2005 through December 31, 2005. New owners that purchased a refinery after that date would do so with full knowledge of the proposed regulations, and should have planned to comply along with their purchase decisions. As with the earlier fuel rules, we are proposing that a refiner that restarts a refinery in the future may be eligible for small refiner status. Thus, a refiner restarting a refinery that was shut down or non-operational between January 1, 2005 and January 1, 2006 could apply for small refiner status. In such cases, we would judge eligibility under the employment and crude oil capacity criteria based on the most recent 12 consecutive months prior to the application, unless we conclude from data provided by the refiner that another period of time is more appropriate. However, unlike past fuel rules, we propose to limit this to a company that owned the refinery at the time that it was shut down. New purchasers would not be eligible for small refiner status for the same reasons described above. Companies with refineries built after January 1, 2005 would also not be eligible for the small refiner hardship provisions.

—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,

—Had a crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2005.

In determining its total number of employees and crude oil capacity, a refiner would need to include the number of employees and crude oil capacity of any subsidiary companies, any parent companies, any subsidiaries of the parent companies, and any joint venture partners. There has been some confusion in past rules regarding how these provisions were interpreted, and as a result, we are proposing to clarify (and, in some cases, modify) them here. For example, in previous rules we defined a subsidiary to be a company in which the refiner or its parent(s) has a 50 percent or greater interest. We realize that it is possible for a parent to have controlling ownership interest in a subsidiary despite having less than 50 percent ownership. Similarly, we realize that it is also possible for multiple parents to each have less than 50 percent ownership interest but still maintain a controlling ownership interest. Therefore, in order to clarify our rules, we are proposing to define a parent company as any company (or companies) with controlling interest,

and to define a subsidiary of a company to mean any company in which the refiner or its parent(s) has a controlling ownership interest. In many cases, there are likely to be multiple layers of parent companies, with the ultimate parent being the one for which no one else has controlling interest. The employees and crude capacity of all parent companies, and all subsidiaries of all parent companies, would thus be taken into consideration when evaluating compliance with these criteria.

As with our earlier fuel sulfur regulations, we are also proposing today that refiners owned and controlled by an Alaska Regional or Village Corporation organized under the Alaska Native Claims Settlement Act, would also be eligible for small refiner status, based only on the refiner's employees and crude oil capacity.<sup>265</sup>

#### c. What Options Would Be Available For Small Refiners?

We are proposing several provisions today to help reduce the burdens on small refiners, as discussed above. In addition, these provisions would also allow for incentives for small refiners that make reductions to their benzene levels.

##### i. Delay in Standards

We propose that small refiners be allowed to postpone compliance with the proposed benzene standard until January 1, 2015, which is four years after the general program would begin. While all refiners would be allowed some lead time before the general proposed program began, we believe that in general small refiners would still face disproportionate challenges. The proposed four-year delay for small refiners would help mitigate these challenges. Further, previous EPA fuel programs have included two to four year delays in the start date of the effective standards for small refiners, consistent with the lead time we believe appropriate here.

Small refiners have indicated to us that an extension of available lead time would allow them to more efficiently carry out necessary capital projects with less direct competition with non-small refiners for financing and for contractor to carry out capital improvements. There appears to be merit in this position, and we propose that approved small refiners have four years of additional lead time. This would provide three years after the 2012 review of the program, which we believe would be enough time for such

<sup>265</sup> 43 U.S.C. 1626.

refiners to complete necessary capital projects if they chose to pursue them.

ii. ABT Credit Generation Opportunities

While we have anticipated that many small refiners would likely find it more economical to purchase credits for compliance, some have indicated they would make reductions to their gasoline benzene levels to meet the proposed benzene standard. Further, a few small refiners indicated that they would likely do so earlier than would be required by the January 1, 2015 proposed small refiner start date. Therefore, we are proposing that early credit generation be allowed for small refiners that take steps to meet the benzene requirement prior to their effective date. Small refiner credit generation would be governed by the same rules as the general program, described above in section VII.D, the only difference being that small refiners would have an extended early credit generation period of up to seven years. Early credits could be generated by small refiners making qualifying reductions from June 1, 2007 to December 31, 2014, after which credits could be generated indefinitely for those that overcomplied with the standard.

iii. Extended Credit Life

As discussed previously, in order to encourage the trading of credits to small refiners, we are proposing that the useful life of credits be extended by 2 years if they are generated by or traded to small refiners. This is meant to directly address concerns expressed by small refiners that they would be unable to rely on the credit market to avoid large capital costs for benzene control.

iv. ABT Program Review

As previously stated, we are anticipating that it may be more economically sound for some refiners to purchase and use credits. During discussions with small refiners, all of the small refiners voiced their concerns about reliance on a credit market for compliance with the benzene standard. Specifically, small refiners feared that: (1) there could be a shortage of credits, (2) that larger refiners would not trade credits with smaller refiners, and (3) that the cost of credits could be so high that the option to purchase credits for compliance would not be a viable option. Due to these concerns it was suggested that EPA perform a review of the ABT program (and thus, the small refiner flexibility options) by 2012, one year after the general program begins.

Such a review would take into account the number of early credits generated, as well as the number of credits generated and transferred during

the first year of the overall benzene control program. Further, requiring the submission of pre-compliance reports from all refiners, similar to the highway and nonroad diesel programs, would aid in assessing the ABT program prior to performing the review. A small refiner delay option of four years after the compliance date for other refiners, coupled with a review after the first year of the overall program, would still provide small refiners with roughly three years that we believe would be needed to obtain financing and perform engineering and construction. We are proposing to perform a review within the first year of the overall program (i.e., by 2012). To aid the review, we are also proposing the requirement that all refiners submit refinery pre-compliance reports annually beginning June 1, 2008. Refiners' 2011 annual compliance reports will be similar to the pre-compliance reports, but the annual compliance reports will also contain information such as credits generated, credits used, credits banked, credit balance, cost of credits purchased. EPA would aggregate the data (to protect individual refiners' confidentiality) and make the results available to the industry. When combined with the four-year delay option, this would provide small refiners (and others) with the knowledge of the credit trading market's status before they would need to make a decision to either purchase credits or to obtain financing to invest in capital equipment.

Further, we are requesting comment on elements to be included in the ABT program review, and suggested actions that could be taken following such a review. Such elements could include:

- Revisiting the small refiner provisions if it is found that the credit trading market did not exist to a sufficient degree to allow them to purchase credits, or that credits were only available at a cost-prohibitive price.
- Options to either help the credit market, or help small refiners gain access to credits.

With respect to the first element, the SBAR Panel recommended that EPA consider establishing an additional hardship provision to assist any small refiners that were unable to comply with the benzene standard even with a viable credit market. Such a hardship provision would address the case of a small refiner for which compliance would be feasible only through the purchase of credits, but it was not economically feasible for the refiner to do so. This hardship 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 up to two years. Following the two-year relief, a small refiner would be allowed to request multiple extensions of the hardship until the refinery's material situation changed. We are proposing the inclusion of such a hardship provision which could be applied for following, and based on the results of, the ABT program review.

With respect to the second element, the Panel recommended that EPA develop options to help the credit market if it is found (following the review) that there is not an ample supply of credits or that small refiners are having difficulty obtaining credits. These options could include 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. Another option the Panel discussed to assist the credit market was to impose additional requirements to encourage trading with small refiners. These could include a requirement that a percentage of all credits sold be set aside and only made available for small refiners. Similarly, we could require 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. Options such as these would help to ensure that small refiners were able to purchase credits. One such recommendation by the Panel, to extend credit life for small refiners, is included in today's proposal and described above.

We welcome comment on additional measures that could be taken following the review if it was found that there was a shortage of credits or that credits were not available to small refiners.

d. How Would Refiners Apply for Small Refiner Status?

A refiner applying for status as a small refiner would be required to apply and provide EPA with several types of information by December 31, 2007. (The detailed application requirements are summarized below.) All refiners seeking small refiner status under this program would need to apply for small refiner 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 proposed rule

that were later found to contain false or inaccurate information would be void ab initio.

Requirements for small refiner status applications:

- 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 would 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 during the 12 months preceding January 1, 2006; and the average number of employees at each location during this time period. This would 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.
- An indication of 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.

#### e. The Effect of Financial and Other Transactions on Small Refiner Status and Small Refiner Relief Provisions

In situations where a small refiner loses its small refiner status due to merger with a non-small refiner, acquisition of another refiner, or

acquisition by another refiner, we are proposing provisions which are similar to those finalized in the nonroad diesel final rule to allow for an additional 30 months of lead time. A complete discussion of this provision is located in the preamble to the final nonroad diesel rule.

#### 2. General Hardship Provisions

Unlike previous fuel programs, today's program includes inherent flexibility because there is a nationwide credit trading program. Refiners would have the ability to avoid or minimize capital investments indefinitely by purchasing credits, and we expect that many refiners would utilize this option. We also expect that refiners and importers who normally would produce or import gasoline that met the proposed standard would periodically rely on credits in order to achieve compliance. As discussed in section VII.D, we expect that sufficient credits would be available on an annual basis to accommodate the needs of the regulated industry, and we expect that these credits would be available at prices that are comparable to the alternative cost of making the capital investment necessary to produce compliant gasoline. We are proposing to require that refiners submit pre-compliance reports beginning in 2008. These reports would indicate how the refinery plans to achieve compliance with the 0.62 vol% standard as well as the amount of credits expected to be generated or expected to be needed. The information provided in these reports would enable an assessment of the robustness of the credit market and the ability of refiners to rely on credits as the program began.

Although we expect credits to be available at competitive prices to those who need them, we are proposing hardship provisions to accommodate an inability to comply with the proposed standard at the start of the program, and to deal with unforeseen circumstances. These provisions would be available to all refiners, small and non-small, though relief would be granted on a case-by-case basis following a showing of certain requirements, primarily that compliance through the use of credits was not feasible. We are proposing that any hardship waiver would not be a total waiver of compliance. Rather, such a waiver would allow the refiner to have an extended period of deficit carryover. Under regular circumstances, our proposed deficit carryover provision would allow an entity to be in deficit with the proposed benzene standard for one year, provided that they made up the deficit and were in compliance the

next year. The proposed hardship provisions would allow a deficit to be carried over for an extended, but limited, time period. EPA would determine an appropriate extended deficit carryover time period based on the nature and degree of the hardship, as presented by the refiner in their hardship application, and on our assessment of the credit market. Note that any waivers granted under this proposed rule would be separate and apart from EPA's authority under the Energy Policy Act to issue temporary waivers for extreme and unusual supply circumstances, under section 211(c)(4).

#### a. Temporary Waivers Based on Unforeseen Circumstances

We are proposing a provision which, at our discretion, would permit any refiner to seek a temporary waiver from the MSAT benzene standard under certain rare circumstances. This waiver provision is similar to provisions in prior fuel regulations. It is intended to provide refiners relief in unanticipated circumstances—such as a refinery fire or a natural disaster—that cannot be reasonably foreseen now or in the near future.

Under this provision, a refiner could seek permission to extend the deficit carryover provisions of the proposal for more than the one year already allowed if it could demonstrate that the magnitude of the impact was so severe as to require such an extension. We are proposing that the refiner would be required to show that: (1) The waiver would be in the public interest; (2) the refiner was not able to avoid the nonconformity; (3) it would meet the proposed benzene standard as expeditiously as possible; (4) it would make up the air quality detriment associated with the nonconforming gasoline, where practicable; and (5) it would pay to the U.S. Treasury an amount equal to the economic benefit of the nonconformity 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 were granted would be limited in scope.

As discussed, such a request would be based on the refiner's inability to produce compliant gasoline at the affected facility due to extreme and unusual circumstances outside the refiner's control that could not have been avoided through the exercise of due diligence. The hardship request would also need to show that other avenues for mitigating the problem,

such as the purchase of credits toward compliance under the proposed credit provisions, had been pursued and yet were insufficient or unavailable. Especially in light of the credit flexibilities built into the proposed overall program, we expect that the need for additional relief would be rare.

#### b. Temporary Waivers Based on Extreme Hardship Circumstances

In addition to the provision for short-term relief in extreme unforeseen circumstances, we are also proposing a hardship provision where a refiner could receive an extension of the deficit carryover provisions based on extreme hardship circumstances. Such hardship could exist based on severe economic or physical lead time limitations of the refinery to comply with the benzene standard at the start of the program, and if they were unable to procure sufficient credits. A refiner seeking such hardship relief under this proposed rule would have to demonstrate that these criteria were met. In addition to showing that unusual circumstances exist that impose extreme hardship in meeting the proposed standard, the refiner would have to show (1) best efforts to comply, including through the purchase of credits, (2) the relief granted under this provision would be in the public interest, (3) that the environmental impact would be acceptable, and (4) that it has active plans to meet the requirements as expeditiously as possible. Because such a demonstration could not be made prior to the development of the credit market, EPA would not begin to consider such hardship requests until August 1, 2010, that is, until after the final pre-compliance reports are submitted. Consequently, requests for such hardship relief would have to be received prior to January 1, 2011.

If hardship relief under these circumstances was approved, we would expect to impose appropriate conditions to ensure that the refiner was making best efforts to achieve compliance

offsetting any loss of emission control from the program through the deficit carryforward provisions. We believe that providing short-term relief to those refiners that need additional time due to hardship circumstances would help to facilitate the adoption of the overall MSAT program for the majority of the industry. However, we do not intend for hardship waiver provisions to encourage refiners to delay planning and investments they would otherwise make. Again, because of the flexibilities of the proposed overall program, we expect that the need for additional relief would be rare.

#### c. Early Compliance With the Proposed Benzene Standard

We are also requesting comment on a means for allowing refineries, under certain conditions, to meet the proposed benzene standard early in lieu of MSAT1. In order to meet the proposed benzene standard early, refiners would need to meet several criteria similar to those used in the past when EPA has adjusted refinery baselines under the MSAT1 program. Specifically, the eligibility for such provisions would be limited to refiners that have historically had 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 as an oxygenate. The result of not allowing such early compliance could be less supply of their cleaner fuel and more supply of fuel with higher toxics emissions, with a worsening of overall environmental performance under MSAT1. A refiner opting into such provisions would not be allowed to generate benzene credits on the affected fuel prior to 2011, since an ability to reduce benzene further would presumably negate the need for an early compliance option.

#### F. Technological Feasibility of Gasoline Benzene Reduction

This section summarizes our assessment of the feasibility for the

refining industry to reduce benzene levels in gasoline to an average of 0.62 vol% starting January 1, 2011. Based on this assessment, we believe that it is technologically feasible for refiners to meet the benzene standard by the start date using technologies that are currently available.

We begin this section by describing where benzene comes from and the current levels found in gasoline. Next we discuss the benzene reduction technologies available to refiners today and how they are expected to be used to meet the proposed benzene standard. Then we provide our analysis of the lead time necessary for complying with the benzene standard. All of these issues are discussed in more detail in Chapters 6 and 9 of the Regulatory Impact Analysis.

#### 1. Benzene Levels in Gasoline

EPA receives information on gasoline quality, including benzene levels, from each refinery and importer in the U.S. under the reporting requirements of the RFG and CG programs. As discussed earlier in this section, benzene levels averaged 0.94 vol% for gasoline produced in and imported into the U.S. in 2003, which is the most recent year for which complete data is available. However, for individual refineries, daily batch gasoline benzene levels and annual average levels can vary significantly from the national average. As indicated earlier in describing our decision-making process for the type and level of gasoline benzene standard, it is very important to understand how current benzene levels vary by individual refinery, by region, as well as day-to-day by batch.

The variability in 2003 average annual gasoline benzene levels by individual refinery is shown in Figure VII.F-1. This figure contains a summary of annual average gasoline benzene levels by individual refinery for CG and RFG versus the cumulative volume of gasoline produced.

Figure VII.F-1.

## Benzene Levels in U.S. Gasoline Produced and Imported in 2003 (Excluding California).

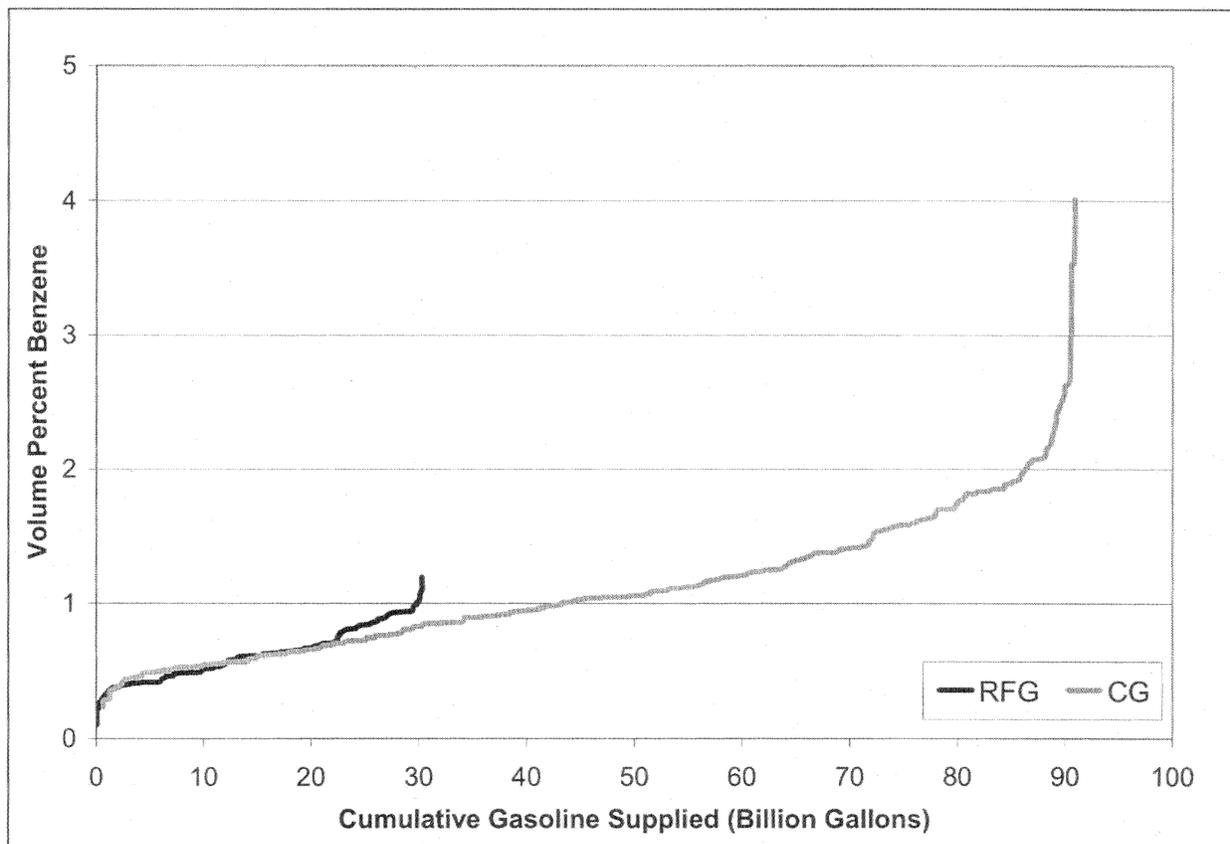


Figure VII.F-1 shows that the annual average benzene levels of CG as produced by individual refineries varies from 0.29 to 4.01 vol%. Based on the data in the figure, the volume-weighted average benzene content for U.S. CG is 1.10 vol%. As expected, the annual average benzene levels of RFG as produced by individual refineries are lower, ranging from 0.10 to 1.09 vol%. The volume-weighted average benzene content for U.S. RFG (not including California) is 0.62 vol%.

The information presented for annual average gasoline benzene levels does not illustrate the very large day-to-day variability in gasoline batches produced by each refinery. We evaluated the batch-by-batch gasoline benzene levels for several refineries that produce both RFG and CG, using information submitted to EPA as part of the reporting requirements for the RFG and CG Anti-dumping Programs. One refinery had no particular trend for its CG benzene levels, with benzene levels that varied from 0.1 to 3 vol%. That same refinery's RFG averaged around 0.95 vol% benzene, ranging from 0.05 to

1.1 vol%. The second refinery had RFG benzene levels that averaged around 0.4 vol% ranging from 0.1 to 1.0 vol%. Its CG benzene levels averaged about 0.6 vol% with batches that ranged from 0.1 to 1.2 vol%. The batches for both RFG and CG varied on a day-to-day basis and, overall, by over an order of magnitude. It is clear from our review of batch-by-batch data submitted to EPA that benzene variability is typical of refineries nationwide.

There are several contributing factors to the variability in refinery gasoline benzene levels across all the refineries. We will review these factors and describe how each impacts batch-by-batch and annual average gasoline benzene levels.

The first factor contributing to the variability in gasoline benzene levels is crude oil quality. Each refinery processes a particular crude oil slate, which tends to be fairly constant except for seasonal changes that reflect changes in product demand. Crude oil varies greatly in aromatics content. Since benzene is an aromatic compound, its level tends to vary with the aromatics

content of crude oil. For example, Alaskan North Slope crude oil contains a high percentage of aromatics. Refiners processing this crude oil in their refineries shared with us that their straight run naphtha contains on the order of 3 vol% benzene (the production of naphtha is discussed further below). This is one reason why the gasoline in PADD 5 outside of California is high in benzene. Conversely, refiners that process very paraffinic crude oils (low in aromatics) usually have a low amount of benzene in their straight run naphtha. Because crude oil supplies tend to be constant over periods of months, crude oil quality is not a major contributor to day-to-day variations in benzene among gasoline batches. However, because crude oil supplies often vary from refinery to refinery, differences in crude quality are an important factor in the variability among refineries.

The second factor contributing to the variability in benzene levels is differences in the types of processing units and gasoline blendstocks among refineries. If a refinery is operated to rely on its reformer for virtually all of

its octane needs—especially the type that operates at higher pressures and temperatures and thus tends to produce more benzene—it will likely have a high benzene level in its gasoline. Refineries with a reformer and without a fluidized catalytic cracking (FCC) unit are particularly prone to higher benzene levels, since they rely heavily on the product of the reformer (reformate) to meet octane needs. However, refineries that can rely on other means for boosting their gasoline octane can usually rely less on the reformer and can run this unit at a lower severity, resulting in less benzene in their gasoline pool. Examples of such other octane-boosting refinery units include the alkylation unit, the isomerization unit and units that produce oxygenates. Refiners may have these units in their refineries, or in many cases, they can purchase the gasoline blendstocks produced by these units from other refineries or third-party producers. The blending of the products of these processes—alkylate, isomerate, and oxygenates—into the gasoline pool provides a significant octane contribution, which can allow refiners to rely less on the octane from reformate. Since refiners make individual decisions about producing or purchasing different blendstocks for each refinery, this variation is another important contributor to differences in gasoline benzene content among refineries. In addition, the variation in gasoline blendstocks used to produce different batches of gasoline is by far the

most important factor in the drastically differing benzene levels among batches of gasoline at any given refinery.

This practice by refiners of producing or purchasing different blendstocks and blending them in different ways to produce gasoline is an integral and essential aspect of the refining business. Thus, in designing an effective benzene control program, it is critical that benzene levels be reduced while refiners retain the ability to change blendstocks (and crude supplies) as needed from batch to batch and refinery to refinery. We believe that the proposed program accomplishes these goals.

A third important source of variability in existing benzene levels in gasoline is the fact that many refiners are already operating their refineries today to intentionally reduce benzene levels in their gasoline, while others are not. For example, refiners that are currently producing RFG must ensure their RFG averages 0.95 vol% or less and is always under the 1.3 vol% cap (see discussion of the current toxics program in section VII.C.5 above). Similarly, refiners producing gasoline to comply the California RFG program need to produce gasoline with reduced benzene. These refiners are generally using benzene control technologies to actively produce gasoline with lower benzene levels. If they are producing CG along with the RFG, their CG is usually lower in benzene as well compared with the CG produced by other refiners, since the benzene control technology often affects

some of the streams used to blend CG. In addition, some refiners add specific refinery units such as benzene extraction to intentionally produce chemical-grade benzene. Benzene commands a much higher price on the chemical market compared to the price of gasoline. For these refiners, the profit from the sale of benzene pays for the equipment upgrades needed to greatly reduce the levels of benzene in their gasoline. In most cases, refineries with extraction units are marketing their low-benzene gasoline in the RFG areas.

The use of these benzene control technologies by some refiners contributes to the variability in gasoline benzene levels among refineries. The use of these technologies can also contribute to the batch-to-batch variability in benzene levels. This is because, as with different blendstocks, refiners need to be able to change the operating characteristics of these technologies to meet varying needs in gasoline quality. In addition, planned or unexpected shut-downs of benzene control equipment may result in temporarily high batch benzene levels relative to the normally low gasoline levels when the unit is operating.

The variations in gasoline benzene levels among refineries also lead to variations in benzene levels among regions of the country. Table VII.F-1 shows the average gasoline benzene levels for all gasoline produced in (and imported into) the U.S. by PADD for 2003. The information is presented for both CG and RFG.

TABLE VII.F-1.—BENZENE LEVELS BY GASOLINE TYPE PRODUCED IN OR IMPORTED INTO EACH PADD IN 2003

	PADD 1	PADD 2	PADD 3	PADD 4	PADD 5	CA	U.S.
Conventional Gasoline .....	0.84	1.39	0.94	1.54	1.79	0.63	1.11
Reformulated Gasoline .....	0.60	0.82	0.56	n/a	n/a	0.62	0.62
Gasoline Average .....	0.70	1.28	0.87	1.54	1.79	0.62	0.94

Table VII.F-1 shows that benzene levels vary fairly widely across different regions of the country. PADD 1 and 3 benzene levels are lower because the refineries in these regions produce a high percentage of RFG for both the Northeast and Gulf Coast. Also, a number of refineries in these two regions are extracting benzene for sale into the chemicals market, contributing to the much lower benzene level in these PADDs. It is interesting to note that, in addition to RFG, CG benzene levels are low in PADDs 1 and 3. There are two reasons for this. First, some RFG produced by refineries ends up being sold as CG. Second, as mentioned above, refiners that are reducing the

benzene levels in their RFG generally also impact the benzene levels in their CG. In contrast, other parts of the U.S. with little to no RFG production and little extraction have much higher benzene levels.

2. Technologies for Reducing Gasoline Benzene Levels

a. Why Is Benzene Found in Gasoline?

To discuss benzene reduction technologies, it is helpful to first review some of the basics of refinery operations. Refineries process crude oil into usable products such as gasoline, diesel fuel and jet fuel. For a typical crude oil, about 50 percent of the crude

oil falls within the boiling range of gasoline, jet fuel and diesel fuel. The rest of crude oil boils at too high a temperature to be blended directly into these products and therefore must be cracked into lighter compounds. Material that boils within the gasoline boiling range is called naphtha. There are two principal sources of naphtha. The first is “straight run” naphtha, which comes directly off of the crude oil atmospheric distillation column. Another principle source of naphtha is that generated from the cracking reactions. Each type of naphtha contributes to benzene in gasoline.

Typically, little of the benzene in gasoline comes from benzene naturally

occurring in crude oil. Straight run naphtha, which comes directly from the distillation of crude oil, thus tends to have a low benzene content, although it can contain anywhere from 0.3 to 3 vol% benzene. While straight run naphtha is in the correct distillation range to be usable as gasoline, its octane value is too low for blending directly into gasoline. Thus, the octane value of this material must be increased to enable it to be used as a gasoline blendstock.

The primary means for increasing the octane value of naphtha (whether straight run or from cracking processes) is reforming. Reforming reacts the heavier portion of straight run naphtha (six-carbon material and heavier) over a precious metal catalyst at a high temperature. The reforming process converts many of the naphtha compounds to aromatic compounds, which raises the octane of this reformat stream to over 90 octane numbers. ("Octane number" is the unit of octane value.) Since benzene is an aromatic compound, it is produced along with toluene and xylene, the other primary aromatic compounds found in gasoline. The reforming process increases the benzene content of the straight run naphtha stream from 0.3 to 3 vol% to 3 to 11 vol%.

There are two ways that benzene levels increase in the reformer above the benzene levels occurring naturally in crude oil—the conversion of non-aromatic six-carbon hydrocarbons into benzene, and the cracking of heavier aromatic hydrocarbon compounds into

benzene.<sup>266</sup> In the discussion below about how benzene in the reformat stream can be reduced, we elaborate further about the opportunities that refiners have to manage both of these benzene-producing processes.

Three factors contribute to the wide range in benzene levels in the reformat stream, and these factors are important in the decisions refiners would make in response to the proposed benzene control program. First, different feedstocks contain different amounts of benzene and different levels of benzene precursors that are more or less capable of being converted to benzene by the reformer. Second, the type of reformer being used affects how much benzene is produced during the reforming process. For example, refineries with the older, higher pressure reformers tend to form more benzene by cracking heavier aromatics than refineries with newer, lower pressure units. Third, the severity with which the reformer is being operated also affects benzene levels in reformat. The greater the severity at which the reformer is operated, the greater the conversion of feedstocks to aromatics (and the more hydrogen is produced). However, more severe operation shortens the time between the catalyst regeneration events that the reformer must periodically undergo. Greater severity also lowers the gasoline yield from this unit. Because refiners balance these operation and production factors individually at each refinery in deciding on how severely to operate the reformer, these decisions contribute to

the range of benzene levels found in reformat from refinery to refinery.

In addition to benzene occurring in the reformat stream, another source of benzene in gasoline is naphtha produced from cracking processes. There are three primary cracking processes in the refinery—the FCC unit, the hydrocracker, and the coker. The naphthas produced by these cracking processes contain anywhere from 0.5 to 5 vol% benzene. The benzene in these streams is typically formed from the cracking of heavier aromatic compounds into lighter compounds that can then be blended into gasoline. The benzene content of cracked streams is therefore largely a function of the aromatics content of the crude oil feedstocks and the need of a particular refinery to produce gasoline from heavier feedstocks. As we discuss later, we do not expect that benzene reductions from these cracked naphthas would be a major avenue for compliance with the proposed benzene control program for most refiners.

Finally, there are other intermediate streams that contribute to benzene in gasoline but that have such low benzene content or are found in such low volumes in gasoline that they are of very limited importance in reducing benzene levels. Examples of these are light straight run naphtha and the oxygenates MTBE and ethanol.

Table VII.F-2 summarizes the typical ranges in benzene content and average percentages of gasoline of the various intermediate streams that are blended to produce gasoline.

TABLE VII.F-2.—BENZENE CONTENT AND TYPICAL GASOLINE FRACTION OF VARIOUS GASOLINE BLENDSTOCKS

Process or blendstock name	Typical benzene level (vol%)	Average volume in gasoline (percent)
Reformat	3–11	30
FCC Naphtha	0.5–2	36
Alkylate	0	12
Isomerate	0	4
Hydrocrackate	1–5	3
Butane	0	4
Light Straight Run	0.3–3	4
MTBE/Ethanol	0.05	3
Natural Gasoline	0.3–3	3
Coker Naphtha	3	1

Table VII.F-2 shows that the principal contributor of benzene to gasoline is reformat. This is due both to its high benzene content and the relatively large gasoline fraction that reformat comprises of the gasoline pool. The

product stream from the reformer, reformat, accounts for between 15 and 50 percent of the content of gasoline, depending on the refinery (typically about 35 percent.) For this reason and as discussed below, reducing the

benzene in reformat is the primary focus of the various benzene reduction technologies available to refiners. Control of benzene from the other streams quickly becomes cost prohibitive due to either the low

<sup>266</sup> In the process of converting the straight run naphtha into aromatics, a significant amount of

hydrogen is produced that is critical for the various hydrotreating operations in refineries. As discussed

later, the impact on hydrogen production is an important consideration in reducing benzene levels.

depending on the refinery (typically about 35 percent.) For this reason and as discussed below, reducing the benzene in reformate is the primary focus of the various benzene reduction technologies available to refiners. Control of benzene from the other streams quickly becomes cost prohibitive due to either the low concentration of benzene in the stream, the low volume of the stream, or both.

#### b. Benzene Control Technologies Related to the Reformer

There are several technologies that reduce gasoline benzene by controlling the benzene in the feedstock to and the product stream from the reformer.<sup>267</sup> One approach is to route the intermediate reformer streams that have the greatest tendency to form benzene in a way that bypasses the reformer. This approach is very important in benzene control, but it is limited in its effectiveness because it does not address any of the naturally-occurring benzene and some of the benzene formed in the reformer. For this reason, refiners often use a second category of technologies that remove or destroy benzene, including both the naturally occurring benzene as well as that formed in the reformer. These technologies are isomerization, benzene saturation, and benzene extraction. We discuss each of these approaches to benzene reduction below. The effectiveness of these technologies in reducing the benzene content of reformate varies from approximately 60% to 96%. The actual impact on an individual refinery's finished gasoline benzene content, however, will be a function of many different refinery-specific factors, including the extent to which they are already utilizing one of these technologies.

##### i. Routing Around the Reformer

The primary compounds that are converted to benzene by the reforming unit are the six-carbon hydrocarbon compounds contained in the straight run naphtha fed to the reformer. These compounds, along with the naturally-occurring benzene in this straight run naphtha stream, can be removed from the feedstock to the reforming unit using the upstream distillation unit, bypassed around the reforming unit, and then blended directly into gasoline. Routing

these compounds around the reformer prevents the formation of much of the benzene in the reformer, though it does not reduce the naturally-occurring benzene.

For a typical refinery, the technology to route the six-carbon material around the reformer would likely require only a small capital investment. Compared with a scenario where all of this material goes to the reformer, the combined rerouted and reformate streams would overall have about 60 percent less benzene, and finished gasoline would have about 31 percent less benzene. However, in most cases this would not be sufficient to achieve a 0.62 vol% benzene standard, and some combination of the technologies discussed next would also be needed.

##### ii. Routing to the Isomerization Unit

A variation of routing around the reformer involves the isomerization of the re-routed benzene precursors. Rather than directly blending the rerouted stream into gasoline, this stream can first be processed in the isomerization unit. This has two main advantages. First, it increases the effectiveness of benzene control, since the isomerization process converts the naturally-occurring benzene in this rerouted stream to another compound. Second, it recovers some of the octane otherwise lost by the conversion of benzene.

The typical role of the isomerization unit is to convert five-carbon hydrocarbons from straight-chain to branched-chain compounds, thus increasing the octane value of this stream. If the isomerization unit at a refinery has sufficient additional capacity to handle the rerouted six-carbon hydrocarbons, that stream can also be sent to this unit, where the benzene present in that stream would be saturated and converted into another compound (cyclohexane). (This benzene saturation process is similar to what occurs in a dedicated benzene saturation unit, as described below.) Compared to a scenario where all this material goes to the reformer, routing the six-carbon compounds to the isomerization unit in this manner can reduce the benzene levels in the combined rerouted and reformate streams by about 80 percent. The option of isomerization is currently available to those refineries with sufficient capacity in an existing isomerization unit to treat all of the six-carbon material.

##### iii. Benzene Saturation

The function of a benzene saturation unit is to react hydrogen with the benzene in the reformate (that is, to saturate the benzene) in a dedicated

reactor, converting the benzene to cyclohexane. Because hydrogen is used in this process, refiners that choose this technology need to ensure that they have a sufficient source of hydrogen. Refiners cannot afford to saturate other aromatic compounds present in their reformate as it would cause too great an octane loss. Thus, it is necessary to separate a six-carbon stream, which contains the benzene, from the rest of reformate, and only feed the six-carbon stream to the benzene saturation unit. This separation is done with a distillation unit called a reformate splitter placed just after the reformer.

There are two vendors that produce benzene saturation units. UOP produces a technology named Bensat. There are at least six Bensat units operating in the U.S. today and many more around the world. CDTEch licenses another, somewhat newer technology for this purpose called CDHydro. There are six CDHydro units operating today, mostly outside of the U.S. Benzene saturation can reduce benzene in the reformate by about 96 percent.

##### iv. Benzene Extraction

Extraction is a technology that chemically removes benzene from reformate. The removed benzene can be sold as a high-value product in the chemicals market. To extract only benzene from the reformate, a reformate splitter is installed just after the reformer to separate a benzene-rich stream from the rest of the reformate. The benzene-rich stream is sent to an extraction unit which separates the benzene from the rest of the hydrocarbons. Since the benzene must be sufficiently concentrated before it can be sold on the chemicals market, a very thorough distillation step is incorporated with the extraction step to concentrate the benzene to the necessary purity. Where it is economical to use, benzene extraction can reduce benzene levels in the reformate by 96 percent.

There are two important considerations refiners have with respect to using benzene extraction. The first is the price of chemical grade benzene. If the price of chemical grade benzene is sufficiently higher than the price of gasoline, benzene extraction can realize an attractive return on capital invested and is often chosen as a technology for achieving benzene reduction. The difference in price between benzene and gasoline has been significantly higher than its historic levels during the last few years. While we expect that this difference will return closer to the lower historic levels by the time the proposed program

<sup>267</sup> The benzene reduction technologies are discussed here in the context of the feasibility for reducing the benzene levels of gasoline to meet a gasoline benzene content standard. However, this discussion applies equally to the feasibility of a total air toxics standard, since we believe that benzene control would be the only means that refiners would choose in order to comply with such a standard.

would be implemented, the difference in prices should still be sufficient to make extraction a very cost-effective technology for reducing gasoline benzene levels. A more detailed discussion about benzene prices is contained later in this preamble (section IX) and in Chapter 9 of the RIA.

The other consideration in using benzene extraction is the distance that a refinery is from the markets where benzene is used as a chemical feedstock. Transportation of chemical grade benzene requires special hazardous-materials precautions, including protection against leaks. Certain precautions are also necessary to preserve the purity of the benzene during shipment. These special precautions are costly for shipping benzene over long distances. Thus if a refinery were located far from the chemical benzene markets, the economics for using extraction would be much less attractive compared to that of refineries located near benzene markets.

The result has been that chemical grade benzene production has been limited to those refineries located near the benzene markets. This includes refineries on the Gulf and on the East Coast and to a limited extent, several refineries in the Midwest. This could change if the very high benzene prices in 2004 and the beginning of 2005 were to continue, instead of returning to lower historical levels. However, even if benzene prices remain high by the time that a benzene control standard would take effect, refineries located away from the benzene markets may be concerned that the higher benzene prices may not be certain enough for the long term to warrant investment in extraction. Our analysis for today's proposal conservatively assumes that only refineries on the Gulf and East coasts would choose to use benzene extraction to lower their gasoline benzene levels. Despite some existing extraction units in the Midwest, the benzene market there is small and no additional benzene extraction is assumed to occur there.

#### c. Other Benzene Reduction Technologies

We are aware of other, less attractive technologies capable of achieving benzene reductions in gasoline. These technologies tend to have more serious impacts on other important refinery processes or on fuel quality and are generally capable of only modest benzene reductions. We do not currently have sufficient information about how widely these approaches are or could be utilized or their potential costs, and in our modeling we have not assumed that refineries would use them.

However, because they may be feasible in some unique situations, we mention these potential gasoline benzene reduction approaches here.

One of these less attractive opportunities for additional benzene reduction would be for refineries to capture more of the reformate benzene in the reformate splitter and send this additional benzene to the saturation unit. Refiners attempt to minimize both the capital and operating costs when splitting a benzene-rich stream out of the reformate stream for treating in a benzene saturation unit. To do this, they optimize the distillation cut between benzene and toluene, thus achieving a benzene reduction of about 96 percent in the reformate while preserving all but about 1 percent of the high-octane toluene. However, if a refiner were to be faced with a dire need for additional benzene reductions, it could change its distillation cut to send the last 4 percent of the benzene to the saturation unit. Since this cut would also bring with it more toluene than the normal optimized scenario, this toluene would also be saturated, resulting in a larger loss in octane and greater hydrogen consumption.

Some refineries with hydrocracking units may have another means of further reducing the gasoline benzene levels. They may be able to reduce the benzene content of one of the products of the hydrocracker, the light hydrocrackate stream. Today, light hydrocrackate is normally blended directly into gasoline. Light hydrocrackate contains a moderate level of benzene, although its contribution to the gasoline benzene levels is significant only in those refineries with hydrocrackers. Light hydrocrackate could be treated by routing this stream to an isomerization unit, similar to how refineries isomerize the six-carbon straight run naphtha as discussed above. Alternatively, refineries could use additional distillation equipment to cut the light hydrocrackate more finely. In this way, more of the benzene could be shifted to the "medium" hydrocrackate stream, which in most refineries is sent to the reformer and thus would be treated along with the reformate.

Another way that we believe some refineries could further reduce their benzene levels would be to treat the benzene in natural gasoline. Many refineries, especially in PADDs 3 and 4, blend some light gasoline-like material, which is a by-product of natural gas wells, into their gasoline. In most cases, we believe that this material is blended directly into gasoline. Because the benzene concentration in this stream is not high, it would be costly to treat the

stream to reduce benzene. However, there could be other reasons that refineries might find compelling for treating this stream. First, since its octane is fairly low to begin with, it could be fed to the reformer and its benzene would be treated in the reformate, along with the benefit of improving the octane quality of this stream. Second, refineries producing low-sulfur gasoline under the gasoline sulfur program may not be able to easily tolerate the sulfur from this stream if it were blended directly into gasoline. Thus, if they treat this stream in the reformer, it would undergo the hydrotreating (desulfurization) that is necessary for all streams fed to the reformer. Overall, we do not have sufficient information to conclude whether treating natural gasoline might become more attractive in the future.

Another approach to benzene reduction that we believe could be attractive in certain unique circumstances relates to the benzene content in naphtha from the fluidized catalytic cracker, or FCC unit. As shown in Table VII.F-2, FCC naphtha contains less than 1 percent benzene on average. Despite the very low concentration of benzene in FCC naphtha, the large volumetric contribution of this stream to gasoline results in this stream contributing a significant amount of benzene to gasoline as well. There are no proven processes which treat benzene in FCC naphtha. This is because its concentration is so low as well as because FCC naphtha contains a high concentration of olefins. Segregating a benzene-rich stream from FCC naphtha and sending it to a benzene saturation unit would saturate the olefins in the same boiling range, resulting in an unacceptable loss in octane value. Also, some refineries operate their FCC units today more severely to improve octane, an action that also increases benzene content. Conceivably, refineries could redesign their FCC process (change the catalyst and operating characteristics) to reduce the severity and produce slightly less benzene. We do not have sufficient information to know whether many refineries are already operating at high FCC severity and thus have the potential to reduce benzene by reducing that severity.

We request comment on our assessment of benzene reduction approaches, including data related to the current or potential usage and potential effectiveness of each approach.

d. Impacts on Octane and Strategies for Recovering Octane Loss

All these benzene reduction technologies affect the octane of the final gasoline. Regular grade gasoline must comply with a minimum 87 octane (R+M)/2 rating (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 (R+M)/2. Gasoline must meet these octane ratings to be sold as gasoline at retail. Routing the benzene precursors around the reformer reduces the octane of the six-carbon compound stream, which normally exits the reformer with the rest of the reformate. Without these compounds in the reformate, a loss of octane in the gasoline pool of about 0.14 octane numbers typically occurs. If this rerouted stream can be sent to an isomerization unit, a portion of this lost octane can be recovered, provided that sufficient capacity remains in that unit to continue treating the five-carbon naphtha compounds. Benzene saturation and benzene extraction both affect the octane of reformate and therefore the gasoline pool. Benzene saturation typically reduces the octane of gasoline by 0.24 octane numbers, and benzene extraction typically reduces the octane by 0.14 octane numbers.

Refiners can recover the lost octane in a number of ways. First, the reformer severity can be increased. 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 would also decrease 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 but the amount of benzene extracted is increased. Again, operating the reformer more severely would have the negative impact of shortening the reformer's operating cycle between regeneration events.

Lost octane can also be recovered by increasing the activity of other octane-producing units at the refinery. As discussed above, saturating benzene in the isomerization unit loses the octane value of that benzene, but octane is increased by the simultaneous formation of branch-chain compounds. Also, many refineries produce a high-

octane blendstock called alkylate. Alkylate is produced by reacting normal butane and isobutane with isobutylene over an acid catalyst. Not only is this stream high in octane, but it converts 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. If the refinery is short of feedstocks for alkylate, then the operations of the FCC unit, which is the principal producer of these feedstocks, can be adjusted to produce more of the feedstocks for the alkylate unit, increasing the availability of this high octane blendstock.

Octane can also be increased by purchasing high-octane blendstocks and blending them into the gasoline pool. For example, some refiners with excess octane production capacity market high octane blendstocks such as alkylate or aromatics such as toluene. Oxygenates, such as ethanol, can also be blended into the gasoline pool. Other oxygenates such as methyl tertiary butyl ether (MTBE), ethyl tertiary butyl ether (ETBE), tertiary amyl methyl ether (TAME), and other ethers are sometimes used. The availability and cost of oxygenates for octane replacement vary according to material prices as well as state and federal policies that either encourage or discourage their use. (For example, the Energy Policy Act of 2005 requires an increase in the volume of renewable fuels, including ethanol, which are blended into gasoline).

e. Experience Using Benzene Control Technologies

All of the benzene reduction technologies and octane generating technologies described above have been demonstrated in refineries in the U.S. and abroad. All four of these technologies have been used for compliance purposes for the federal RFG program, which has required that benzene levels be reduced to an average of 0.95 vol% or lower since 1995.

According to the Oil and Gas Journal's worldwide refining capacity report for 2003, there were 27 refineries in the U.S. with extraction units. Those refineries that chose extraction often reduced their benzene to levels well below 0.95 vol% because of the value of benzene as a chemical feedstock, as discussed above. Once a refiner invests in extraction, they have a strong incentive to maximize benzene production and thus the availability of benzene to sell to the chemical market, often reducing gasoline benzene more than is required by regulation. The RFG program also led to the installation of a small number of benzene saturation

units in the Midwest to produce RFG for the markets there. California has its own RFG program which also put into place a stringent benzene standard for the gasoline sold there. The Oil and Gas Journal's Worldwide Refining Report shows that four California refineries have benzene saturation units. If we assume that those RFG and California refineries that do not have extraction or saturation units are routing their precursors around their reformer, then there are 28 refineries using benzene precursor rerouting as their means to reduce benzene levels. Thus, these technologies have been demonstrated in many refineries since the mid-1990s in the U.S. and are considered by the refining community as commercially proven technologies.

Worldwide experience provides further evidence of the commercial viability of these benzene control technologies. A vendor of benzene control technology has shared with us how the refining companies in other countries have controlled the benzene levels of their gasoline in response to the benzene standards put in place there. In Europe, benzene control is typically achieved by routing the benzene precursors around the reformer and feeding that rerouted stream to an isomerization unit. In Japan, much of the benzene is extracted from gasoline and sold to the chemicals market. Finally, in Australia and New Zealand, refiners tend to use benzene saturation to reduce the benzene levels in their gasoline.

f. What Are the Potential Impacts of Benzene Control on Other Fuel Properties?

With the complex nature of modern refinery operations, most changes to fuel properties affect other fuel properties to some degree. In the case of benzene control, the "ripple effects" on other fuel properties tends to be limited. However, as discussed above, the reduction in benzene content that we are proposing in this rule, depending on how it is accomplished, would in most cases slightly reduce the overall octane of the resulting gasoline. Refiners would likely compensate by increasing the volume of reformate (other aromatics) blended into the gasoline, requiring a small increase in reformer severity and energy inputs. Some analysis of gasoline property survey data suggests that as benzene is reduced in gasoline, other aromatics may increase somewhat to help compensate.

Another option refiners might consider in response to the proposed rule is match-blending ethanol to make up octane and increase supply volume.

This has been done for several years with MTBE as an economical way to meet toxics performance requirements and octane targets for RFG. Like MTBE, ethanol has a relatively high blending octane, and is already added in many markets to take advantage of tax benefits or to support local suppliers. Since the use of ethanol is being encouraged in the recently-enacted energy legislation, refiners will likely seek to capture the octane benefits as part of their process, which could help offset the octane loss some refiners will see as a result of benzene reduction processes. Furthermore, to the extent that current MTBE production is shifted to production of isooctene, isooctane, and alkylate, these compounds would be available as high-octane, low-benzene gasoline blendstocks.

Finally, refiners may blend in isomerate or alkylate, which are very "clean" gasoline blendstocks, thereby reducing the levels of "dirtier" gasoline blendstocks, and reducing overall sulfur, olefins, and aromatics. We do not anticipate major changes in other fuel properties due to reductions in benzene. Our modeling of the emissions impacts of the proposed benzene standard does account for the modest changes in other fuel properties. As discussed in section V of this preamble and Chapter 2 of the RIA, this emissions modeling indicates that the proposed benzene standard has negligible impacts on the emissions of other mobile source air toxics.

### 3. Feasible Level of Benzene Control

A key aspect of our selection of the level of the proposed average benzene standard of 0.62 vol% was our evaluation of the benzene levels achievable by individual refineries. Our modeling analyses, which combine our understanding of technological and economic factors, is summarized in section IX below and discussed in detail in Chapter 9 of the RIA. Later in this section we summarize our conclusions about the overall feasibility of the program in terms of the requirements of the Clean Air Act.

We assessed the benzene levels achievable for each refinery, assuming that each refinery pursued the most stringent form of reformate benzene control available to it—installing either benzene saturation or extraction units. Based on this assessment, we project that the most stringent benzene level achievable on average for all U.S. gasoline would be 0.52 vol% benzene.<sup>268</sup> As discussed above,

however, a standard at this level would require significant investment at essentially all refineries—that is, near-universal installation of either benzene saturation or benzene extraction capability. As discussed in section IX below, this would be a very expensive result—costing about three times more than the proposed program—that we do not believe would be reasonable when costs are taken into account.

Furthermore, the model projects that all refineries would use optimal combinations of actual benzene reductions and/or credit purchases and would meet the average standard without going beyond the primary technologies of reformate benzene reduction discussed earlier in this section. To reach this conclusion, our model assumes a fully utilized credit trading program (that is, each refiner is assumed to minimize its average costs and to freely trade credits among companies so that all credits generated are used). Although the assumption of a fully utilized credit trading program is appropriate for our modeling purposes, it is very possible that this would not occur in practice. For example, some refiners might choose to hold onto credits that they generate, saving them for potential "emergencies" when unexpected events would otherwise cause noncompliance with the benzene standard.

Given the high cost of control for some refineries and the potential that credit trading would be less-than-fully utilized, we have looked at standards less stringent than 0.52 vol% that might be feasible, considering cost. Based on our modeling, we believe that with the proposed ABT program all gasoline could be produced at the proposed average level of 0.62 vol% without extreme economic consequences. We believe that sufficient credits would be generated such that refineries facing the highest costs of benzene control would have sufficient access to credits and would not need to turn to cost prohibitive technologies.

From a strict feasibility standpoint, we have also assessed whether all refineries could meet the proposed benzene level in cases where sufficient credits were not available to every refinery that might want them. We found that, despite the application of maximum reformate benzene control in the refinery model to all refineries, the analysis concluded that 13 refineries would still have benzene levels that exceeded a 0.62 benzene level, with one refinery as high as 0.77 vol% benzene. We have evaluated how these 13 refineries might use the other, less attractive benzene control technologies

discussed above (assuming that an ABT option is not available to them).

The approach of capturing more of the reformate benzene in the reformate splitter and sending this additional benzene to the saturation unit would allow 7 of the 13 challenged refineries to reach the 0.62 vol% level. Then, those refineries with a hydrocracker or a coker could reduce the benzene content of the light hydrocrackate or coker stream. This step would allow 5 more refineries to reach the target level. Finally, the treatment of benzene in natural gasoline would bring the remaining 1 refinery to the 0.62 vol% level or below. (Because of our lack of information about the potential for reducing the severity of the FCC unit, and because we do not believe that reducing the benzene level of FCC naphtha is feasible, we did not consider FCC options in this analysis.) Again, we expect that at the proposed standard level of 0.62 vol% in the context of the proposed ABT program, all refineries would be able to comply. This analysis demonstrates that there are options, although extreme and costly, for challenged refineries even if the ABT program does not fully function as projected.

### 4. Lead Time

Our proposal for the gasoline benzene standard to begin on January 1, 2011 would allow about four years after we expect the rulemaking to be finalized for refiners to comply with the program's requirements. As discussed below, we believe that four years of lead time would allow refiners sufficient time to install the capital equipment they would need to lower their benzene levels, and would also allow this program to avoid significant conflict with other fuel programs being implemented around the same time. In addition, the ABT program would allow the industry to phase in the program, through the early credit provisions, so that significant benzene reductions would occur earlier than the program start date. The credits earned could allow the investment in higher capital cost and less cost-effective technologies to be delayed relative to the program start date.

In recent years, the implementation of the gasoline sulfur and highway diesel sulfur programs has provided an opportunity to observe the response of the refining industry to major fuel control requirements. Many refiners have demonstrated their ability to make very large, expensive sulfur control modifications to their refineries in less than four years, and in some cases significantly less. It is helpful to

<sup>268</sup> This analysis is within the constraints of our modeling and the refinery-specific information available to us at the time of this proposal.

compare this sulfur control experience with the types of technologies refiners would use to reduce benzene.

Refiners could implement approaches to benzene control that require very little or no capital equipment, including routing of benzene precursors around the reformer and the use of an existing isomerization unit, with very little lead time requirements. We believe that approaches using moderately complex capital equipment, including improving the effectiveness of precursor rerouting and expanding existing extraction capacity, would generally require one to two years of lead time. Projects that involve the installation of new equipment, including benzene saturation and extraction units, require more time, generally two to three years. This includes time for the equipment installation as well as related offsite equipment and any necessary capital equipment for production of hydrogen or high-octane blendstocks. Of all the benzene control approaches, benzene extraction is closest in scope and complexity to the technologies the industry is using for fuel sulfur control. In addition to the time needed for planning and installing the extraction unit and related equipment, extraction also requires time to install additional facilities for storing extracted benzene and for loading it for transport. Thus, as with the earlier programs, we believe the refiners choosing to add a benzene extraction unit could in some cases need as much as four years to complete the project. Overall, we believe that four years of lead time would ensure that all refiners would have sufficient time to comply, regardless of the benzene control technology they select.

Another factor in selecting an appropriate date to begin the program is the timing of the implementation of other large fuel control programs, especially the Nonroad Diesel rule.<sup>269</sup> The 15 ppm sulfur standard mandated by the Nonroad Diesel Fuel program applies to nonroad diesel fuel in 2010 and to locomotive and marine diesel fuel in 2012. Refiners modifying their refineries to produce either ultra low sulfur nonroad or locomotive and marine diesel fuel will do so during the several years prior to 2010 and 2012. For each of those start dates, there is a progression of actions which includes

planning, design, construction and start-up all during the four year run-up toward the start date of the program. For example, the engineering and construction (E&C) industry will be busy designing and constructing each of the units that will be installed. Different portions of the E&C industry will be engaged at specific periods of time leading up to the time that the unit is started up. For this reason, staggering the start year of this benzene fuel standard with the start years for the Nonroad Diesel program would help to avoid excessive demand on specific parts of the E&C industry. The staggering of today's proposed program's start date with those of the Nonroad Diesel program may also help refiners that might be seeking to acquire capital through banks or other lending institutions by spreading out the requests.

We believe that the proposed implementation date of January 1, 2011 would minimize overlap and possible interference with the implementation of the Nonroad Diesel rule. Implementation of the proposed benzene standard one year earlier or one year later would overlap directly with one of the two Nonroad Diesel implementation dates. We also believe that the additional year of lead time, compared to a 2010 start date, would make the program more effective. Because we expect that the proposed ABT program would encourage many refiners to reduce benzene levels early whenever possible, we believe that significant benzene reductions would occur prior to 2011. We discuss this expected early benzene reduction further as a part of the description of the proposed ABT program in section VII.D above.

For these reasons, we are proposing that the gasoline benzene standard be implemented beginning January 1, 2011. We request comment on the issue of lead time, including data supporting four years or a different length of time.

## 5. Issues

### a. Small Refiners

Small refiners are technically capable of realizing a similar benzene reduction from their gasoline as large refiners. Because of economies of scale, however, some of the benzene control technologies which would be more affordable for larger refineries would be much more challenging and more expensive for small refiners. This is due to the poorer economies of scale that the small refiners are faced with installing capital into their refineries. Two of the benzene control technologies discussed

above would be particularly attractive to small refiners for implementing into their refineries. These are benzene precursor rerouting, and, if the refinery has an isomerization unit, routing the benzene precursors to the isomerization unit. These technologies would be attractive to small refiners because they would require little or no capital investments to implement for reducing their gasoline benzene levels. Therefore, the per-gallon cost of these two technologies is about the same as that for large refineries.

Smaller refineries tend to have fewer process units and blending streams, which generally also means that they will have fewer options for recovering lost octane. For example, these refineries are less likely to have an alkylation unit. An alkylation unit gives refiners short on octane the option to change the operations of their FCC unit to make more olefins and then send the appropriate olefins to their alkylation unit to produce more of that high octane blendstock. This is not an option for several of the small refiners that do not have an alkylation unit. Also, small refineries are more likely to have a higher pressure reforming unit. The higher pressure reformer units tend to produce more benzene from the cracking of heavier aromatic compounds and will tend to do this more as their severity is increased. A higher pressure reformer also has a more difficult regeneration cycle and shorter cycle lengths as it is operated more severely. Thus, while other refiners with lower pressure units may be able to increase the severity of their reformers to make more octane without producing much more benzene and greatly reducing the cycle lengths of their reformers, many of the small refiners may not have as much flexibility in this area. In any event, these greater technological challenges can be offset somewhat where it is economical to purchase high octane blendstocks or oxygenates from other refiners or from the petrochemical industry.

### b. Imported Gasoline

Although the majority of petroleum products in the U.S. are made from imported crude oil, only about five percent of the gasoline consumed in this country was imported as finished gasoline in 2003. This imported fuel is approximately half RFG and half CG, and had an average benzene content of 0.8% volume in 2003. No batches of imported gasoline had a benzene level above 2.4%. Over 90% of the imported gasoline was delivered into the East Coast and Florida, with about 5% arriving on the West Coast, and the

<sup>269</sup> The months leading up to January 2010 will also be when several small refiners and refiners that were granted hardship relief will be implementing their gasoline sulfur programs. We believe that any serious interference among implementation projects that individual refiners might demonstrate during this time period could be addressed under the small refiner or general hardship provisions of the proposed rule.

remainder being brought into other regions of the country. The origin of the majority of this gasoline was Canada (40%), Western Europe (31%), and South America (17%).

Since imported finished gasoline is not processed in a domestic refinery, where refiners would be taking steps to meet the proposed benzene standard, importers would be affected in other ways. Importers would most likely either begin to purchase gasoline that is low enough in benzene to meet the standard, or they would continue to import gasoline with benzene at current levels but purchase credits to cover the fuel being above the standard. As shown above, over 70 percent of imported gasoline comes from countries that have already set benzene limits on their gasoline. As a result, we believe that gasoline with some degree of benzene control will be easily available for importers to market. In some cases, we also expect that some foreign refiners may produce for export some fraction of their gasoline to meet our proposed 0.62 vol% average standard benzene. This would provide importers further options in the U.S. gasoline market.

#### *G. How Does the Proposed Fuel Control Program Satisfy the Statutory Requirements?*

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. Today's action proposes such a program, with an average benzene content standard of 0.62 vol% and a specially-designed averaging, banking, and trading program. In section VII.F above, we summarize our evaluation of the feasibility of the proposed program, and in section IX.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 program more stringent than the proposed program would not be feasible, taking into consideration cost. As we have discussed, making the standard more stringent would require more refiners to install the more expensive benzene control equipment, with very little improvement in benzene emissions. Also, we have shown that related costs increase very rapidly as the level of the standard is made more stringent. Conversely, while it would provide significant benzene emission reductions, we are concerned that a somewhat less stringent national

average standard than the proposed 0.62 vol% (e.g., 0.65 or 0.70 vol%) would not satisfy our statutory obligation for the most stringent standard feasible considering cost and other factors. Furthermore, such standards would not accomplish several important programmatic objectives as discussed in section VII.C.

We have also considered energy implications of the proposed program, as well as noise and safety, and we believe the proposed program would have very little impact on any of these factors. 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 VII.F above).

Consequently, we believe that the proposed program would meet the requirements of section 202(l) 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."

#### *H. Effect on 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. If promulgated, the gasoline benzene provisions of the proposed rule would shift about 22,000 barrels per day of benzene from the gasoline market to the petrochemical market. This volume represents about 0.2 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 proposed rule would be offset by less benzene produced from other gasoline feedstocks.

The rule would 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 one percent. Overall, we believe that the proposed rule would result in no significant adverse energy impacts.

The proposed gasoline benzene provisions would not affect the current gasoline distribution practices.

We discuss our analysis of the energy and supply effects of the proposed gasoline benzene standard further in section IX of this preamble and in Chapter 9 of the Regulatory Impact Analysis.

The fuel supply and energy effects described above would be offset substantially by the positive effects on gasoline supply and energy use of the proposed gas can standards also proposed in today's action. These proposed provisions would greatly reduce the gasoline lost to evaporation from gas cans. This would in turn reduce the demand for gasoline, increasing the gasoline supply and reducing the energy used in producing gasoline.

#### *I. How Would the Proposed Gasoline Benzene Standard Be Implemented?*

This section discusses the details associated with meeting the proposed 0.62 vol% benzene standard.

##### 1. General Provisions

###### a. What Are the Implementation Dates for the Proposed Program?

We are proposing that refiners and importers would achieve compliance with the requirements of the proposed benzene program beginning with the annual averaging period beginning January 1, 2011. Refineries with approved benzene baselines could generate early credits from June 1, 2007, through December 31, 2010. Refineries and importers could generate standard credits beginning with the annual averaging period beginning January 1, 2011, provided that the average benzene content of the gasoline they produce or import during the year was less than 0.62 vol% benzene.

Approved small refiners would be allowed to delay compliance with the 0.62 vol% standard until the annual averaging period beginning January 1, 2015. They could, however, generate early credits beginning June 1, 2007 through December 31, 2014, provided that they had an approved benzene baseline. They would be able to generate standard credits beginning January 1, 2015.

b. Which Regulated Parties Would Be Subject to the Proposed Benzene Standards?

Domestic refiners and importers would be subject to the proposed standards. We are proposing that each refinery of a refiner must meet the standard, and all associated requirements, individually. Refinery grouping, or aggregation, as allowed in the Anti-dumping and MSAT1 program for CG, would not be permitted for purposes of complying with the proposed benzene standard (although the ABT provisions provide similar flexibility, and the credit generation and transfer provisions would perform basically the same functions). For an importer, we are proposing that the requirements apply to the entire volume imported during the averaging period regardless of import locations or sources. In addition, where a company has both refinery and import operations, each operation would have to achieve its own compliance with the 0.62 vol% benzene standard. We are proposing that those who only added oxygenate or butane to gasoline or gasoline blending stock would not be subject to the proposed standards for that gasoline unless they also added other blending components to the blend. This would be similar to the current treatment of these entities and their gasoline under the RFG, Anti-dumping and MSAT1 programs, where specialized accounting and calculation procedures are specified. In these cases, the refinery (or importer) that produces gasoline or gasoline blendstock includes the oxygenate in its own compliance determination. We are proposing that this practice would continue under today's program. Transmix processors would not be subject to the proposed requirements for gasoline produced from transmix, but gasoline produced from transmix to which other blendstocks were added would be subject to the proposed benzene standard.

We are proposing that all gasoline produced by foreign refineries for use in the United States would be included in the compliance and credit calculation of the importer of record. Under the Anti-dumping and MSAT1 rules, as well as the gasoline sulfur requirements, additional requirements applicable to foreign refiners who chose to comply with those regulations separately from any importer were included to ensure that enforcement of the regulation at the foreign refinery would not be compromised. We are proposing similar provisions here. Specifically, we are proposing to allow foreign refiners to

generate early credits and to apply for temporary hardship relief and small refiner status. See proposed 40 CFR 80.1420. However, under the earlier rules, few foreign refiners have chosen to undertake these additional requirements, and almost all gasoline produced at foreign refineries is included in an importer's compliance determination for the current EPA gasoline programs.<sup>270</sup> We invite comment on the value of extending these provisions to this proposed benzene program.

As mentioned, we are proposing to extend the small refiner provisions to foreign refiners. Our experience in past rules is that they are not taken advantage of for various reasons. Most foreign refineries are state-owned or owned by large multinational companies, and would exceed the employee-count criterion. Others have typically not been interested in fulfilling the enforcement-related requirements that apply to foreign refineries. We request comment on extending the small refiner provisions to foreign refiners.

c. What Gasoline Would Be Subject to the Proposed Benzene Standards?

All finished gasoline produced by a refinery or imported by an importer would be subject to the proposed benzene content standard. In addition, gasoline blending stock which becomes finished gasoline solely upon the addition of oxygenate would also be subject to the proposed standard.<sup>271</sup> Other gasoline blendstocks which are shifted among refiners prior to turning them into finished gasoline would not be subject to the benzene standard. They would be included at the point they are converted or blended to produce finished gasoline.

We are proposing to exclude gasoline produced or imported for use in California from this benzene requirement. Although California's benzene averaging standard is greater than 0.62 vol%, California in-use benzene levels are currently below the level of the proposed standard.<sup>272</sup> We

<sup>270</sup> Often, the importer of record is the foreign refiner. In these instances, the importer/foreign refiner has simply opted to achieve compliance via the applicable importer provisions.

<sup>271</sup> As stated earlier, both blending stock and oxygenate would be included in the refinery's or importer's compliance determination. Conventional gasoline refiners are required to have agreements with downstream oxygenate blenders to ensure that the appropriate type and amount of oxygenate is added to the gasoline blending stock, per 40 CFR 80.10(d). Absent such agreements, the refinery may only include the gasoline blending stock in its compliance determination and the oxygenate is not included in any compliance determination.

<sup>272</sup> California Code of Regulations, Title 13 Section 2262.

expect this situation will continue. There would be no additional benefit to consumers of California gasoline or to the implementation and benefits of the proposed program by the inclusion of gasoline used in California.

This proposal also would exclude those specialized gasoline applications that have been exempted from other EPA gasoline rules, such as gasoline used to fuel aircraft, or for sanctioned racing events, gasoline that is exported for sale and use outside of the U.S., and gasoline used for research, development or testing purposes, under certain circumstances.

d. How Would Compliance With the Benzene Standard Be Determined?

Compliance with the proposed benzene standard would be on an annual, calendar year basis, similar to almost all other current gasoline controls. A refiner's or importer's compliance (or Compliance Benzene Value, as used in the proposed regulation) would be determined from the annual average benzene content of its gasoline (produced or imported), any credits used for compliance purposes, and any deficit carried over from the previous year, and would have to be 0.62 vol% or lower, on a benzene volume basis. The Compliance Benzene Value would differ from the refiner's or importer's actual annual average benzene concentration because the latter would be solely a volume weighted average of the benzene concentrations of the refinery's or importer's actual gasoline batches.

Credits, in any amount, could be used to achieve compliance. As mentioned, we are also proposing to allow a deficit to be carried forward for one year. Under these circumstances, in the next compliance period, the refinery or importer would have to be in compliance, that is, the refinery or importer would have to, through production or import practices, and/or the use of credits, make up the deficit from the previous year and be in compliance with the proposed benzene standard. This provision could be especially helpful to refiners in the first year of the program, until the availability and need for credits was established.

In the RFG and Anti-dumping programs, and MSAT1, by extension, refiners and importers generally include oxygenate added downstream from the refinery or the import facility in their compliance calculations.<sup>273</sup> Refiners

<sup>273</sup> As a result, oxygenate blenders would not be subject to the RFG, Anti-dumping or MSAT1

and importers of RBOB are required to account for the oxygenate in their own compliance. As mentioned earlier, refiners and importers of conventional gasoline can include the oxygenate if they have met the Anti-dumping requirements for ensuring that the amount and type of oxygenate was indeed added. We are not proposing any changes to these provisions for the purposes of compliance with the proposed benzene program. However, average pool benzene levels are expected to decrease as a result of increased ethanol use due to requirements of the Energy Policy Act of 2005, and this would affect both early and standard credit generation, as will be discussed below. However, we request comment on how, if at all, additional oxygenate use should be considered, and perhaps limited, in compliance determinations for the proposed program.

## 2. Averaging, Banking and Trading Program

### a. Early Credit Generation

As discussed, early credit generation could occur as early as the averaging period beginning June 1, 2007, through the averaging period ending December 31, 2010, or ending December 31, 2014, for small refiners. In order to generate early benzene credits, a refinery would first establish a benzene baseline which is its average benzene concentration over the period January 1, 2004, through December 31, 2005. A refinery would be eligible to generate early credits when it reduced its annual average benzene concentration by at least 10% compared to its benzene baseline. Credits would then be calculated based on the entire reduction in benzene below the baseline. Generation of early credits for the first averaging period, June 1, 2007 through December 31, 2007, which is less than a calendar year, would be based on the average benzene level of the gasoline produced only during this period. Gasoline produced before June 1, 2007, would not be included in the credit generation determination.

We are proposing to allow only refiners (and not importers) to generate early benzene credits because it is at the refinery, or production level, where real changes in the production of gasoline can be made. Importers would simply seek out blending streams or gasoline with lower benzene, but would not have to invest or take other action involving the production of the lower benzene gasoline. Furthermore, many importer operations grow in volume, shrink in

regulations except for gasoline to which they add other blendstocks in addition to the oxygenate.

volume, come into existence and go out of existence on a continual basis, making it difficult to assess the appropriateness of both the baseline and any early credits. Thus, even though an importer may have had regular, consistent import activity during the 2004–2005 baseline period, we are proposing that only refiners would be allowed to apply for a benzene baseline, and if approved, to generate early benzene credits based on reductions in future averaging period gasoline benzene levels.

As discussed above, one of the purposes of allowing the early generation of benzene credits would be to promote reductions in benzene through refinery processing changes. We are concerned that benzene reductions due to increased oxygenate use would result in reduced benzene concentrations. Oxygenate use (in the form of ethanol) in CG is expected to increase as a result of the Energy Policy Act requirements.<sup>274</sup> This additional oxygenate will dilute gasoline benzene levels as well as extend the gasoline pool. As a result, refinery average benzene levels would be likely to be lower during the early credit generation period than during the benzene baseline period (2004–2005) if there is an increase in the amount of CG refiners send for downstream blending with ethanol (CBOB). We are concerned that reductions in fuel benzene levels due to oxygenate addition significantly beyond the average levels of recent years could result in windfall early credit generation for some refineries. We request comment on the likelihood of windfall early credit generation, and if such a situation were to occur, whether it would warrant limiting early benzene credits by consideration of the average oxygenate use during the baseline period compared to the early credit generation period or by adjusting the early credit trigger point. We believe this would be less of an issue during the standard credit generation period beginning in 2011 (2015 for small refiners) because of the more stringent requirements for generating standard credits (getting below the 0.62 vol% standard) compared to the early credit generation requirements (achieving a minimum 10% reduction in baseline benzene levels).

<sup>274</sup> Even though the Energy Policy Act of 2005 eliminated the oxygen mandate for RFG, oxygenate use (in the form of ethanol) in RFG is expected to continue.

### b. How Would Refinery Benzene Baselines Be Determined?

As mentioned above, a refiner would submit a benzene baseline application to EPA for any of its refineries which planned to generate early credits. The benzene baseline would be the volume-weighted average of the benzene levels of the gasoline produced by the refinery during 2004–2005. Note that the gasoline would be the combination of the refinery's RFG and CG, if applicable, and would exclude California gasoline and other fuels exempted from the proposed standard. The benzene values used in the benzene baseline calculation should be the same as used in the RFG, Anti-dumping and MSAT1 compliance determinations. We are not proposing provisions for adjusting these benzene baselines based on circumstances during the baseline years or otherwise.

Though we expect that most refineries that apply for a benzene baseline would have data for both 2004 and 2005, if a refinery was shut down for part of the 2004–2005 period, it could still be able to establish a benzene baseline. Under these circumstances, the refiner would have to provide and justify, using refinery and engineering analyses, an appropriate adjusted value that reflects the likely average benzene concentration for the refinery, had it been fully operational. A refinery that was non-operational for the entire period January 1, 2004 through December 31, 2005 would not be able to establish a benzene baseline and therefore not allowed to generate early credits.

### c. Credit Generation Beginning in 2011

Credits could be generated in any annual averaging period beginning January 1, 2011, or for small refiners, beginning January 1, 2015. These credits, also called standard benzene credits, could be generated by a refinery or importer when the refinery's or importer's annual average benzene concentration was less than the proposed standard of 0.62 vol%.

While the proposed benzene standard is a 49-state standard due to the fact that California would maintain its existing benzene standard, we request comment on the appropriateness of allowing California refineries to generate credits that could be used to demonstrate compliance outside of California.

### d. How Would Credits Be Used?

We are proposing that all gasoline benzene credits that are properly created may be used equally and interchangeably. That is, once generated, there would be no difference

between early credits and standard credits, except for their credit life, as discussed below. Under this proposal, credits could be transferred to another refiner or importer, or they could be banked by the refinery or importer that created them for use or transfer in a later compliance period.

As in past credit programs, we are proposing some limits on credit use. First, we are proposing to limit the number of times a credit could be transferred. At the end of the allowable number of transfers, the credit would have to be used by the last transferee before its expiration date. Second, we are proposing that credits would have a finite life whether or not transferred. We are proposing that early credits, those generated prior to 2011, would have a three-year credit life from the start of the program in 2011. These credits would have to be used to achieve compliance with the proposed benzene standard in 2011, 2012, and/or 2013, or they would expire. In addition, we are proposing that credits generated in 2011 and beyond (or early credits generated by small refiners during this period) would have to be used within five years of the year in which they were generated. We had considered requiring credits be used in order of their generation date, that is, credits generated earlier would have to be used before credits generated later. However, the finite credit life is likely to ensure this usage, and thus we are not proposing to regulate credit use in this manner. We are also proposing that credit life could be extended by two years for any credits that are generated by or traded to approved small refiners.

Under the proposed regulations, a refiner or importer would have to use all benzene credits in its possession before being allowed to have deficit carryover, and would have to meet its own compliance requirement before transferring any gasoline benzene credits. In the case of invalid credits, or credits improperly created, all parties would have to adjust their credit records, reports, and compliance calculations to reflect proper credit use. The transferor would first correct its own records and ensure its own compliance, and then apply any remaining properly created credits to the transferee before trading or banking those credits. See section X.A below for more discussion of these issues.

### 3. Hardship and Small Refiner Provisions

#### a. Hardship

The hardship provisions and requirements are extensively discussed in section VII.E.2, and thus are only

briefly addressed here. We are proposing that a refiner for any of its refineries could seek temporary relief from meeting the proposed benzene standard due to unusual circumstances, including those situations, such as a natural disaster, which would clearly be outside the control of the refiner. A refiner would have to apply to EPA for this temporary relief, and EPA could deny the application or approve it for an appropriate period of time. However, given the existence of a flexible ABT program, EPA expects that, prior to requesting hardship relief, the refiner would have made best efforts to obtain credits in order to comply with the proposed benzene standard. In past rulemakings, for example the gasoline sulfur rule, the hurdle for receiving a hardship was very high, with very few granted. While we are proposing these provisions again here, the expectation is that the hurdle would be even higher. Given the existence and flexibility afforded by the ABT program and the more limited cost of the benzene standard, it is our expectation that as long as a viable credit market existed, it would be difficult to justify granting a hardship. Furthermore, the form of any relief we are proposing is in the form of additional time to demonstrate compliance via credits as opposed to any waiver of the standards.

#### b. Small Refiners

As discussed earlier, we are proposing to allow small refiners to meet the proposed benzene standard beginning with the 2015 averaging period, which is four years later than non-small refiners and importers. Small refiners could also generate both early and standard credits if they can meet the requirements of those programs. A refiner would have to apply to EPA by December 31, 2007 in order to be considered a small refiner under this proposed rule even if the entity was or had been considered a small refiner under other EPA rules. The requirements for small refiners under this rule are detailed in section VII.E.

### 4. Administrative and Enforcement Related Provisions

#### a. Sampling/Testing

As under the Tier 2 program where a sulfur concentration must be determined for every batch of gasoline, we are proposing that a benzene concentration value also be determined for every batch of gasoline produced or imported. Thus, as gasoline samples are taken for sulfur measurement, they would also be taken for benzene measurement. The RFG program, which

has both a toxics emissions requirement and a per-gallon benzene cap, already requires a benzene value to be determined for every batch of gasoline. The Anti-dumping program, which has only a toxics emissions requirement, allows benzene values to be determined from composite samples. See 40 CFR 80.101(i). Thus, the proposed sampling requirement would be a change from the current sampling methodology allowed under the Anti-dumping provisions but makes it consistent with the ongoing Tier 2 sulfur program. However, unlike the gasoline sulfur requirements, this every batch testing requirement for conventional gasoline benzene would not have to occur prior to the batch leaving the refinery. Additionally, the batch numbering system would be the same as that used for conventional gasoline sulfur.

We are not proposing any changes to the benzene test methodology. See 40 CFR 80.46(e). We are proposing sample retention requirements similar to those in the gasoline sulfur provisions. See 40 CFR 80.335.

#### b. Recordkeeping/Reporting

We are proposing to require that records be kept for each averaging period in order to accommodate the proposed benzene standard and the accompanying credit trading program. These records would include: the benzene baseline calculation, if applicable; the number of early credits generated, if applicable; the actual average benzene concentration of gasoline produced or imported; the compliance benzene value; any deficit; the number of credits generated; and records of any credit transfers to or from the refinery or importer, including price of the credits and dates of transactions. All of this information, and any other information that EPA may require, such as information similar to that proposed below for inclusion in the pre-compliance reports, would be submitted in a refiner's or importer's annual report to the Agency. Since we are proposing that the regulatory provisions for the benzene control program would become the single regulatory mechanism covering RFG and Anti-dumping annual average toxics requirements once the benzene standard is in effect, and would replace the MSAT1 requirements, we expect to be able to streamline several of the current reporting forms once the proposed program is fully implemented in 2015.

As mentioned, we are also proposing to require that refiners and importers submit pre-compliance reports in order to provide information as to the likely number of benzene credits needed and

available, and how the refiner or importer plans to achieve compliance with the proposed benzene requirements. These reports would be required annually each June 1 from 2001 through 2011 (or through 2015 for small refiners). In addition to information regarding gasoline production and the number of credits expected to be used or produced, the pre-compliance reports would include information regarding the benzene reduction technology expected to be used, any capital commitments, and information on the progress of the installation of the technology. We are also proposing that these reports include price and quantity information for any credits bought or sold. The reports would include updates from the previous year's estimates, and comparison of previous year actual production to the projected values.

#### c. Attest Engagements, Violations, Penalties

We are proposing to require attest engagements for generation of both early and other credits, credit use, and compliance with the proposed program, using the usual procedures for attest engagements. The violation and penalty provisions applicable to this proposed benzene program would be very similar to the provisions currently in effect in other gasoline programs. We request comment on the need for additional attest engagement, violation or penalty provisions specific to the proposed benzene program.

#### 5. How Would Compliance With the Provisions of the Proposed Benzene Program Affect Compliance With Other Gasoline Toxics Programs?

As discussed above, we expect that virtually all refineries will reduce benzene from their current levels, and no refineries will increase it. This impact on benzene levels, combined with the pre-existing gasoline controls in sulfur, RVP, and VOC performance, means that compliance with the benzene content provisions is also expected to lead to compliance with the annual average requirements on benzene and toxics performance for reformulated gasoline and the annual average Anti-dumping toxics performance for conventional gasoline. EPA is therefore proposing that upon full implementation in 2011 the regulatory provisions for the benzene control program would become the single regulatory mechanism used to implement these RFG and Anti-dumping annual average toxics requirements, replacing the current RFG and Anti-dumping annual average

toxics standards as unnecessary. The proposed benzene control program would also replace the MSAT1 requirements. However, we propose the RFG per gallon benzene cap of 1.3 vol% remain in effect; we are requesting comment on the need to retain this requirement for RFG. Note that compliance with the proposed benzene standard would ensure compliance with the aforementioned RFG, Anti-dumping and MSAT1 requirements beginning with the 2011 averaging period, or the 2015 averaging period for small refiners. Thus, during the early credit generation period, 2007 through 2010, all entities would still be required to comply with their applicable RFG, Anti-dumping and MSAT1 requirements. In addition, from 2011 through 2014, small refiners would have to continue to meet their applicable RFG, Anti-dumping and MSAT1 requirements. As discussed earlier in section VII.E.2, we are also requesting comment on the option of allowing some refineries to meet the proposed benzene standard early, thus replacing the current RFG and Anti-dumping annual average toxics provisions and replacing MSAT1 requirements for these refineries.

#### VIII. Gas Cans

Gas cans are consumer products people use to refuel a wide variety of gasoline-powered equipment. Their most frequent use is for refueling lawn and garden equipment such as lawn mowers, trimmers, and chainsaws. They are also routinely used for recreational equipment such as all-terrain vehicles and snowmobiles, and for passenger vehicles which have run out of gas. The gas cans are red, per ASTM specifications, and about 95 percent of them are made of plastic (high density polyethylene (HDPE)). There are approximately 20 million gas cans sold annually and about 80 million cans are in use nationwide. The average lifetime of a gas can is about 5 years.

California has established an emissions control program for gas cans which began in 2001. Since then, some other states have adopted the California requirements. Last year, California adopted a revised program which is very similar to the one we are proposing in this rulemaking. Manufacturers are required to meet the new requirements in California by July 1, 2007 at the latest. State programs are discussed further in section VIII.A.3., below.

#### A. Why Are We Proposing an Emissions Control Program for Gas Cans?

##### 1. VOC Emissions

We are proposing standards to control VOCs as an ozone precursor and also to minimize exposure to VOC-based toxics such as benzene and toluene. Gasoline is highly volatile and evaporates easily from containers that are not sealed or closed properly. Although an individual gas can is a relatively modest emission source, the cumulative VOC emissions from gas cans are quite significant. We estimate that containers currently emit about 315,000 tons of VOC annually nationwide, which is equal to about 5 percent of the nationwide mobile source inventory (see section V.A.). Left uncontrolled, a gas can's evaporative emissions are up to 60 times the VOC of a new Tier 2 vehicle evaporative control system. Gas can emissions are primarily of three types: evaporative emissions from unsealed or open containers; permeation emissions from gasoline passing through the walls of the plastic containers; and evaporative emissions from gasoline spillage during use.

As discussed in section IV. above, ozone continues to be a significant air quality concern, and gas cans are currently an uncontrolled source of VOC emissions in many areas of the country. Section 183(e) of the Clean Air Act 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 gas can emissions.<sup>275</sup> After analyzing the emissions inventory impacts of gas cans, EPA plans to publish a **Federal Register** notice that would add portable gasoline containers to the list of consumer products to be regulated and explain the rationale for this action in detail. EPA will afford interested persons the opportunity to comment on the data underlying the listing before taking final action on today's proposal. In today's notice, EPA is proposing that the standards for

<sup>275</sup> 60 FR 15264 "Consumer and Commercial Products: Schedule for Regulation," March 23, 1995.

portable gasoline 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.<sup>276</sup>

## 2. Technological Opportunities to Reduce Emissions From Gas Cans

Gas can manufacturers have already developed and applied emissions controls in response to California requirements. Traditional gas cans typically have a spout for pouring fuel and a vent at the rear of the can to allow air to flow into the cans when in use. About 70 percent of emissions from gas cans are due to evaporative losses from caps being left off one or both of these openings. The primary way to reduce these emissions is to design cans that are not easily left open. To accomplish this, gas can manufacturers have developed spouts that incorporate a spring mechanism to close cans automatically when not in use. Many spout designs are opened by consumers pushing the spout against the equipment fuel tank. Some designs incorporate a button or trigger mechanism that the consumer pushes to start fuel flow and then releases when done refueling. Also, some cans are made without rear vents, incorporating venting into the spouts and thus eliminating one potential emission point. The consumer still must remove the spout to refill the cans but would replace the spout once the can is full in order to prevent spillage during transport.

The auto-closing spouts reduce spillage by giving consumers greater control over the fuel flow. The spouts allow consumers to place the can in position before activating or opening the cans. Once the receiving fuel tank is full, consumers can easily release the mechanism to stop the fuel flow. This reduces spillage during the positioning and removal of the can and reduces overall spillage by about half. Consumers generally appreciate the greater control over the refueling event.

Blow-molding is used to manufacture gas cans. Typically, blow-molding is performed by creating a hollow tube, known as a parison, by pushing high-

density polyethylene (HDPE) through an extruder with a screw. The parison is then pinched in a mold and inflated with an inert gas. The HDPE plastics used for gas cans allow gasoline molecules to permeate (i.e., pass through) the walls of the container. This contributes to overall emission losses from the containers. There are several effective permeation barriers that can be incorporated into the can walls. Gas can manufacturers have used several of these methods to meet California program requirements. The technologies were initially developed to meet automotive evaporative emissions standards and are now also being used for other types of fuel tanks. The barriers are either incorporated as part of the manufacturing process of the can (either as a layer or by mixing the barrier materials with the plastics) or are applied to the cans after they are manufactured. These barriers typically achieve reductions of 85 percent or better compared to untreated cans.

Some gas can manufacturers have produced non-permeable plastic gas cans by blow molding a layer of ethylene vinyl alcohol (EVOH) or nylon between two layers of polyethylene. This process is called coextrusion and requires at least five layers: The barrier layer, adhesive layers on either side of the barrier layer, and HDPE as the outside layers which make up most of the thickness of the gas can walls. However, this blow-molding process requires two additional extruder screws, which significantly increases its cost.

An alternative to coextrusion is to blend a low-permeability resin with the HDPE and extrude it with a single screw to create barrier platelets. The trade name typically used for this permeation control strategy is Selar. The low-permeability resin, typically EVOH or nylon, creates non-continuous platelets in the HDPE gas can which reduce permeation by creating long, tortuous pathways that the hydrocarbon molecules must navigate to pass through the gas can walls. Although the barrier is not continuous, this strategy can still achieve greater than a 90-percent reduction in permeation of gasoline. EVOH has much higher permeation resistance to alcohol than nylon; therefore, it would be the preferred material to use for meeting our proposed standard (described at Section B., below), which is based on testing with a 10-percent ethanol fuel.

Another type of low permeation technology for HDPE gas cans is treating the surfaces of plastic gas cans with a barrier layer. Two ways of achieving this are known as fluorination and sulfonation. The fluorination process

causes a chemical reaction where exposed hydrogen atoms are replaced by larger fluorine atoms, creating a barrier on the surface of the gas can. In this process, a batch of gas cans is generally processed post production by stacking them in a steel container. The container is then voided of air and flooded with fluorine gas. By pulling a vacuum in the container, the fluorine gas is forced into every crevice in the gas can. As a result of this process, both the inside and outside surfaces of the gas can would be treated. As an alternative, gas cans can be fluorinated on the manufacturing line by exposing the inside surface of the gas can to fluorine during the blow molding process. However, this method may not prove as effective as off-line fluorination, which treats the inside and outside surfaces.

Sulfonation is another surface treatment technology. In this process, sulfur trioxide reacts with the exposed polyethylene to form sulfonic acid groups on the surface. Current practices for sulfonation are to place a gas can on a small assembly line and expose the inner surfaces to sulfur trioxide, then rinse with a neutralizing agent. However, sulfonation can also be performed using a batch method. Either of these processes can be used to reduce gasoline permeation by more than 95 percent.

## 3. State Experiences Regulating Gas Cans

California established an emissions control program for gas cans that began in 2001.<sup>277</sup> Twelve other states and the District of Columbia have adopted the California program in recent years. These states include Delaware, Maine, Maryland, Pennsylvania, New York, Connecticut, Massachusetts, New Jersey, Rhode Island, Vermont, Virginia, Washington, DC, and Texas.

Last year, California adopted a revised program that is very similar to the one we are proposing in this rulemaking.<sup>278</sup> California's new program goes into effect on July 1, 2007. California addressed several deficiencies they observed in their first program by adding new enhanced diurnal standards, new testing requirements, and new certification requirements, and by removing automatic shut-off requirements that lead to designs that do not work well in the field.

<sup>277</sup> Portable Fuel Container Spillage Control Regulations, Final Statement of Reasons, State of California Environmental Protection Agency Air Resources Board, June 2000.

<sup>278</sup> Public Hearing to Consider Amendments to the Regulations for Portable Fuel Containers, Final Statement of Reasons, California Air Resources Board, October 2005.

<sup>276</sup> 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.

California's original program contained several design specifications which limited manufacturer flexibility and resulted, in many cases, in products that were difficult for consumers to use. California has removed most of these design specifications from their revised program.

California's original program included an automatic shut-off requirement intended to reduce spillage caused by overfilling the receiving fuel tank. The spouts were required to be designed to stop fuel flow when the fuel reached the tip of the spout, similar to how gas pumps shut off when refueling a vehicle. California specified a test fixture, the height of the fuel in the receiving tank at which point the fuel flow must stop, and the minimum fuel flow rate. The gas cans were designed by manufacturers to work well with the test fixture, but the automatic shut-off failed in use a significant amount of the time. California found that the design of the equipment fuel tank had a big impact on the performance of the automatic shut-off. Due to the wide variety of fuel tank designs, the automatic shut-off worked on a relatively small percentage of equipment. In addition, many of the spout designs were not compatible with passenger vehicles. This is especially critical because the cans are customarily used by consumers when their vehicles run out of gas.

These problems led to many consumer complaints to both the manufacturers and to the California Air Resources Board. It also led to increased spillage in many cases. It was also found that many consumers did not understand how the spouts were supposed to operate. Even in cases where the spouts would have stopped the flow of fuel in time, consumers did not use the cans properly. Consumers are used to actively controlling the flow of fuel. For these reasons, California removed the automatic shut-off requirements from their program for all cans.

#### *B. What Emissions Standard Is EPA Proposing, and Why?*

##### 1. Description of Emissions Standard

We are proposing 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 would be measured based on the emissions from the can over a diurnal test cycle. The cans would be tested as a system with their spouts attached. Manufacturers would test the cans by placing them in an environmental chamber which

simulates summertime ambient temperature conditions and cycling the cans through the 24-hour temperature profile (72–96° F), as discussed below. The test procedures, which are described in more detail below, would ensure that gas cans meet the emission standard over a range of in-use conditions such as different temperatures, different fuels, and taking into consideration factors affecting durability.

##### 2. Determination of Best Available Control

The 0.3 g/gal/day emissions standard and associated test procedures reflect the performance of the best available control technologies discussed above, 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. As discussed above, to comply with California's program, gas can manufacturers have developed gas cans with low VOC emissions at a reasonable cost (see section IX. for costs). Testing of cans designed to meet CARB standards has shown the proposed standards to be technologically feasible. When tested over cycles very similar to those we are proposing, emissions from these cans have been in the range of 0.2–0.3 g/gal/day.<sup>279</sup> 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 would require the use of best available technologies. We are proposing a level at the upper end of the tested performance range to account for product performance variability. In addition, we believe that any of the current best designs can achieve these levels, so we do not believe that the proposed standard forecloses use of any of the existing performing product designs. Our detailed feasibility analysis is provided in the Regulatory Impact Analysis. We request comment on the level of the standard and on its feasibility. We request that commenters provide detail and data where possible.

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

<sup>279</sup> "Quantification of Permeation and Evaporative Emissions From Portable Fuel Container", California Air Resources Board, June 2004.

health impacts are discussed in section IV. Moreover, control of spillage from gas cans 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. Emissions Performance vs. Design Standard

We are proposing an emissions performance standard rather than mandating that gas cans be of any specified design. Rather than proposing to require that gas cans only have one opening, or other design-based requirements, we believe that it is sufficient to require gas cans to meet an emissions performance standard. A performance standard allows flexibility in can design while ensuring the overall emissions performance of the cans. We are reluctant to specify design standards for consumer products in order not to limit manufacturer (and ultimately consumer) choice. The market will encourage manufacturers to offer products that work well for consumers, and design-based requirements could unnecessarily limit manufacturer design flexibility.

##### 4. Automatic Shut-Off

We are not requiring automatic shut-off as a design-based standard, or considering it to be a "best available control." As described in section VIII.A.3. above, the automatic shut-off has been shown to be problematic for consumers for several reasons, and we believe that including requirements for automatic shut-off would be counterproductive. 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 overfilling. 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. We want to avoid cases where spills occur even when consumers are using the products properly due to a mismatch between the spout design and the design of the receiving fuel tank being filled. Excessive consumer difficulties in using new cans would likely lead to some consumers defeating the low emissions features of the cans by removing the spouts and using other means such as funnels to refuel equipment. Any additional emissions reductions provided by automatic shut-off in cases where it worked properly would likely be largely or completely offset by increased spillage due to cases where

consumers defeated the designs or the designs failed to work properly. We believe that the automatic closing cans, even without automatic shut-off requirements, will lead to reduced spillage. As discussed above, automatic closure keeps the cans closed when they are not in use and provides more control to the consumer during use.

Some additional reduction in spillage is likely possible in some cases with automatic shut-off, but may not be feasible across the wide array of gas can usage. It is possible to design a spout that works well on some equipment but not for all equipment. It might also be possible to cover more uses by having multiple spouts, but we believe that having multiple spouts would lead to confusion and would also require consumers to have multiple cans depending on the types of equipment that they refuel. We request comment on automatic shut-off requirements and on ways to establish an automatic shut-off requirement that would reduce spillage, be feasible for manufacturers, and be practical for consumers.

#### 5. Consideration of Retrofits of Existing Gas Cans

Clean Air Act section 183(e) provides authority to consider retrofitting gasoline containers as an approach for controlling emissions. We do not believe, however, that requiring the retrofit of existing gas cans would be a feasible approach for controlling gas can emissions, either technically or economically. This would likely entail manufacturers first developing retrofit systems (including spouts for various previous gas can designs), testing them for emissions performance, and certifying them with EPA. Manufacturers would need time to develop and certify systems and also to develop an implementation strategy, considering that there are millions of cans in use. Manufacturers would then likely need to collect gas cans from consumers, recondition the cans, permanently close vents, incorporate permeation barriers, and incorporate new spouts. We believe that this process would lead to costs that far exceed the cost of newly manufactured gas cans. In addition, emissions reductions would depend on consumer participation, which would be highly uncertain given that gas cans are relatively low-cost consumer products. In fact, we believe that consumers who are concerned about emissions would be more likely to discard old gas cans and purchase new cans meeting emissions standards. For all these reasons, we do not believe that a retrofitting approach makes sense for gas cans.

#### 6. Consideration of Diesel, Kerosene and Utility Containers

We are requesting comment on but not proposing applying emissions control requirements to diesel, kerosene, and utility containers. Due to the low volatility of diesel and kerosene, the evaporative losses from diesel and kerosene cans would be minimal when used with the designated fuels. California has included diesel and kerosene cans in their regulations largely due to the concern that they would be purchased as substitutes for gasoline containers. California also included utility containers in their portable fuel container program due to concerns that these containers would be used for gasoline. We believe that manufacturers can minimize this incentive by designing gasoline cans and spouts that are easy to use and beneficial to the consumer. However, storing gasoline in diesel, kerosene, and utility containers would result in a loss of emissions reductions and therefore we are requesting comment on including them in the program. The costs for these containers would be similar to the costs estimated for gasoline containers. We request comment on the potential for diesel, kerosene, and utility containers to be used as a substitute for regulated gas cans, and the cost and other implications of including them in the program.

#### C. Timing of Standard

As an aspect of considering the proposed standard's technological feasibility, we are proposing to require manufacturers to meet the standard beginning January 1, 2009. 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 would take at least six months due to the required durability demonstrations described below, and manufacturers would need time to procure and install the tooling needed to produce gas cans with permeation barriers for nationwide sales.

The standards would apply to gas cans manufactured on or after the start date of the program and would not affect cans produced before the start date. We propose that 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 gas cans manufactured prior to the January

1, 2009 start of the program, allowing the normal sell through of these cans to the retail level. Retailers would be able to sell their stocks of gas cans through the course of normal business without restriction. Gas cans are currently stamped with their production date, which would allow EPA to determine which cans are required to meet the new standards.

We believe that the 2009 time frame is feasible, but recognize that it could be a challenge for manufacturers with high volume sales to ramp up production. We request comment on the economic feasibility of the proposed timing and also on whether or not a phase-in of the standards would ease the transition to a national program. We encourage commenters to provide detailed rationale and data where possible to support their comments.

#### D. What Test Procedures Would Be Used?

As part of the proposed system of regulations for gas cans, we are proposing 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 proposed test procedures implement section 183(e)(4), which authorizes EPA to develop appropriate standards relating to product use. Emission testing on all gas cans that manufacturers produce is not feasible due to the high volumes of gas cans produced every year and the cost and time involved with emissions testing. Instead, we are proposing that before the gas cans are introduced into commerce, EPA would need to certify gas cans to the emissions standards based on manufacturers' applications for certification. Manufacturers would submit test data on a sample of gas cans that are prototypes of the products manufacturers intend to produce. Manufacturers would also need to certify that their production cans would not deviate in materials or design from the prototype gas cans that are tested. Manufacturers would need to obtain approval of their certification from EPA prior to introducing their products into commerce. The proposed test procedures and certification requirements are described in detail below.

We are proposing that manufacturers would test cans in their most likely storage configuration. The key to reducing evaporative losses from gas cans 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 proposing to require that containers be tested in their open condition. If the gas cans 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 would apply 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.

We propose that 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 proposing a test procedure for diurnal emissions testing where manufacturers (or others conducting the testing) place gas cans in an environmental chamber or a Sealed Housing for Evaporative Determination (SHED), vary the temperature over a prescribed temperature and time profile, and measure the hydrocarbons escaping from the gas can. We are proposing that gas cans would 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 (formed from hydrocarbons and oxides of nitrogen) would be highest. We propose that three containers would be tested, each over a three-day test. We are proposing that three cans would be tested for certification in order to address variability in products or test measurements. All three cans would have to individually meet the proposed standard. As noted above, gas cans would be tested in their most likely storage configuration.

The final result would be reported in grams per gallon, where the grams are the mass of hydrocarbons escaping from the gas can over 24 hours and the gallons are the nominal gas can capacity. The daily emissions would then be averaged for each can to demonstrate compliance with the standard. This test would capture hydrocarbons lost through permeation and any other evaporative losses from the gas can as a whole. We are proposing that the grams of hydrocarbons lost would 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 proposing 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 proposing for this testing to use E10 fuel (10% ethanol blended with the gasoline described above) in this testing to help ensure in-use emission reductions on ethanol-gasoline blends, which tend to have increased evaporative emissions with certain permeation barrier materials. We believe 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 proposing that the fill level at the start of the test be 50% of the nominal capacity of the gas can. This would likely be the average fuel level of the gas can in-use. Nominal capacity of the gas cans would be defined as the volume of fuel, specified by the manufacturer, to which the gas can could be filled when sitting on level ground. The vapor space that normally occurs in a gas can, even when "full," would not be considered in the nominal capacity of the gas can. All of these test requirements are proposed to represent typical in-use storage conditions for gas cans, on which EPA can base its emissions standards. These provisions are proposed as a way to implement the standards effectively, which will lead to the use of best available technology at a reasonable cost.

Before testing for certification, the gas cans would be run through the

durability tests described below. Within 8 hours of the end of the soak period contained in the durability cycle, the gas cans would be drained and refilled to 50 percent nominal capacity with fresh fuel, and then the spouts re-attached. When the gas can is drained, it would have to 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 would be re-weighed. In lieu of weighing the gas cans, we propose that manufacturers could opt to measure emissions from the SHED directly. For any in-use testing of gas cans, the durability procedures would 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. We propose to allow manufacturers to use this temperature profile to test gas cans as long as other parts of the EPA test procedures are followed, including the durability provisions below. We request comment on these test procedures, including ways the procedures may be further streamlined without impacting the overall emissions measurements and performance of the gas cans.

#### 2. Preconditioning To Ensure Durable In-Use Control

##### a. Durability Cycles

To determine permeation emission deterioration rates, we are specifying three durability aging cycles: Slosh, pressure-vacuum cycling, and ultraviolet 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 certification standard 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 (which permeation barriers are examples of best available controls). As described above, we believe including these cycles as part of the certification test is preferable to a design-based requirement.

For slosh and pressure cycling, we are proposing to use durability tests that are based on draft recommended SAE practice for evaluating permeation barriers.<sup>280</sup> For slosh testing, the gas can would 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. The third durability test is intended to assess potential impacts of ultraviolet (UV) sunlight ( $0.2 \mu\text{m}$ – $0.4 \mu\text{m}$ ) on the durability of a surface treatment. In this test, the gas cans must be exposed to a UV light of at least  $0.40 \text{ Watt-hour/meter}^2/\text{minute}$  on the gas can surface for 15 hours per day for 30 days. Alternatively, gas cans could 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.<sup>281</sup> 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. We request comments on the use of these procedures for gas cans to help ensure permeation control in-use.

We also propose to allow manufacturers to 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 gas cans and therefore that the durability cycles are not needed. Manufacturers would 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

would have to be collected under equivalent or more severe conditions as those noted above.

#### 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 emissions have stabilized, to ensure that the emissions standard is met in-use. Therefore, we are proposing that prior to testing the gas cans, the cans would 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 gas can would be filled with a 10-percent ethanol blend in gasoline (E10), sealed, and soaked for 20 weeks at a temperature of  $28 \pm 5^\circ \text{C}$ . As an alternative, we are proposing that the fuel soak could be performed for 10 weeks at  $43 \pm 5^\circ \text{C}$  to shorten the test time. During this fuel soak, the gas cans would 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.<sup>282</sup> 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 gas can, we would expect the manufacturer to use a longer soak period (and/or higher temperature) consistent with good engineering judgment.

Durability testing that is performed with fuel in the gas can may be considered part of the fuel soak provided that the gas can continuously has fuel in it. This approach would shorten the total test time. For example, the length of the UV and slosh tests could be considered as part of the fuel soak provided that the gas can is not drained between these tests and the beginning of the fuel soak.

#### c. Spout Actuation

In its recently revised program for gas cans, California included a durability demonstration for spouts. We are proposing 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 proposed standards. If these spouts stick or deteriorate, in-use emissions could remain very high (essentially uncontrolled). We are interested in ways to ensure during the certification procedures that the spouts also remain effective in use. 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 proposing requirements consistent with California will help manufacturers to avoid duplicate testing. We request comment on the above approach for demonstrating spout durability.

#### E. What Certification and In-Use Compliance Provisions Is EPA Proposing?

##### 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 proposing a certification mechanism pursuant to these authorities. Manufacturers would be required to go through the certification process specified in the proposed regulations before entering their containers into commerce. To certify products, manufacturers would first define their emission families. This is generally based on selecting groups of products that have similar emissions. For example, co-extruded gas cans of various geometries could be grouped together. The manufacturer would select a worst-case configuration for testing, such as the thinnest-walled gas can. These determinations may be made using good engineering judgment and would be subject to EPA review. Testing with those products, as specified above, would need to show compliance with emission standards. The manufacturers would then send us an application for certification. We propose to define the

<sup>280</sup> 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).

<sup>281</sup> Final Rule, "Control of Emissions from Nonroad Large Spark-ignition engines, and Recreational Engines (Marine and Land-based)", 67 FR 68287, November 8, 2002.

<sup>282</sup> Final Rule, "Control of Emissions from Nonroad Large Spark-ignition engines, and Recreational Engines (Marine and Land-based)", 67 FR 68287, November 8, 2002.

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 would not be considered a manufacturer and thus would not be certifying entities; the manufacturers of the cans they import would have to certify the cans. Importers would only be able to import gas cans that are certified.

After reviewing the information in the application, we would issue a certificate of conformity allowing manufacturers to introduce into commerce the gas cans from the certified emission family. EPA review would typically take about 90 days or less, but could be longer if we have questions regarding the application. The certificate of conformity would be for a production period of up to five years. Manufacturers could carry over certification test data if no changes are made to their products that would affect emissions performance. Changes to the certified products that would affect emissions would require reapplication for certification. Manufacturers wanting to make changes without doing testing would be required to present an engineering evaluation demonstrating that emissions are not affected by the change.

The certifying manufacturer accepts the responsibility for meeting applicable emission standards. While we are proposing no requirement 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 gas cans 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 five-year production period otherwise allowed between certifications. The details of the proposed certification process are provided in the proposed regulatory text. We request comments on the certification process we are proposing.

## 2. Emissions Warranty and In-Use Compliance

We are proposing a warranty period of one year to be provided by the manufacturer of the gas can to the consumer. The warranty would cover emissions-related materials defects and breakage under normal use. For example, the warranty would cover failures related to the proper operation of the auto-closing spout or defects with the permeation barriers. We are also

proposing to require 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 would not need to be submitted. We believe that this warranty will encourage designs that work well for consumer and are durable. Although it does not fully cover the average life of the product, it is not typical for very long warranties to be offered with 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 request comment on the warranty period.

EPA views this aspect of the proposal as another part of the "system of regulation" it is proposing to control VOC emissions from gas cans, which system may include "requirements for registration and labeling \* \* \* use, or consumption \* \* \* of the product" pursuant to section 183(e)(4) the Act. A warranty will promote the objective of the proposed rule by assuring that manufacturers will "stand behind" their product, thus improving product design and performance. Similarly, the proposed 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 five years on average before they are scrapped. We are proposing durability provisions as part of certification testing to help ensure containers perform well in use (a system of regulation for "use" of the product, pursuant to section 183(e)(4)). Under the proposal, we could test gas cans 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 proposed provision thus would work in tandem with the warranty claim reporting provision proposed in the preceding paragraph.)

We are not proposing any recall provisions for gas cans. Manufacturers do not have registration programs for gas cans and implementing such a program for a low-cost consumer product may be overly burdensome, and have a very low participation rate. Also, we would not expect a high participation rate from consumers in a recall, in any event, due to the nature of

gas cans as a consumer product. We believe, however, that by having the authority to test products in use, along with the possible repercussions, will encourage manufacturers to develop robust designs.

## 3. Labeling

Since the requirements will be effective based on the date of manufacture of the gas can, we propose 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 propose to require 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 1 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 proposing this labeling requirement, we further believe, pursuant to section 183(e)(8), that these labeling requirements would 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.

### *F. How Would State Programs Be Affected by EPA Standards?*

As described in section VIII.A.3. above, several states have adopted emissions control programs for gas cans. California implemented an emissions control program for gas cans in 2001. Thirteen other states, mostly in the northeast, have adopted the California program in recent years.<sup>283</sup> Last year, 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 proposing. We believe that although a few aspects of the program we are proposing are different, manufacturers will be able to meet both EPA and CARB requirements with the same gas can designs and therefore sell a single product in all 50

<sup>283</sup> Delaware, Maine, Maryland, Pennsylvania, New York, Connecticut, Massachusetts, New Jersey, Rhode Island, Vermont, Virginia, Washington DC, and Texas.

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 factor 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 the EPA program rather than continue their own program. We expect very little difference in the emissions reductions provided by the EPA and California programs in the long term. In addition, if EPA's program starts in 2009, as discussed above, this would be the same timing states would likely target in their program revisions.

#### *G. Provisions for Small Gas Can Manufacturers*

As discussed in previous sections, prior to issuing a proposal for this proposed 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 propose to include flexibility and hardship provisions for gas can manufacturers. Since nearly all gas can manufacturers (3 of 5 manufacturers as defined by SBA) are small entities and they account for about 60 percent of sales, the Panel recommended to extend the flexibility options and hardship provisions to all gas can manufacturers. (Our proposal today is consistent with that recommendation.) Moreover, implementation of the program would be much simpler by doing so. The flexibility provisions are incorporated into the program requirements described earlier in sections VIII.C through VIII.E. The hardship provisions

are described below. For further discussion of the Panel process, see section XII.C of this proposed rule and/or the Final Panel Report.

The Panel recommended that two types of hardship provisions be extended to gas can manufacturers. These entities could, on a case-by-case basis, face hardship, and we are proposing these provisions to provide what could prove to be needed safety valves for these entities. Thus, the propose hardship provisions are as follows:

#### 1. First Type of Hardship Provision

Gas can manufacturers would be able 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 or would have a significant adverse effect on the company's solvency. Hardship relief could include requirements for interim emission reductions.

#### 2. Second Type of Hardship Provision

Gas can manufacturers would be permitted 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.

For both types of hardship provisions, the length of the hardship relief would be established during the initial review for not more than one year and would be reviewed annually thereafter as needed. As part of its application, a company would be required to provide a compliance plan detailing when and how it would achieve compliance with the standards.

### **IX. What Are the Estimated Impacts of the Proposal?**

#### *A. Refinery Costs of Gasoline Benzene Reduction*

The proposed 0.62 volume percent benzene standard would generally result in many refiners investing in benzene control hardware and changing the operations in their refineries to reduce their gasoline benzene levels. The proposed ABT program would allow refiners to optimize their investments, which we believe would maximize the benzene reductions at the lowest possible cost. We have estimated that the capital and operating costs that we

believe would result from the proposed program would average 0.13 cents per gallon of gasoline.

In this section we summarize the methodology used to estimate the costs of benzene control, the scenarios we evaluated, and our estimated costs for the program. We also summarize the results of our analyses of other potential MSAT control programs. A detailed discussion of all of these analyses is found in Chapter 9 of the RIA.

#### 1. Tools and Methodology

##### a. Linear Programming Cost Model

We considered performing our cost assessments for this proposed program 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 would be choosing a variety of technologies for controlling benzene, and because the program would be national and would 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 new model, and for performing analyses of other potential programs.

##### b. Refiner-by-Refinery Cost Model

In contrast to LP models, refinery-by-refinery cost models are useful when individual refineries would respond to program requirements in different ways and/or have significantly different process capabilities. Thus, in the case of today's proposed gasoline benzene control program, we needed a model that would accurately simulate the variety of decisions refiners would 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 proposed benzene control program.

Our 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 the various units are used to produce gasoline and 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 2003 gasoline volumes and benzene levels, which was the most recent year for which data was available, and found that the model simulated the actual situation well. 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.

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 the specific benzene cost model, we have initiated a peer review process, and have received some comments on the design of our model. Although we did not receive these comments in time to respond to them in this proposal, we plan to address all peer review comments in the development of the final rule. (Based on our initial assessment of these comments, we do not believe that the changes suggested would significantly affect the projected costs of the program. See Chapter 9 of the RIA for our initial responses to these peer-review comments.)

Based on our understanding of the primary benzene control technologies (see section VII.F above), the cost model assumes that four technologies would 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; (2) routing benzene precursors to an existing isomerization unit, if available; (3) benzene extraction (extractive distillation); and (4) benzene saturation. There are several restrictions on the use of these various technologies (such as the assumption that benzene extraction would only be expanded in areas with strong benzene chemical markets) and these are incorporated into the model.

For the proposed benzene control program, the associated 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 establish an estimated cost for the set of technologies required for each refinery to meet the standard. We then rank the refineries in order from lowest to highest control cost per gallon of gasoline. 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 volume percent. This establishes which refineries we expect to apply control technologies to comply, as well as those that would generate credits and those that would use credits in lieu of investing in control. The sum of the costs of the refineries expected to invest in control provides the projected overall cost of the program.

#### c. Price of Chemical Grade Benzene

The price of chemical grade benzene is critical to the proposed 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 produced 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 projected benzene price for 2004 indicated that the benzene price averaged 38 dollars per barrel higher than regular grade gasoline.

For the future, CMAI projects that the price of benzene relative to gasoline will return to more historic levels or lower, in the range of \$20 per barrel higher than regular grade gasoline. We have based our modeling on this value. However, we have also examined the sensitivity of the projected overall program costs for a case where the cost of benzene control remains at \$38 higher than gasoline into the future.

#### d. Applying the Cost Model to Special Cases

For the comparative cases we modeled that involve a maximum-average (max-avg) standard in addition to an average benzene standard,

modeling the costs requires a different modeling methodology. Refineries that the model estimates would have benzene levels above the max-avg standard are assumed to apply the most cost-effective benzene reduction technologies that the model shows would reduce benzene levels to below the max-avg standard. The benzene reductions associated with meeting the max-avg standard may or may not be sufficient for also meeting the average standard, depending on how stringent the max-avg standard is relative to the average standard. If the model indicates that additional benzene reduction would be necessary, these additional benzene reductions are modeled in the same way as the case of an average standard only, as described above.

We also evaluated a limited number of cases that did not include an ABT program. In such cases, the model assumes that all the refineries with benzene levels below the standard would maintain the same benzene level, while each refinery with benzene levels above the standard would take all the necessary steps to reduce their benzene levels down to the standard. If the model shows that capital investments are needed to achieve the necessary benzene reduction, we assume that the refiner installs a full sized unit to treat the entire stream and then operates the unit only to the extent necessary to meet the standard.

## 2. Summary of Costs

### a. Nationwide Costs of the Proposed Program

We have used the refinery-by-refinery cost model to estimate the costs of the proposed program, with an average gasoline benzene content standard of 0.62 volume percent and the proposed ABT program. In general, the cost model indicates that among the four primary reformate-based technologies, benzene extraction would be the most cost effective. The next most cost effective technologies are benzene precursor rerouting, and rerouting coupled with isomerization. The model indicates that benzene saturation would be the least cost-effective, but only marginally so in the larger refineries.

Our refinery-by-refinery model estimates that 92 refineries of the total 115 gasoline-producing refineries in the U.S. would have to put in new capital equipment or change their refining operations to reduce the benzene levels in their gasoline. Of these refineries 25 would use benzene precursor removal, 32 refineries would use benzene precursor removal coupled with isomerization, 24 would use extraction,

and 11 would use benzene saturation. The analysis projects that 43 refineries would reduce their benzene levels to the proposed benzene standard or lower, while 49 refineries would reduce their benzene levels but still would need to purchase credits to comply with the average benzene standard. Including the refineries with benzene levels currently below 0.62, we project that there would be a total of 62 refineries producing gasoline with benzene levels at 0.62 or lower. The model assumes that those with benzene levels lower than 0.62

volume percent would generate credits for sale to other refineries. Finally, the model projects that there would be 6 refineries that would take no benzene reduction action and comply with the proposed program solely through the use of benzene credits.

The refinery model estimates that the proposed benzene standard would cost 0.13 cents per gallon, averaged over the entire U.S. gasoline pool. (When averaged only over those refineries which are assumed to take steps to reduce their benzene levels, the average

cost would be 0.19 cents per gallon.) This per-gallon cost would result from an industry-wide investment in capital equipment of \$500 million to reduce gasoline benzene levels. This would amount to an average of \$5 million in capital investment in each refinery that adds such equipment.<sup>284</sup>

We also estimated annual aggregate costs associated with the proposed new fuel standard. As shown in Table IX.A-1, these costs are projected to begin at \$186 million in 2011 and increase over time as fuel demand increases.

TABLE IX.A-1.—ANNUAL AGGREGATE FUEL COSTS

2011	2013	2015	2017	2019	2020
\$185,533,000	\$191,873,000	\$198,283,000	\$204,212,000	\$209,875,000	\$212,606,000

Several observations can be made from these results from our nationwide analysis. First, significantly reducing gasoline benzene levels to low levels, coupled with the flexibility of an ABT program, will incur fairly modest costs. This is primarily because we expect that refiners would optimize their benzene control strategies, resulting in large benzene reductions at a low overall program cost. With high benzene prices relative to those of gasoline projected to continue (even if they drop from the recent very high levels), extraction would 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 would be fairly cost-effective overall because larger refineries that install this

technology would take advantage of their economies of scale.

b. Regional Distribution of Costs

The benzene reductions estimated by the cost model and associated costs vary significantly by region. Table IX.A-2 summarizes the initial benzene levels and the projected benzene levels after refiners take anticipated steps to reduce the benzene in their gasoline and the estimated per-gallon costs for complying with the proposed benzene standard.

Table IX.A-2 shows that under the proposed program the largest benzene reductions occur in the areas with the highest benzene levels. This is expected as many of these refineries are not doing anything to reduce their gasoline benzene levels today and simple, low-cost technologies can be employed to realize large reductions in their benzene levels. In PADDs 1 and 3, which have significant benzene control today to meet the RFG requirements, a more modest benzene reduction would occur.

Many of the refineries producing fuel for sale in PADDs 1 and 3 cannot reduce their benzene levels further because they are already extracting all the benzene that they can. Extraction is the technology most used in PADDs 1 and 3, resulting in a much lower average cost for reducing benzene in these regions.

For comparison, we also modeled a program where the 0.62 vol% average standard was supplemented by a maximum average benzene cap standard, as described in section VII above. We did not propose such a maximum average standard because the main effect would simply be to shift emission reductions from one region of the country to another with no change in overall emission reductions. Table IX.A-2 shows that a maximum average standard would increase costs slightly nationwide, but that PADD 2 benzene levels, already above the standard, would rise while other areas improved.

TABLE IX.A-2.—CURRENT AND PROJECTED BENZENE LEVELS AND COSTS BY PADD

[\$2002, 7% ROI before taxes]

	PADD					U.S.
	1	2	3	4	5 (w/o CA)	
Current Benzene Level (vol%)	0.66	1.32	0.86	1.54	1.87	0.97
Projected Benzene Level (vol%)	0.51	0.73	0.55	0.95	1.04	0.62
Cost (c/gal)	0.05	0.25	0.05	0.40	0.72	0.125
Projected Benzene Level (vol%) (With 1.3 vol% Max-Avg Std)	0.50	0.75	0.56	0.90	0.88	0.62
Cost (c/gal)	0.06	0.22	0.03	0.43	1.18	0.130

c. Cost Effects of Different Standards

We also estimated the benzene reduction costs for other benzene

reduction levels, as summarized in Table IX.A-3. The cost model estimates that a 0.52 volume percent benzene

<sup>284</sup> The modeling does not separate out capital costs for the recovery of lost octane and supplying

additional hydrogen, but rather includes these in

the operating cost estimates. Therefore, actual capital costs maybe somewhat greater.

standard with an ABT program <sup>285</sup> is the maximum benzene reduction possible when each refinery employs the maximum appropriate reformate benzene control (that is, benzene extraction whenever possible, and benzene saturation otherwise).

TABLE IX.A-3.—COSTS OF VARIOUS POTENTIAL BENZENE CONTROL STANDARDS  
[2002, 7% ROI before taxes]

Average standard (vol%)	Cost (cents/gallon)
0.62 (Proposed Standard) ....	0.13
0.65 .....	0.09
0.60 .....	0.15
0.52 .....	0.36

The results in Table IX.A-3 indicate that the cost for reducing benzene levels is not very sensitive to the benzene standard in the range from 0.60 to 0.65 volume percent benzene. This is because we project that standards in this range would not require many of the smaller or otherwise higher-cost refineries to employ benzene saturation, which is the highest cost technology. Also, in this range of potential standards, the ABT program would allow the refining industry to optimize the benzene control technologies they apply. The need for all refineries to use either benzene saturation or benzene extraction to comply with a 0.52 vol% standard explains the much higher cost for a program with a standard that range.

We also examined the effect of the ABT program on cost. Without ABT, we assume that the standard would be met by all refineries. To achieve a national average level of 0.62 vol% benzene without an ABT program would require an absolute standard of 0.73 vol%. We estimate that such a program would result in a nationwide average cost of 0.25 cents per gallon, about double the cost of the program with ABT.

d. Effect on Cost Estimates of Higher Benzene Prices

As described above, we also performed a sensitivity analysis to estimate the costs of the proposed program if the recent very high prices for chemical grade benzene continue

<sup>285</sup> The cost model projects that this standard would require an ABT program because many of the refineries modeled would not be able to achieve this standard. These refineries would have to rely on the purchase of credits from other refineries which are already below this benzene level, or other refineries which could install benzene control technology to get their benzene levels below this standard. This scenario assumes a fully utilized credit program.

into the future. We estimate that at an average benzene price of \$38 dollars above that for gasoline, the program would cost 0.08 cents per gallon less on average nationwide.

3. Economic Impacts of MSAT Control Through Gasoline Sulfur and RVP Control and a Total Toxics Standard

As discussed above in section VII, we have considered two approaches to fuel-related MSAT control that would involve increasing the stringency of two existing emission control programs, the gasoline sulfur program and the gasoline volatility program. We estimated the cost of programs that would further reduce the sulfur content and Reid vapor pressure (RVP) of gasoline. For these costs estimates, the LP refinery model was used to estimate the costs for the year 2010, including the fuel economy impacts. We summarize these costs here and provide detailed analyses in Chapter 9 of the RIA.

For sulfur control, we estimated the costs of reducing U.S. gasoline sulfur levels down to 10 ppm from the 30 ppm sulfur level required for Tier 2 sulfur control. The costs are based on revamping current hydrotreaters installed to meet the 30 ppm sulfur standard. We estimate that reducing gasoline sulfur down to 10 ppm would cost 0.51 cents per gallon, taking into account the fuel economy effects. The analysis also estimates that U.S. refineries would invest \$1.3 billion in new capital to achieve this sulfur reduction.

We also estimated costs for lowering summertime gasoline RVP down to a maximum of 7.8 or 7.0 RVP from the current average for non-RVP controlled gasoline of 9.0 RVP. The estimated volume of gasoline required to meet an additional low RVP requirement was assumed to be equivalent to half of the volume of the reformulated gasoline sold within the PADD, applied to the conventional gasoline sold within the PADD. This simple means of estimating the volume of gasoline affected by future additional RVP control programs was used because the analysis of possible new low RVP programs established for complying with the 8 hour ozone National Ambient Air Quality Standards (NAAQS) was not completed when the cost analysis was initiated. The per-gallon cost is not expected to vary much by the size of the program. The cost analysis estimates that reducing RVP down to 7.8 RVP would cost 0.23 cents per gallon. The analysis also estimates that U.S. refineries would invest \$121 million in new capital to achieve this level of RVP control. The cost analysis estimates that reducing RVP down to 7.0 RVP would

cost 0.40 cents per gallon. Meeting a 7.0 RVP standard is projected to cause U.S. refiners to invest \$184 million in new capital to achieve this level of RVP control.

We have also evaluated the costs of programs that would control total air toxics. These programs, the analyses of which are also found in Chapter 9 of the RIA, would all be more costly than the proposed 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 draft RIA.

As described in section VI, 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, a standard based on averaging allows some vehicles to be above the numeric standard as long as those excess emissions are offset by vehicles below the standard. Averaging would 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 would be needed to meet a 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 would incur research and development (R&D) costs associated with a new cold temperature standard, and some likely would 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 would recover R&D costs over a five-year 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 would be less than \$1 per vehicle.

We are not anticipating additional costs for the proposed new evaporative emissions standard. As discussed in section VI, 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 would streamline certification and be an "anti-backsliding" measure. It also would

codify 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 IX.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 Gas Can Cost Impacts?

For gas cans, 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 emissions gas cans. Cost estimates based on the projected technologies represent an expected change in the cost of gas cans as they begin to comply with new emission standards. All costs are presented in 2003 dollars. Full details of our cost analysis, including fuel savings, can be found in Chapter 10 of the Draft RIA.

Table IX.C-1 summarizes the projected near-term and long-term per unit average costs to meet the new emission standards. Long-term impacts on gas cans 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.<sup>286</sup> The table also shows our projections of average fuel savings over the life of the gas can. Fuel savings can be estimated based on the VOC emissions reductions due to gas can controls.

TABLE IX.C-1.—ESTIMATED AVERAGE GAS CAN 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 gas can 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 IX.C-2. The annual cost savings due to fuel savings start slowly, then increase as greater numbers of compliant gas cans enter the market. Table IX.C-2 also presents a summary of the estimated annual fuel savings. Aggregate costs are projected to peak in 2013 at about \$51 million and then drop to about \$29 million once fixed costs are recovered. The change in numbers beyond 2015 occurs due to projected growth in gas can sales and population.

TABLE IX.C-2.—TOTAL ANNUALIZED COSTS AND FUEL SAVINGS

	2009	2013	2015	2020
Costs .....	\$49,112,000	\$51,228,000	\$28,772,000	\$31,767,000
Fuel Saving .....	14,381,000	76,037,000	92,686,000	98,861,000

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 proposed fuel, vehicle, and gas can programs using the costs described above and the emissions reductions described in section V. More detail on the costs, emissions reductions, and cost

per ton estimates can be found in the draft RIA. We have calculated the costs per ton using the net present value of the annualized costs of the program, including gas can 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.<sup>287</sup>

<sup>286</sup> These cost 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.

<sup>287</sup> The proposed standards do not apply to nonroad engines, since section 202 (l) authorizes controls only for "motor vehicles," which 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.

For vehicles and gas cans, we are proposing to establish NMHC and HC standards, respectively, which would also reduce benzene and other VOC-based toxics. For vehicles, we are also expecting direct PM reductions due to the proposed NMHC standard.<sup>288</sup> Section V 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 gas cans. 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 gas cans are provided in Table IX.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 proposal as a whole would be \$0

because the fuel savings from gas cans offsets the costs of gas can 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 proposed vehicle program.<sup>289</sup>

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 IX.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
Gas Cans (without fuel savings) .....	230	250	180
Gas Cans (with fuel savings) .....	0	0	0
Combined (with fuel savings) .....	0	0	0

The cost per ton of benzene reductions for fuels, vehicles, and gas

cans are shown in Table IX.D-2 using the same methodology as noted above

for HC. The results are calculated by assigning all costs to benzene control.

TABLE IX.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 .....	\$10,900	11,100	11,400
Vehicles .....	260	340	0
Gas Cans (without fuels savings) .....	27,800	30,900	21,600
Gas Cans (with fuel savings) .....	0	0	0
Combined (with fuel savings) .....	3,400	3,600	2,400

The cost per ton of overall MSAT reductions for fuels, vehicles, and gas cans are shown in Table IX.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 IX.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 .....	\$10,900	\$11,100	\$11,400
Vehicles .....	40	53	0
Gas Cans (without fuel savings) .....	1,800	2,000	1,400
Gas Cans (with fuel savings) .....	0	0	0
Combined (with fuel savings) .....	710	780	450

<sup>288</sup> 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.

<sup>289</sup> We note that in determining whether the proposed vehicle controls represent the greatest emissions reductions achievable considering costs, we have considered the proposed cold-start standards separately from any other proposed control program. Similarly, in considering whether

the proposed controls for gas cans represent the best available control considering economic feasibility, we considered the proposed gas can standards separately from any other proposed control program.

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 IX.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 .....	\$620	\$820	\$0

E. Benefits

This section presents our analysis of the health and environmental benefits that can be expected to occur as a result of the proposed 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 proposed vehicle, fuel and gas can standards, reductions in VOCs (an ozone precursor) from the proposed cold temperature vehicle and gas can standards, and reductions in direct PM<sub>2.5</sub> from the proposed cold temperature vehicle standards. When translating emission benefits to health effects and monetized values, however, we only quantify the PM-related benefits associated with the proposed cold temperature vehicle standards.

The reductions in PM from the proposed cold temperature vehicle standards would 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 are expected to be approximately \$6.5 billion using a 3 percent discount rate and \$5.9 billion using a 7 percent discount rate. Total social costs of the entire proposal for the same year (2030) are \$205 million. Details on the costs of each of the proposed controls are in section IX.F. These estimates, and all monetized benefits presented in this section, are in year 2003 dollars.

We demonstrate that the proposed standards would reduce cancer and noncancer risk from reduced exposure to MSATs (as described in Section IV of this preamble). However, we do not translate this risk reduction into benefits. We also do not quantify the benefits related to ambient reductions in ozone due to the VOC emission reductions expected to occur as a result of the proposed 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 can be expected as a result of the proposed standards, and monetizes those benefits. The benefits would 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<sub>2.5</sub> emissions.

While there will be benefits associated with air toxic pollutant reductions, notably with regard to reductions in exposure and risk (see Section IV, above), 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 Section IV.A). The EPA Science Advisory Board specifically commented in their review of the 1996 National Air Toxics Assessment (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.<sup>290</sup> 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 as part of a case study being done for benzene as part of

the ongoing update to the Section 812 retrospective and prospective studies.<sup>291</sup>

We also do not estimate the monetized benefits of VOC controls in this benefits analysis. Though VOCs would be demonstrably reduced as a result of the cold temperature vehicle standards, we assume that these emissions would not have a measurable impact on ozone formation since the standards seek to reduce VOC emissions at cold ambient temperatures and ozone formation is primarily a warm ambient temperature issue. The gas can controls would 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 proposed standards. In Section IV.C., we discuss that the ozone modeling conducted for the proposed gas can standards results in a net reduction in the population weighted ozone design value metric measured within the modeled domain (37 Eastern states and the District of Columbia). The net improvement is very small, however, and would 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 proposed standards. We discuss these benefits qualitatively within the Regulatory Impact Analysis.

Table IX.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 Regulatory Impact Analysis for the proposed standards provides a qualitative description of the health and welfare effects not quantified in this analysis.

<sup>290</sup> 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>.

<sup>291</sup> The analytic blueprint for the Section 812 benzene case study can be found at <http://www.epa.gov/air/sect812/appendixi51203.pdf>.

TABLE IX.E-1.—UNQUANTIFIED AND NON-MONETIZED EFFECTS

Pollutant/effects	Effects not included in primary estimates—changes in:
Ozone Health <sup>a</sup> .....	Premature mortality: short term exposures <sup>b</sup> . 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 (+/-) <sup>e</sup> .
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 (+/-) <sup>e</sup> .
PM Health <sup>c</sup> .....	Premature mortality—short term exposures <sup>d</sup> . Low birth weight. Pulmonary function. Chronic respiratory diseases other than chronic bronchitis. Non-asthma respiratory emergency room visits. Exposure to UVb (+/-) <sup>e</sup> .
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 (+/-) <sup>e</sup> .
MSAT Health .....	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). 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).
MSAT Welfare .....	Direct toxic effects to animals. Bioaccumulation in the food chain. Damage to ecosystem function. Odor.

<sup>a</sup> 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.

<sup>b</sup> EPA sponsored a series of meta-analyses of the ozone mortality epidemiology literature, published in the July 2005 volume of the journal Epidemiology, which found that short-term exposures to ozone may have a significant effect on daily mortality rates, independent of exposure to PM. EPA is currently considering how to include an estimate of ozone mortality in its primary benefits analyses.

<sup>c</sup> 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.

<sup>d</sup> 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.

<sup>e</sup> May result in benefits or disbenefits.

2. Quantified Human Health and Environmental Effects of the Proposed Cold Temperature Vehicle Standard

In this section we discuss the PM<sub>2.5</sub> benefits of the proposed cold temperature vehicle standard. To estimate PM<sub>2.5</sub> benefits, we rely on a benefits transfer technique. The benefits

transfer approach uses as its foundation the relationship between emission reductions and ambient PM<sub>2.5</sub> concentrations modeled across the contiguous 48 states (and DC) for the Clean Air Nonroad Diesel (CAND)

proposal.<sup>292</sup> For a given future year, we first calculate the ratio between CAND direct PM<sub>2.5</sub> emission reductions and direct PM<sub>2.5</sub> emission reductions associated with the proposed cold temperature vehicle control standard

<sup>292</sup> See 68 FR 28327, May 23, 2003.

(proposed emission reductions/CAND emission reductions). We multiply this ratio by the percent that direct PM<sub>2.5</sub> contributes towards population-weighted reductions in total PM<sub>2.5</sub> due to the CAND standards. This calculation results in a “benefits apportionment factor” for the relationship between direct PM emissions and primary PM<sub>2.5</sub>, 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 modeled CAND control option and the proposed standards.<sup>293</sup> This benefits transfer method is consistent with the approach used in other recent mobile and stationary source rules.<sup>294</sup>

Table IX.E-2 presents the primary estimates of reduced incidence of PM-related health effects for the years 2020 and 2030 for the proposed cold temperature vehicle control strategies.<sup>295</sup> In 2030, we estimate that PM-related annual benefits would result

in approximately 910 fewer premature fatalities, 590 fewer cases of chronic bronchitis, 1,600 fewer non-fatal heart attacks, and 940 fewer hospitalizations (for respiratory and cardiovascular disease combined). In addition, we estimate that the emission controls would reduce days of restricted activity due to respiratory illness by about 620,000 days and reduce work-loss days by about 110,000 days. We also estimate substantial health improvements for children from reduced upper and lower respiratory illness, acute bronchitis, and asthma attacks.

TABLE IX.E-2.—ESTIMATED ANNUAL REDUCTIONS IN INCIDENCE OF HEALTH EFFECTS RELATED TO THE PROPOSED COLD TEMPERATURE VEHICLE STANDARD <sup>a</sup>

Health effect	2020 Annual incidence reduction	2030 Annual incidence reduction
<b>PM-Related Endpoints:</b>		
<b>Premature Mortality <sup>b</sup></b>		
Adult, age 30+ and Infant, age <1 year .....	480	910
Chronic bronchitis (adult, age 26 and over) .....	330	590
Non-fatal myocardial infarction (adult, age 18 and over) .....	820	1,600
Hospital admissions—respiratory (all ages) <sup>c</sup> .....	260	540
Hospital admissions—cardiovascular (adults, age >18) <sup>d</sup> .....	220	400
Emergency room visits for asthma (age 18 years and younger) .....	360	630
Acute bronchitis, (children, age 8–12) .....	790	1,400
Lower respiratory symptoms (children, age 7–14) .....	9,400	17,000
Upper respiratory symptoms (asthmatic children, age 9–18) .....	7,100	13,000
Asthma exacerbation (asthmatic children, age 6–18) .....	12,000	21,000
Work Loss Days .....	63,000	110,000
Minor restricted activity days (adults age 18–65) .....	370,000	620,000

<sup>a</sup> Incidence is rounded to two significant digits. Estimates represent benefits from the proposed rule nationwide, excluding Alaska and Hawaii.

<sup>b</sup> PM-related adult mortality based upon studies by Pope, et al 2002.<sup>296</sup> PM-related infant mortality based upon studies by Woodruff, Grillo, and Schoendorf, 1997.<sup>297</sup>

<sup>c</sup> Respiratory hospital admissions for PM include admissions for chronic obstructive pulmonary disease (COPD), pneumonia and asthma.

<sup>d</sup> Cardiovascular hospital admissions for PM include total cardiovascular and subcategories for ischemic heart disease, dysrhythmias, and heart failure.

PM 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 prepared for this proposal.

3. Monetized Benefits

Table IX.E-3 presents the estimated monetary value of reductions in the incidence of those health effects we are able to monetize for the proposed cold temperature vehicle standard. Total annual PM-related health benefits are estimated to be approximately \$6.5 or \$5.9 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 IX.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 IX.E-1.

<sup>293</sup> Note that while the proposed regulations also control VOCs, which contribute to PM formation, the benefits transfer scaling approach only scales benefits based on NO<sub>x</sub>, SO<sub>2</sub>, 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.

<sup>294</sup> 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).

<sup>295</sup> The “primary estimate” refers to the estimate of benefits that reflects the suite of endpoints and assumptions that EPA believes yields the expected value of air quality improvements related to the proposed standards. The impact that alternative endpoints and assumptions have on the benefit estimates are explored in appendixes to the RIA.

<sup>296</sup> 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.

<sup>297</sup> 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.

- The PM benefits scaled transfer approach, derived from the Clean Air Nonroad Diesel rule, does not account for VOCs as precursors to ambient PM<sub>2.5</sub> formation. To the extent that VOC emission reductions associated with the

proposed regulations contribute to reductions in ambient PM<sub>2.5</sub>, 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 IX.E-3.—ESTIMATED ANNUAL MONETARY VALUE OF REDUCTIONS IN INCIDENCE OF HEALTH AND WELFARE EFFECTS RELATED TO THE PROPOSED COLD TEMPERATURE VEHICLE STANDARD

[Millions of 2003\$]<sup>a,b</sup>

Health effect	Pollutant	2020 Estimated value of reductions	2030 Estimated value of reductions
PM-Related Premature mortality <sup>c, d</sup> :			
Adult, 30+ years and Infant, <1 year.			
3 percent discount rate .....	PM <sub>2.5</sub> .....	\$3,100	\$6,000
7 percent discount rate .....	.....	2,800	5,400
Chronic bronchitis (adults, 26 and over) .....	PM <sub>2.5</sub> .....	150	270
Non-fatal acute myocardial infarctions:			
3 percent discount rate .....	.....	80	150
7 percent discount rate .....	PM <sub>2.5</sub> .....	77	150
Hospital admissions for respiratory causes .....	PM <sub>2.5</sub> .....	4.8	10
Hospital admissions for cardiovascular causes .....	PM <sub>2.5</sub> .....	5.1	9.4
Emergency room visits for asthma .....	PM <sub>2.5</sub> .....	0.12	0.21
Acute bronchitis (children, age 8–12) .....	PM <sub>2.5</sub> .....	0.32	0.58
Lower respiratory symptoms (children, age 7–14) .....	PM <sub>2.5</sub> .....	0.17	0.30
Upper respiratory symptoms (asthma, age 9–11) .....	PM <sub>2.5</sub> .....	0.20	0.37
Asthma exacerbations .....	PM <sub>2.5</sub> .....	0.57	1.0
Work loss days .....	PM <sub>2.5</sub> .....	9.2	14
Minor restricted activity days (MRADs) .....	PM <sub>2.5</sub> .....	21	36
Monetized Total <sup>e</sup> :			
Base estimate.			
3 percent discount rate .....	PM <sub>2.5</sub> .....	3,400+ B	6,500+ B
7 percent discount rate .....	.....	3,100+ B	5,900+ B

<sup>a</sup> Dollars are rounded to two significant digits. The PM estimates represent benefits from the proposed rule across the contiguous United States.

<sup>b</sup> Monetary benefits adjusted to account for growth in real GDP per capita between 1990 and the analysis year (2020 or 2030).

<sup>c</sup> 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).<sup>298</sup>

<sup>d</sup> Adult mortality based upon studies by Pope et al. 2002. Infant mortality based upon studies by Woodruff, Grillo, and Schoendorf, 1997.

<sup>e</sup> B represents the monetary value of health and welfare benefits not monetized. A detailed listing is provided in Table IX.E-1.

4. What Are the Significant Limitations of the Benefit Analysis?

Perhaps 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 proposed 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 due to the magnitude of, and uncertainty

associated with, the modeled changes in ambient ozone associated with the proposed gas can standards, despite net benefits, when population weighted, in the ozone design value metric observed across the modeled domain (see Section IV.C).

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, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. 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 proposed 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

<sup>298</sup> U.S. Environmental Protection Agency, 2000. Guidelines for Preparing Economic Analyses. [www.yosemite1.epa.gov/ee/epa/eed/hsf/pages/Guideline.html](http://www.yosemite1.epa.gov/ee/epa/eed/hsf/pages/Guideline.html).

Office of Management and Budget, The Executive Office of the President, 2003. Circular A-4. <http://www.whitehouse.gov/omb/circulars>.

benefits analysis to the proposed 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.

Despite these uncertainties, we believe this benefit-cost analysis provides a conservative estimate of the expected economic benefits of the proposed 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 supported by EPA's technical peer review panel, the Science Advisory Board's Health Effects Subcommittee (SAB-HES). EPA has also worked to address many of the comments made by the National Academy of Sciences (NAS) in a September 26, 2002 report on its review of the Agency's methodology for analyzing the health benefits of measures taken to reduce air pollution. EPA addressed many of these comments in the analysis of the final CAIR rule.<sup>299</sup> The analysis of the proposed rule incorporates this most recent work.

There is one category where new studies suggest the possibility of significant additional economic benefits. Over the past several years, EPA's SAB has expressed the view that there were not sufficient data to show a separate ozone mortality effect, in essence saying that any ozone benefits are captured in the PM-related mortality benefit estimates. However, in their most recent advice, the SAB recommended that EPA reconsider the evidence on ozone-related mortality based on the publication of several recent analyses that found statistically significant associations between ozone and mortality. Based on these studies and the recommendations from the SAB, EPA sponsored three independent

meta-analyses of the ozone-mortality epidemiology literature to inform a determination on including this important health endpoint. The studies were peer-reviewed and printed in the journal *Epidemiology* in July 2005.<sup>300 301 302</sup>

EPA is reviewing the body of literature available on the association of ozone exposure and premature mortality. EPA's second external review draft of the Criteria Document for ozone has concluded that there is strong evidence that exposure to ozone has been associated with premature mortality.<sup>303</sup> We are exploring ways of appropriately characterizing the premature mortality benefits of reducing ozone and included an estimate in recent analyses of the Clear Skies legislation.<sup>304</sup> We plan to include a quantification of ozone mortality benefits in future air pollution rulemakings.

In contrast to the additional benefits of the proposed 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.<sup>305</sup> 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.<sup>306</sup> 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 Proposed Standards?

This proposed rule provides three separate provisions that reduce air toxics emissions from mobile sources: cold temperature vehicle controls, an emissions control program for gas cans, 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<sub>2.5</sub>-related benefits from direct PM emission reductions associated with the cold temperature standards. There are a number of health and environmental effects associated with the proposed standards that we were unable to quantify or monetize (see Table IX.E-1).

Table IX.E-4 contains the estimates of monetized benefits of the proposed cold temperature vehicle standards and estimated social welfare costs for each of the proposed control programs.<sup>307</sup> The annual social welfare costs of all provisions of this proposed rule are described more fully in Section IX.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 IX.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

<sup>300</sup> Levy, J.I., Chemerynski, S.M., Sarnat, J.A. 2005. Ozone Exposure and Mortality: An Empirical Bayes Meta-Regression Analysis. *Epidemiology*. 16:458-468.

<sup>301</sup> Bell, M.L., Dominici, F., Samet, J.M. 2005. A Meta-Analysis of Time-Series Studies of Ozone and Mortality with Comparison to the National Morbidity, Mortality, and Air Pollution Study. *Epidemiology*. 16:436-445.

<sup>302</sup> Ito, K., DeLeon, S.F., Lippmann, M. 2005. Associations Between Ozone and Daily Mortality: Analysis and Meta-Analysis. *Epidemiology*. 16:446-457.

<sup>303</sup> 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>

<sup>304</sup> For technical details about Clear Skies multi-pollutant analysis, see [http://www.epa.gov/airmarkets/mp/bmresults/health\\_benefits\\_method.pdf](http://www.epa.gov/airmarkets/mp/bmresults/health_benefits_method.pdf)

<sup>305</sup> 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>

<sup>306</sup> 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>

<sup>307</sup> 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.

<sup>299</sup> See Chapter 4 of the Final Clean Air Interstate Rule RIA ([www.epa.gov/cair](http://www.epa.gov/cair)) for a discussion of EPA's ongoing efforts to address the NAS recommendations in its regulatory analyses.

program would be approximately \$3,400 + B million or \$3,100 + 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 \$11 million in the last year of the program (2019). These benefits are expected to increase to

\$6,500 + B million or \$5,900 + B million annually in 2030 (using a 3 percent and 7 percent discount rate in the benefits analysis, respectively), even as the social welfare costs of that program fall to zero. Table IX.E-4 also presents the costs of the other proposed rule provisions: an emissions control program for gas cans and a control

program limiting benzene in gasoline. Though we are unable to present the benefits associated with these two programs, we note for informational purposes that the benefits associated with the proposed cold temperature vehicle standards alone exceed the costs of all three proposed rule provisions combined.

TABLE IX.E-4.—SUMMARY OF ANNUAL BENEFITS OF THE PROPOSED COLD TEMPERATURE VEHICLE STANDARDS AND COSTS OF ALL PROVISIONS OF THE PROPOSED STANDARDS <sup>a</sup>

[Millions of 2003 dollars]

Description	2020	2030
Estimated Social Welfare Costs <sup>b</sup> :		
Proposed Cold Temperature Vehicle Standards .....	\$11 <sup>c</sup> .....	\$0
Proposed Gasoline Container Standards .....	32 .....	39
Proposed Fuel Standards <sup>d</sup> .....	210 .....	250
Total .....	240 .....	290
Fuel Savings .....	- 73 .....	- 82
Total Social Welfare Costs .....	170 .....	205
Total PM <sub>2.5</sub> -Related Health Benefits of the Proposed Cold Temperature Vehicle Standards <sup>e</sup> :		
3 percent discount rate .....	3,400 + B <sup>f</sup> ...	6,500 + B <sup>f</sup>
7 percent discount rate .....	3,100 + B <sup>f</sup> ...	5,900 + B <sup>f</sup>

<sup>a</sup>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.

<sup>b</sup>Note that costs are the annual total costs of reducing all pollutants associated with each provision of the proposed MSAT control package. Also note that while the cost analysis only utilizes a 7 percent discount rate to calculate annual costs, the benefits analysis uses both a 3 percent and 7 percent discount rate to calculate annual benefits. Benefits reflect only direct PM reductions associated with the cold temperature vehicle standards.

<sup>c</sup>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.

<sup>d</sup>Our modeling for the total costs of the proposed gasoline benzene program included California gasoline, since it was completed before we decided to propose that California gasoline not be covered by the program. California refineries comprise approximately 1 percent of these 2projected costs. For the final rule, we expect to exclude California refineries from the analysis.

<sup>e</sup>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). 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).<sup>308</sup>

<sup>f</sup>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 IX.E-1.

F. Economic Impact Analysis

We prepared a draft Economic Impact Analysis (EIA) to estimate the economic impacts of the proposed emission control program on the gas can, 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 economic sectors. We also present the results of our analysis.

We estimate the net social costs of the proposed program to be about \$171.5 million in 2020. This estimate reflects the estimated costs associated with the

gasoline, gas can, and vehicle controls and the expected fuel savings from better evaporative controls on gas cans. The results of the economic impact modeling performed for the gasoline fuel and gas can control programs suggest that the social costs of those two programs are expected to be about \$244.3 million in 2020 with consumers of these products expected to bear about 60 percent of these costs. We estimate fuel savings of about \$72.8 million in 2020 that will accrue to consumers. There are no social costs associated with the vehicle program in 2020. 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 0.1 percent (0.2 cents per gallon) for PADD 5. The price of gas cans is expected to increase by about 1.8 percent (\$0.20 per can) in areas that already have gas can requirements and about 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 proposal.

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 in Section IX.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

<sup>308</sup> U.S. Environmental Protection Agency, 2000. Guidelines for Preparing Economic Analyses. [www.yosemite1.epa.gov/ee/epa/eed/hsf/pages/Guideline.html](http://www.yosemite1.epa.gov/ee/epa/eed/hsf/pages/Guideline.html).

Office of Management and Budget, The Executive Office of the President, 2003. Circular A-4. <http://www.whitehouse.gov/omb/circulars>.

output.<sup>309</sup> 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 proposed 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 for this proposal to estimate price and quantity changes and total social costs associated with the emission controls under consideration. The EIM simulates how producers and consumers of affected products can be expected to respond to an increase in production costs as a result of the proposed 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 proposal: gas cans, gasoline fuel, and light-duty vehicles. In this Economic Impact Analysis we model only the impacts on the gas can and gasoline fuel markets. We did not model the impacts on the light-duty vehicle market. This is because the compliance costs for the proposed 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 proposed 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

<sup>309</sup> 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>

economic welfare analysis. We do this by adding the vehicle program engineering compliance cost estimates to the estimated social costs of the gasoline and gas can programs.

With regard to the gasoline fuel and gas can markets, we consider only 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 (gas cans) and do not consider how the costs of complying with the proposed programs may affect the production of goods and services that use gasoline fuel or gas cans as production inputs. We believe this approach is reasonable because the commercial share of the end-user markets for both gasoline fuel and gas cans is relatively small.<sup>310 311</sup> 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 gas can 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 Economic Impact Analysis does not include California fuels in the market analysis. California fuels are only included, as a separate line item, in the economic welfare analysis. California currently has state-level controls that address air toxics from gasoline. Any actions that refiners may take to comply with the federal program are expected to be small and not affect market prices or quantities in that state. However, because the estimated fuel program

<sup>310</sup> 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](http://www.eia.doe.gov/oiaf/aeoref_tab.html).

<sup>311</sup> 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." Sacramento, 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>

compliance costs include a small compliance cost for California, and this cost would be a cost to society, it is necessary to include those costs in the total economic welfare costs of the proposal. This is done by including the estimated engineering compliance costs as a separate line item. 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 gas can markets (states that currently have requirements for gas cans 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 proposal.

In the EIM, the gasoline fuel and gas can markets are not linked (there is no feedback mechanism between the gas can 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 one product is not affected by the other. In other words, an increase in the price of gas cans 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.<sup>312</sup>

The EIM is a computer model comprised of a series of spreadsheet modules that simulate the supply and demand characteristics of the markets under consideration. 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

<sup>312</sup> 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/>

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 isolation and that conditions in other markets are assumed either to be unaffected by a policy or unimportant for social cost estimation.<sup>313</sup> 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.<sup>314</sup> 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 gasoline 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 proposal.<sup>315</sup>

With regard to the gas can market, the small number of firms in the market is offset by several features of this market. Because gas cans 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 gas cans as good substitutes for one another. 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).<sup>316</sup> As a result of these conditions, producers and consumers in the gas can market take the market price as given when making their production and consumption choices. For all these reasons, 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 gas cans 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 gas can 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 gas cans 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 gas can 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 gas can 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 in earlier in this section. Although both the gas can 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 gas can 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

<sup>313</sup> EPA Guidelines for Preparing Economic Analyses, EPA 240-R-00-003, September 2000, p. 125-6.

<sup>314</sup> See, for example, EPA Guidelines for Preparing Economic Analyses, EPA 240-R-00-003, September 2000, p. 126.

<sup>315</sup> Section 3 Industry Organization, "Characterizing Gasoline Markets: a Profile," Final Report, prepared for EPA by RTI, August 2005.

<sup>316</sup> 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.

approach can be found in Section 13.2.4.1 of the RIA prepared for this proposal. 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. However, because it may be necessary for refiners to adjust their production to comply with the new federal standards, California fuel controls are included in the economic welfare analysis.

Additional costs that need to be considered in the EIM are the savings associated with the gas can controls and the costs of the light-duty vehicle controls. The proposed gas can controls are expected to reduce evaporative emissions from fuel storage, leading to fuel savings for users of these containers. These 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. Fuel savings are included in the social cost analysis, however, because they are a savings that accrues to society. The estimated 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 gas can 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 proposed emission control program. The results of our analysis are summarized in this section. 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. Market impacts are the estimated changes in the quantity of affected goods produced and their prices. As explained above, we estimated market impacts for only gasoline fuel and gas cans, and California fuel is not included in the market analysis for PADD 5. The estimated market impacts are presented in Table IX.F-1. In this table the market results for gasoline are presented for only 2015 because the compliance costs for the gasoline fuel program are constant for all years and therefore the results of the market analysis are the same for all years.<sup>317</sup> The market results for gas cans are presented for 2009 and 2015, reflecting the changes in

estimated compliance costs due to amortization of fixed costs over the first five years of the program. After 2013 the compliance costs remain constant for all future years.<sup>318</sup>

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 about 0.15 percent or less, depending on PADD. The expected reduction in quantity of fuel produced is expected to be less than 0.03 percent. The market impacts for the gas can program are expected to be more significant. In 2009, the first year of the gas can program, the model predicts a price increase of about 7 percent for gas cans in states that are currently have regulations for gas cans and about 57 percent for those that do not. Even with these larger 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 much smaller after the first five years. In 2015, the estimated gas can price increase is expected to be less than 2 percent for states that currently regulate gas cans and about 32.5 percent for states without such regulations. The quantity produced is expected to decrease by less than 0.4 percent. These changes are expected to remain constant for future years, even though the absolute quantities produced are expected to increase somewhat.

TABLE IX.F-1.—SUMMARY OF MARKET IMPACTS

Market	Engineering cost per unit	Change in price		Change in quantity	
		Absolute	Percent	Absolute	Percent
<b>2009</b>					
Gasoline Fuel: PADD 1 & 3. PADD 2 ..... PADD 4. PADD 5 (w/out CA).		N/A (gasoline fuel control program begins in 2011)			
		\$/can		Thousand Cans	
Gas Cans: States with existing programs ..... States without existing programs .....	\$0.77 ..... \$2.70 .....	\$0.76 ..... \$2.68 .....	6.9% ..... 57.4% .....	-6.8 ..... -88.5 .....	-0.07% ..... -0.57% .....
<b>2015</b>					
		¢/gallon		Million Gallons	
Gasoline Fuel: PADD 1 & 3 ..... PADD 2 .....	0.049¢ ..... 0.202¢ .....	0.03¢ ..... 0.11¢ .....	0.02% ..... 0.07% .....	-3.1 ..... -6.9 .....	-0.004% ..... -0.015% .....

<sup>317</sup> The number of gallons of gasoline fuel produced is expected to decrease in future years, but the percent decrease is expected to remain the

same; this is due to the growth in fuel consumption generally.

<sup>318</sup> The number of gas cans produced is expected to decrease in future years, but the percent decrease is expected to remain the same; this is due to the growth in gas can production generally.

TABLE IX.F-1.—SUMMARY OF MARKET IMPACTS—Continued

Market	Engineering cost per unit	Change in price		Change in quantity	
		Absolute	Percent	Absolute	Percent
PADD 4 .....	0.358¢ .....	0.19¢ .....	0.12% .....	-1.4 .....	-0.025%
PADD 5 (w/out CA) .....	0.391¢ .....	0.21¢ .....	0.13% .....	-2.5 .....	-0.026%
		\$/can		Thousand Cans	
Gas Cans:					
States with existing programs .....	\$0.21 .....	\$0.20 .....	1.9% .....	-2.1 .....	-0.02%
States without existing programs .....	\$1.53 .....	\$1.52 .....	32.5% .....	-56.4 .....	-0.32%

Economic Welfare Analysis. In the economic welfare analysis we look at the costs to society of the proposed program in terms of losses to consumer and producer surplus. These surplus losses are combined with the estimated vehicle compliance costs, fuel savings, and government revenue losses to estimate the net economic welfare impacts of the proposed program. Estimated annual net social costs for selected years are presented in Table IX-F-2. Initially, the estimated social costs of the program are relatively small and are attributable to the gas can program, which begins in 2009, and the vehicle program, which begins in 2010. For 2009 and 2010 the estimated social costs are less than \$40 million. In 2011 the estimated social costs increase to \$215 million, reflecting the beginning of the gasoline fuel program. In subsequent years, estimated social costs increase due to growth. However, they decrease in 2014, to \$169 million, when the gas can fixed costs are fully recovered and in 2020, to \$171.5 million, when the vehicle program compliance costs are terminated.

TABLE IX.F-2.—NET SOCIAL COSTS ESTIMATES FOR THE PROPOSED PROGRAM

[2009 to 2035—2003\$, \$million]

Year	Total social costs (includes fuel savings)
2009 .....	\$38.4
2010 .....	39.2
2011 .....	215.0
2012 .....	208.6
2013 .....	202.2
2014 .....	169.3
2015 .....	171.6
2016 .....	173.6
2017 .....	175.5
2018 .....	177.3
2019 .....	179.7
2020 .....	171.5
2021 .....	174.2
2022 .....	176.9
2023 .....	179.9
2024 .....	183.3
2025 .....	186.8
2026 .....	190.3
2027 .....	193.9
2028 .....	197.6
2029 .....	201.3
2030 .....	205.2
2031 .....	209.1
2032 .....	213.1
2033 .....	217.2
2034 .....	221.4
2035 .....	225.7
NPV at 3% .....	2,937.3
NPV at 7% .....	1,633.0

Table IX.F-3 contains more detailed estimated social costs for 2009, when the gas can program begins, 2011, when the gasoline fuel program begins, and 2015, when the gas can fixed costs are fully recovered. The vehicle program applies from 2010 through 2019. According to these results, consumers are expected to bear approximately 99 percent of the cost of the gas can 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 54.5 percent expected to be borne by consumers and 45.5 percent expected to be borne by producers. In all years, the estimated loss to consumer welfare will be offset somewhat by the fuel savings associated with gas cans. Beginning at about \$11 million per year, these savings increase to about \$70 million by 2015 as compliant gas cans are phased in. These savings accrue for the life of the gas cans.

TABLE IX.F-3.—SUMMARY OF NET SOCIAL COSTS ESTIMATES ASSOCIATED WITH PRIMARY PROGRAM

[2009, 2011, and 2015—2003\$, \$million]

Market	Change in consumer surplus	Change in producer surplus	Total
<b>2009</b>			
Gasoline U.S.:			
PADD 1 & 3			
PADD 2			
	N/A (gasoline fuel control program begins in 2011)		
PADD 4.			
PADD 5 (w/out CA).			
Gas Cans U.S. ....	-\$48.7 .....	-\$0.3 .....	-\$49.0
	(99.3%) .....	(0.7%) .....	
States with existing programs .....	-\$7.5 .....	-\$0.1 .....	

TABLE IX.F-3.—SUMMARY OF NET SOCIAL COSTS ESTIMATES ASSOCIATED WITH PRIMARY PROGRAM—Continued  
[2009, 2011, and 2015—2003\$, \$million]

Market	Change in consumer surplus	Change in producer surplus	Total
States without existing programs .....	-\$41.2 .....	-\$0.3 .....	
Subtotal .....	-48.7 .....	-0.3 .....	-\$49.0
	(99.3%) .....	(1%) .....	
Fuel Savings .....	.....	.....	\$10.6
Vehicle Program .....	.....	.....	\$0
California fuel <sup>a</sup> .....	.....	.....	\$0
Total .....	.....	.....	-\$38.4
<b>2011</b>			
Gasoline U.S. ....	-\$100.3 .....	-\$83.6 .....	-\$183.9
PADD 1 & 3 .....	-\$21.6 .....	-\$18.0 .....	
PADD 2 .....	-\$49.1 .....	-\$40.9 .....	
PADD 4 .....	-\$10.2 .....	-\$8.5 .....	
PADD 5 9w/out CA) .....	-\$19.4 .....	-\$16.2 .....	
Gas Cans U.S. ....	-\$50.7 .....	-\$0.3 .....	-\$51.0
	(99.4%) .....	(0.7%) .....	
States with existing programs .....	-\$7.8 .....	-\$0.1 .....	
States without existing programs .....	-\$42.9 .....	-\$0.3 .....	
Subtotal .....	-\$150.9 .....	-\$83.9 .....	-\$234.8
	(64.3%) .....	(35.7%) .....	
Fuel Savings .....	.....	.....	\$33.3
Vehicle Program .....	.....	.....	-\$11.8
California fuel <sup>a</sup> .....	.....	.....	-\$1.7
Total .....	.....	.....	\$215.0
<b>2015</b>			
Gasoline U.S. ....	-\$107.1 .....	-\$89.4 .....	-\$196.5
	(54.5%) .....	(45.5%) .....	
PADD 1 & 3 .....	-\$23.1 .....	-\$19.3 .....	
PADD 2 .....	-\$52.4 .....	-\$43.7 .....	
PADD 4 .....	-\$10.9 .....	-\$9.1 .....	
PADD 5 (w/out CA) .....	-\$20.7 .....	-\$17.3 .....	
Gas Cans U.S. ....	-\$28.5 .....	-\$0.2 .....	-\$28.7
	(99.3%) .....	(0.7%) .....	
States with existing programs .....	-\$2.3 .....	\$0.0 .....	
States without existing programs .....	-\$26.3 .....	-\$0.2 .....	
Subtotal .....	-\$135.7 .....	-\$89.5 .....	-\$225.2
	(60.3%) .....	(39.7%) .....	
Fuel Savings .....	.....	.....	\$68.3
Vehicle Program .....	.....	.....	\$12.9
California fuel <sup>a</sup> .....	.....	.....	-\$1.8
Total .....	.....	.....	\$171.6

<sup>a</sup> California fuel costs are considered separately. See Section 13.1.3 of the RIA.

The present value of net social costs (discounted back to 2005) of the proposed standards through 2035, contained in Table IX-F-2, is estimated to be \$2.9 billion (2003\$). This present value is calculated using a social discount rate of 3 percent and the stream of economic welfare costs from 2009 through 2035. We also performed an analysis using a 7 percent social discount rate.<sup>319</sup> Using that discount

<sup>319</sup> EPA has historically presented the present value of cost and benefits estimates using both a 3 percent and a 7 percent social discount. The 3

rate, the present value of the net social costs through 2035 is estimated to be \$1.6 billion (2003\$).

#### X. Alternative Program Options

We considered several options for fuels, vehicles, and gas cans in developing this proposal.

percent rate represents a demand-side approach and reflects the time preference of consumption (the rate at which society is willing to trade current consumption for future consumption). The 7 percent rate is a cost-side approach and reflects the shadow price of capital.

#### A. Fuels

We considered a wide range of control strategies for gasoline to reduce toxic emissions. Among the options considered are a toxics performance standard, varying levels of benzene control, approaches for controlling other MSATs in addition to benzene, and lower sulfur and RVP for VOC control. The discussion of these options is provided in section VII.

In addition, we request comment on the following specific concepts relating

to the proposed ABT and compliance assurance provisions.

#### 1. Alternative Compliance Assurance Provisions

The design of the proposed ABT program is based on other recent fuel programs (primarily gasoline and diesel sulfur), but with fewer restrictions. The proposed program includes nationwide trading, does not include an upper limit on benzene, and combines all fuel into a single pool for credit accounting purposes. The compliance assurance mechanisms for the proposed ABT program are also based on previous recent fuel programs (including reformulated gasoline and gasoline and diesel sulfur) which in turn were developed based on the experiences in enforcing past fuel programs. At the same time there are other programs with different ABT and corresponding compliance assurance provisions that could serve as models for this benzene proposal, such as the Acid Rain Program.

An overarching concern that today's proposal attempts to address, and that any alternative program also would have to address, is that EPA does not have the resources to audit a substantial number of refineries each year, and certainly not every refinery. Thus, we must devise a credit program whose enforcement integrity does not depend on EPA conducting annual audits of many or most refiners to determine the validity of credits generated, transferred, banked and used.

The program as proposed would provide a great deal of flexibility to refiners in complying with the standards, but balances this flexibility with provisions to ensure the standard's enforceability. This program would also provide incentives for refiners and importers to ensure the validity of any credits they obtain, through the provisions that hold the buyer of invalid credits liable for any resulting violation of the standard. We summarize the most important of these provisions here:

- Credit life would be limited to 5 years. This is intended to provide reasonable assurance that EPA will have the opportunity to review the appropriate records to verify compliance, regardless of personnel changes, whether existing refiners and importers are bought, sold, merged, or go out of business, and whether new refiners and importers are created;

- Records would be required to be retained for the life of the credits to allow for EPA to enforce the benzene content standard through random audits;

- We propose that credits be limited in the number of trades that would be allowed and are requesting comment on the range from 2 to 4 trades. (We will establish an appropriate number of permissible trades in the final rule.) Such a limitation would be intended to allow EPA to have a reasonable chance of verifying the validity of credits that are traded;

- Both the buyer and seller of the credits would be potentially liable should credits be found to be invalid, in order to allow EPA to maintain the environmental benefits of the program should the credit seller no longer be in business; and

- Purchasers of credits would need to be potential credit users, and so would be refiners or importers. Our experiences during the gasoline lead phase-down program in the 1980s, where brokers and others were allowed to take title to lead credits, raised enforcement problems severe enough to call the program's validity into question. These problems have not arisen for more recent programs, where credit purchasers must be credit users.

We request comment on these provisions as a whole and individually. In addition, we note that the proposed benzene program is different from the other recent fuel programs in several key respects that may provide opportunities to design the ABT program and corresponding compliance assurance mechanisms differently. For example, the proposed program would not have an upper limit on the per-gallon benzene concentration that would otherwise force all refiners to ultimately comply with the standard through actual physical refinery changes. Since this proposed program would allow some degree of variation in benzene levels to continue indefinitely, additional flexibility in how credits are handled may be desirable. Thus, we specifically request comment on the following alternate ABT program elements.

As mentioned above, EPA could not, with its limited resources, conduct annual audits of all refiners (and possibly other parties, as discussed below). With regard to any potential alternative ABT program elements, including those discussed below, we request detailed ideas about a potential auditing process that would be sufficiently robust to assure the validity of credits generated, used, banked or traded, including how such audits might be self-funded.

#### Credit Life

EPA notes that a system that limits credit life may, under certain

circumstances, depress the market price of credits and create less incentive for benzene reductions early in the program. EPA therefore requests comment on whether the credit life should be limited or whether unlimited banking should be encouraged through having credits with unlimited life or longer life. We also seek comment on how a program with unlimited credit life could be successfully enforced. For example, EPA audits for refinery compliance with fuel standard and credit requirements normally include review of refinery production, testing and business records. EPA seeks comment on whether these audits could be effectively conducted to review the validity of credits that were generated more than five years previously and whether audits could be effectively concluded during the first five years of a credit's life.

EPA also seeks comment on the appropriate consequences if EPA was unable to verify credit validity, the criteria for identifying credits as being invalid, and whether EPA should have the burden of proving credits were invalid or whether the credit generator (or the credit user) should have the burden of proving that credits were valid. See *Hazardous Waste Treatment Council v. EPA*, 886 F. 2d 355, 367-68 (D.C. Cir. 1990) (relating to circumstances when the burden of proof may permissibly shift to a regulated entity). EPA also seeks comment on mechanisms that would allow companies to verify the validity of credits they generate without the need for EPA audits. Thus, EPA seeks comment on whether audits conducted by independent auditors could be a reliable indicator of credit validity, and if so, the necessary qualifications of the auditor, the criteria for auditor independence, how these qualifications and independence should be established, whether the audit should review records of all company fuels activities related to credit creation or only a random portion of these records, the appropriate timing requirements for these audits, and the nature and timing of reports. EPA seeks comment on the enforcement implications of the Clean Air Act's five-year statute of limitations if credits with a life longer than five years were allowed.

#### Record Retention

We also seek comment on whether a program with unlimited credit life would need to require that the associated records be retained indefinitely until a credit was used. (The use of credits for which no records exist could result in their being declared

null and void since credit validity could not be established.) We seek comment as to whether record-keeping and EPA audits involving activities occurring more than five years in the past could create any issues regarding statutes of limitations. Also, in general, we request comment on provisions that could address the fact that the farther back in time an event occurred, the more difficult it becomes for EPA to conduct an effective audit (due to factors such as mergers, acquisitions, and turnover of personnel). EPA seeks comment on whether the Clean Air Act's five-year statute of limitations would adversely impact EPA's ability to enforce a requirement to keep records longer than five years.

#### Number of Times Credits May Be Traded

As described earlier in this preamble, EPA is requesting comment on allowing credits to be traded between 2 and 4 times. In particular, EPA seeks comment on any specific benefits to regulated parties or to the credit market generally if a number of trades in this range were allowed; on requirements that should be included to ensure the validity of credits that have been transferred multiple times; on procedures for identifying which credits have been transferred if the credit transferor is found to have had in its possession both valid and invalid credits; and on appropriate consequences to the generator and/or transferor of invalid credits. In addition, EPA seeks comment on mechanisms that would allow companies to establish the validity of credits they have purchased without the need for EPA audits. Thus, EPA requests comment on whether companies that obtain credits that have previously been purchased should be required to establish their validity through reports of independent audits of the credit-creation activities of the company that created the credits and of the credit activities of any intermediary entities to which the credits had been transferred.

#### Case-By-Case Relaxation of Compliance Restrictions

In addition to seeking comment on general modifications discussed above to the proposed provisions, we also request comment on allowing regulated entities to petition for case-by-case relaxation of specific provisions in special cases. For example, such a provision might allow a refiner to petition EPA to allow a specific group of credits to be traded one or more additional times than the final rule ultimately allows. Petitioners might also be allowed to request an extension of

the five year limit on credit life. EPA seeks comment on whether and how such an extension might affect the ability to enforce the benzene content standard, including impacts from the statute of limitations. Such an exception might have important implications for enforcement, record-keeping, and emissions, which would have to be adequately addressed. EPA seeks comment on the nature of documentation that would be required in such a petition and criteria that might be used to make a determination regarding approval of such a petition. EPA also seeks comment on the extent to which any such ABT flexibility provisions would be used, and what the benzene content, enforcement, liquidity, and other implications might be.

#### Ownership of Benzene Credits

The potential modifications of the proposed program on which we request comment may be able to be accomplished relatively easily within the bounds of the proposed program. Another concept, allowing traders and other entities to take title to credits, might best be accomplished by moving to an entirely different type of credit program, since it might require a set of other related changes in order to function effectively. For example, it may be possible to design the benzene trading program and related compliance assurance provisions in a manner that would allow benzene credits to be traded on the open market like many other commodities and not unlike the way SO<sub>2</sub> credits are traded under the Acid Rain Program, or how carbon credits are traded through the voluntary trading program established by the Chicago Climate Exchange. We next discuss such an alternate credit program.

The proposed restriction of benzene credit use to refiners and importers does not provide an opportunity for other entities to participate in this credit market by taking title to credits.<sup>320</sup> The inability of traders to take actual title to credits may reduce the ability of the market to function in certain ways including, for example, to hedge against risk effectively or to aggregate small holdings into larger blocks for sale. This might be avoided if the program provided for benzene credits to be owned, and for entities other than

refiners and importers to obtain, hold, and transfer them.

EPA requests comment on any specific benefits to regulated parties or to the credit market generally if non-refiners were allowed to take title to credits. EPA also requests comments on any situations that occurred under other motor vehicle fuels credit programs where the absence of non-refiner credit owners created difficulties or problems in regulated parties being able to transfer or obtain credits. EPA seeks comment on how the benzene credit program could be reliably enforced if non-refiners were allowed to own credits. Thus, EPA seeks comment on the qualifications that should be required for a company to be a non-refiner credit owner, and how these qualifications should be established; on any registration, record keeping, reporting, independent audit and independent attestation requirements that should be imposed on non-refiner owners of credits; and on the nature of liability that should attach to non-refiner owners of credits that were found to have transferred invalid credits.

We expect that such a program would require that all refiners and importers have their credits (and therefore compliance) verified each year. Given the resource needs for EPA to undertake such verifications, we would expect to require refiners to utilize independent auditors, sufficient for the auditor to make a verified audit finding that the company's assertions regarding credit creation are correct. We believe that verification of credits in this manner would require a complete audit of the gasoline production and testing records related to the benzene content and volume of gasoline produced or imported, including reviews and reconciliation of all batch information. The audit also would have to include sufficient review of records of product sales to verify the completeness of the gasoline production records. The independent auditor performing such an audit would have to be qualified to understand and review the records of gasoline production and testing generated at a refinery, or the importation and testing records associated with imported gasoline. To the extent that gasoline testing was conducted by independent laboratories, the credit audit would have to include the activities of the independent laboratory to make an audit finding of the validity of the laboratory test results. EPA would then continue to have the ability to perform spot audits.

EPA seeks comment on whether the regulations should require that these

<sup>320</sup> In the proposed program non-refiners would be allowed to facilitate, or broker, credit transactions between refiners or importers. Thus, a refiner (or importer) that needed to purchase credits could contract with a broker to identify refiners or importers that have credits to sell.

independent audits must be conducted by an independent audit organization that is funded by an industry consortium, rather than by audit firms individually retained by refiners/importers. The industry consortium would submit to EPA for approval: the consortium organization; the qualifications of the individual auditors; the general audit plans, and any audit plans that are specific to an individual company. The audit organization would submit audit reports to EPA and to the companies that were the subject of their audits.

The refiners and importers would then assign a unique serial number to each credit containing key information including the entity's registration number, the year, and the credit number. These entities would then report this information to EPA as a part of their annual compliance report. Credits properly generated under such a program could then be traded freely until they were used. If an audit determined that some credits were improperly generated, a mechanism would be required to decide which credits were considered to be valid and which invalid.

Given EPA's resource constraints, EPA seeks comment on a mechanism that would allow refiners and importers, and non-refiner owners of credits (if allowed) to conduct this detailed tracking of individual credits, with reconciliation of the reports of all parties transferring, obtaining, or holding credits. Thus, EPA seeks comment on whether the regulations should include an option whereby companies that wish to sell, purchase or hold verified credits would fund an independent organization that would function as the clearinghouse of benzene credits. EPA also seeks comment on how such an independent organization option should be structured: What would be the qualifications of the organization and how would they be established; how would the method of operations of the organization be established and approved by EPA; what reporting by companies to the organization would be required, and what reporting to EPA by the organization would be required; and how would the organization establish the validity of credits that are the subject of reports from companies.

In addition, as in past programs, if credits were later found to be improperly created, the party that generated the invalid credits and the party that used the invalid credits would be subject to EPA enforcement. The party using the invalid credits would be required to remove the invalid

credits from its compliance calculations. If this recalculation resulted in a violation of the benzene standard, the party would be subject to an enforcement action for this violation, regardless of whether the invalid credits were purchased in good faith (although the party may be permitted to remedy such violations through the subsequent purchase of valid credits). This is intended to maintain the environmental benefits of the program and to encourage self-policing by the industry of the validity of the credits they use for compliance. However, in this situation EPA would look first to the generator of the invalid credits to remedy the shortfall. If this generator could make up any credit deficit, EPA normally would defer enforcement against the user or intermediary transferor of invalid credits.

## 2. Alternative ABT Options

EPA seeks comment on whether the regulations should create two options for benzene credits: one that is based on the credit enforcement provisions contained in the proposed fuels program, resulting in credits with more limited credit life that must be transferred from the credit generator to the credit user; and "verified" benzene credits that have a longer credit life and that can be owned by companies other than refiners/importers. Under this approach, benzene credits could be "verified" if certain conditions are met. First, the credit generator would need to participate in an audit consortium (as described above) and the credits would need to be verified through an audit conducted by this organization. Second, the credit generator and any other company that took title to or used these credits would need to participate in a benzene credit clearing house (as described above). In this way, companies that wished to generate benzene credits with longer life and broader ownership options could do so, but also would bear at least part of the expense associated with establishing the validity and tracking the movements of this class of credits. At the same time, companies that wished to generate and transfer credits in the traditional manner, would not bear these extra expenses.

EPA also seeks comment on an approach that would allow refiners and importers, and non-refiner owners of credits (if allowed), to establish a private clearing house to conduct the detailed tracking of individual credits, with reconciliation of the reports of all parties transferring, obtaining, or holding credits. The Chicago Climate Exchange provides an example of a

privately established trading program. The Chicago Climate Exchange provides a trading platform with a registry for credits and clearing facility. The NASD provides market surveillance and verification of emission credits. EPA seeks comment on how such an independent organization could be established; what requirements should EPA establish for the organization; what reporting would be required by companies to the organization; and what reporting would be required by the organization to EPA.

We request comment on the appropriateness of such an alternative ABT program for the proposed benzene control program and how it might work and be enforced.

## B. Vehicles

For vehicles, we considered normal temperature standards more stringent than Tier 2 standards, which would likely entail hardware changes to Tier 2 vehicles. This option is discussed in section VI. We did not consider a less stringent standard for cold temperature NMHC control because CAA sections 202(a) and 202(l) require us to establish the most stringent standards achievable considering cost and other factors. We believe that the proposed cold NMHC standards and phase-in for Tier 2 vehicles satisfy these CAA requirements, and a less stringent standard would not.

## C. Gas Cans

For gas cans, as discussed in section VIII, we are proposing an emissions performance standard we believe reflects the performance of the best available control technologies. We considered but are not proposing options for design-based requirements, including requirements for automatic shut-off spouts. We also considered but are not proposing retrofit requirements for gas cans. These options are discussed in sections VIII.B.3–VIII.B.5.

## XI. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

### A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated under **DATES** above. If you have an interest in the proposed emission control program described in this document, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics identified throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section XI.B.

#### *B. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through the electronic public docket, [www.regulations.gov](http://www.regulations.gov), or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Attention Docket ID EPA-HQ-OAR-2005-0036. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *C. Will There Be a Public Hearing?*

We will hold a public hearing on April 12, 2006 at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202, Telephone: (703) 486-1111. The hearing will start at 10 a.m. local time and continue until everyone has had a chance to speak.

If you would like to present testimony at the public hearing, we ask that you notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

#### *D. Comment Period*

The comment period for this rule will end on May 30, 2006.

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

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket

identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## **XII. Statutory and Executive Order Reviews**

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

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

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because estimated annual costs of this rulemaking are estimated to be over \$100 million per year and it raises novel legal or policy issues. A draft Regulatory Impact Analysis has been prepared and is available in the docket for this rulemaking and at the docket internet address listed under **ADDRESSES** above. This action was submitted to the Office of Management and Budget for review under Executive Order 12866. Written comments from OMB and responses from EPA to OMB comments are in the public docket for this rulemaking.

### *B. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Agency proposes to 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 gasoline container manufacturers. Information-collection requirements related to vehicle manufacturers are in EPA ICR #0783.50 (OMB Control Number 2060-0104); requirements related to fuel producers are in EPA ICR #1591.20 (OMB Control Number 2060-0277); requirements related to portable gasoline container manufacturers are in EPA ICR #2213.01. 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 gasoline 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 XII.B-1, the total annual burden associated with this proposal is about 24,696 hours and \$2,771,309, based on a projection of 225 respondents. The estimated burden for vehicle manufacturers and fuel producers is a total estimate for both new and existing reporting requirements. The portable gasoline container requirements represent our first regulation of gas cans, 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 XII.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 .....	185	23,710	2,677,410
Gas Cans .....	5	216	12,999
Total .....	225	24,696	2,771,309

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2005-0036. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See ADDRESSES section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725

17th Street, NW., Washington, DC 20503, "Attention: Desk Office for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 29, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by April 28, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*C. Regulatory Flexibility Act (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 <sup>a</sup>
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 <sup>b</sup> .....	324110

Industry	Defined as small entity by SBA if less than or equal to	NAICS codes <sup>a</sup>
Portable fuel container manufacturers:		
—Plastic container manufacturers .....	500 employees .....	326199
—Metal gas can manufacturers .....	1,000 employees .....	332431

## Notes:

<sup>a</sup>North American Industrial Classification System.

<sup>b</sup>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.

## 2. Background

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 (RIA) 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 today's action we are proposing: 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 discussion of each of these programs is in sections VI, VII, and VIII of the preamble and Chapters 5, 6, and 7 of the RIA). We are proposing the standards for vehicles and gasoline 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 (MSATs) 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.

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA, as summarized below, is available for review in the docket and Chapter 14 of the RIA.

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to elements of the IRFA. A copy of the Panel report

is included in the docket for this proposed rule, and a summary of the Panel process, and subsequent Panel recommendations, is summarized below.

## 3. Summary of Regulated Small Entities

The following section discusses the small entities directly regulated by this proposed rule.

### a. Highway Light-Duty Vehicles

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), 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. Based on a preliminary assessment, EPA identified 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). EPA estimates 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 15 refiners meet SBA's criterion of having 1,500 employees or less. 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 much different than these initial estimates. Current data further indicates that these refiners produce about 2.5 percent of the total gasoline pool.

### c. Portable Gasoline Container Manufacturers

EPA conducted a preliminary industry profile to identify the manufacturers of portable gasoline containers (gas cans)—98 percent are plastic containers and 2 percent are metal gas cans. Using this industry profile, EPA identified 4 domestic manufacturers and 1 foreign manufacturer. Of these 4 U.S. manufacturers, 3 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.

## 4. Potential Reporting, Record Keeping, and Compliance

For highway light-duty vehicles, EPA is proposing to continue the reporting, recordkeeping, and compliance requirements prescribed for this category in 40 CFR 86. 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. EPA expects that recordkeeping, reporting and compliance provisions of the proposed rule will be fairly consistent with those in place today for other fuel programs. For example, reporting would likely involve requiring that refiners submit pre-compliance reports updating EPA on their plans to meet the MSAT standards.

For gas cans, there currently are not federal emission control requirements, and thus, EPA is proposing new reporting and record keeping requirements for gas can manufacturers that would be subject to the proposed standards. EPA is proposing

requirements that would be similar to those in the California program, such as submitting emissions testing information, reporting of certification families, and use of transition provisions.

#### 5. Relevant Federal Rules

We are aware of a few other current or proposed Federal rules that are related to the upcoming proposed rule. The primary federal rules that are related to the proposed MSAT rule under consideration are the first MSAT rule (**Federal Register** Vol. 66, p. 17230, March 29, 2001), the Tier 2 Vehicle/Gasoline Sulfur rulemaking (**Federal Register** Vol. 65, p. 6698, February 10, 2000), the fuel sulfur rules for highway diesel (**Federal Register** Vol. 66, p. 5002, January 18, 2001) and nonroad diesel (**Federal Register** Vol. 69, p. 38958, June 29, 2004), and the Cold Temperature Carbon Monoxide Rulemaking (**Federal Register** Vol. 57, p. 31888, July 17, 1992).

In addition, the Evaporative Emissions Streamlining Direct Final Rulemaking was issued on December 8, 2005 (**Federal Register** Vol. 70, p. 72917). For gas cans, OSHA has safety regulations for gasoline containers used in workplace settings. Cans meeting OSHA requirements, commonly called safety cans, are exempt from the California program, and we are planning to exempt 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 will be addressed in the Regulatory Impact Analysis (RIA) to this rule and in future rulemakings, such as the RFS rule.

#### 6. Summary of SBREFA Panel Process and Panel Outreach

##### a. Significant Panel Findings

The Small Business Advocacy Review Panel (SBAR Panel, or the 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 SERs and Panel members. The major flexibilities and hardship relief provisions that were recommended by the Panel are described below and are also located in Section 9 of the SBREFA Final Panel Report which is available in the public docket.

##### b. Panel Process

As required by section 609(b) of the RFA, as amended by SBREFA, we also conducted outreach to small entities and convened an SBAR Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements.

On September 7, 2005, EPA's Small Business Advocacy Chairperson convened a Panel under Section 609(b) of the RFA. In addition to the Chair, the Panel consisted of the Division Director of the Assessment and Standards Division of EPA's Office of Transportation and Air Quality, the Chief Counsel for Advocacy of the Small Business Administration, and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. As part of the SBAR Panel process, we conducted outreach with representatives from the various small entities that would be affected by the proposed rulemaking. We met with these Small Entity Representatives (SERs) to discuss the potential rulemaking approaches and potential options to decrease the impact of the rulemaking on their industries. We distributed outreach materials to the SERs; these materials included background on the rulemaking, possible regulatory approaches, and possible rulemaking alternatives. The Panel met with SERs from the industries that will be directly affected by the MSAT rule on September 27, 2005 (gasoline refiners) and September 29, 2005 (light-duty vehicles and portable gasoline containers) to discuss the outreach materials and receive feedback on the approaches and alternatives detailed in the outreach packet (the Panel also met with SERs on July 19, 2005 for an initial outreach meeting). The Panel received written comments from the SERs following the meeting in response to discussions had at the meeting and the questions posed to the SERs by the Agency. The SERs were specifically asked to provide comment on regulatory alternatives that could help to minimize the rule's impact on small businesses.

In general, SERs representing the gas can manufacturers 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's findings and discussions were based on the information that was available during the term of the Panel and issues that were raised by the SERs during the outreach meetings and in their comments. It was 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. Though some of the flexibilities suggested may be appropriate to apply to all entities affected by the rulemaking, the Panel's discussions and recommendations were focused mainly on the impacts, and ways to mitigate adverse impacts, on small businesses. A summary of these recommendations is detailed below, and a full 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 we are proposing in today's action can be found in Sections VI.E, VII.E, and VIII (vehicle, fuels, and gas can sections) of this preamble. Also, the Panel Report includes all comments received from SERs (Appendices D and E of the Report) and summaries of the two outreach meetings that were held with the SERs (Appendices B and C). In accordance with the RFA/SBREFA requirements, the Panel evaluated the

aforementioned materials and SER comments on issues related to the Initial Regulatory Flexibility Analysis (IRFA). The following sections describe the Panel recommendations from the SBAR Panel Report.

### c. Small Business Flexibilities

The Panel recommended that EPA consider and seek comment on a wide range of regulatory alternatives to mitigate the impacts of the rulemaking on small businesses, including those flexibility options described below. As previously stated, the following discussion is a summary of the SBAR Panel recommendations; our proposals regarding these recommendations are located in earlier sections of this rule preamble.

#### 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 VOC standards and evaporative emission standards:

For cold VOC standards, the Panel recommended that SVMs simply comply with the standards with 100 percent of their vehicles during the last year of the 4 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 4 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 4 years), the SVM provision would be 100 percent in 2015.

In regard to 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.

##### (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.

#### 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. A four-year delay would be needed in order to allow for a review of the ABT program, as discussed below, to occur one year after implementation but still 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 early credit generation be afforded to small refiners that take some steps to meet the 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, 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 benzene standard that is set by the rule.

The Panel recommended a review of the credit trading program and small refiner flexibility options one year after the general program starts. Such a 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. Further, a review after the first year of the program would still provide small refiners with the three years that it was suggested would be needed for these refiners to obtain financing and perform engineering and construction for benzene reduction equipment. Should the review conclude that changes to either the program or the small refiner provisions are necessary, the Panel recommended that EPA 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 could 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 could 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, 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.

#### (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.

#### iii. Portable Gasoline Containers

##### (a) Portable Gasoline Container Flexibilities

Since nearly all gas can manufacturers are small entities and they account for about 60 percent of sales, the Panel planned to extend the flexibility options to all gas can 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 gas can 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 gas can 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 gas cans as long as manufacturers do not create stockpiles of noncomplying gas cans prior to the start of the program.

##### (b) Portable Gasoline Container Hardships

The Panel recommended that EPA propose two types of hardship programs for small gas can manufacturers. These provisions are:

Allow small manufacturers to petition EPA for limited additional lead-time to comply with the standards. A manufacturer would have to make the case 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 could include requirements for interim emission reductions. The length of the hardship relief would be established during the initial review and would likely need to be reviewed annually thereafter.

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. As part of its application, a company would be required to provide a compliance plan detailing when and how it would achieve compliance with the standards under both types of hardship relief.

We invite comments on all aspects of the proposal and its impacts on small entities.

#### 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 proposal represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule. The costs and benefits associated with the proposal are discussed above and in the Draft 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 proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

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 solicits comment on this 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 proposed 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. EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *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 proposed 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 section 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. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to the pollutants addressed by this rule.

#### *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. If promulgated, the gasoline benzene provisions of the proposed rule would shift about 22,000 barrels per day of benzene from the gasoline market to the petrochemical market. This volume represents about 0.2 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 reformat from gasoline production are also derived from gasoline components or gasoline feedstocks. Consequently, the expected shift toward more benzene production from reformat due to this proposed rule would be offset by less benzene produced from other gasoline feedstocks.

The rule would 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 one percent. Overall,

we believe that the proposed rule would result in no significant adverse energy impacts.

The proposed gasoline benzene provisions would not affect the current gasoline distribution practices.

We discuss our analysis of the energy and supply effects of the proposed gasoline benzene standard further in section IX of this preamble and in Chapter 9 of the Regulatory Impact Analysis.

The fuel supply and energy effects described above would be offset substantially by the positive effects on gasoline supply and energy use of the proposed gas can standards also proposed in today's action. These proposed provisions would greatly reduce the gasoline lost to evaporation from gas cans. This would 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*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 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.

The proposed 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 proposes to 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 proposed rule involve the measurement of gasoline fuel parameters. The measurement standards for gasoline fuel parameters referenced in today's proposal 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 proposing new procedures for measuring hydrocarbon emissions.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 directs Federal agencies to "determine whether their programs, policies, and activities have disproportionately high adverse human health or environmental effects on minority populations" (sections 3-301 and 3-302). In developing this proposed rule, EPA assessed environmental justice issues that may be relevant to this proposal (see section IV of this proposed rule and chapter 3 of the Draft Regulatory Impact Analysis).

The proposed rule would reduce VOC and toxics emissions from gasoline-fueled mobile sources (particularly highway light-duty vehicles) and gas cans, and thus, it would decrease the amount of air pollution to which the entire population is exposed. 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. Since the proposed rule would reduce emissions from roadways, those living nearby (more likely to be lower income and minority residents) are likely to have a disproportionate benefit from the proposed rule. Thus, this proposed rule does not have a disproportionately high adverse human health or environmental effect on minority populations.

#### **XIII. Statutory Provisions and Legal Authority**

Statutory authority for the fuels controls proposed in today's document can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended, 42 U.S.C. sections 7521 and 7545(c). Additional support for the procedural and enforcement-related aspects of the fuel controls in today's proposal, including the proposed recordkeeping requirements, come from sections 114(a)

and 301(a) of the CAA, 42 U.S.C. sections 7414(a) and 7601(a).

Statutory authority for the vehicle controls proposed in this document can be found in sections 202, 206, 207, 208, and 301 of the CAA, 42 U.S.C. sections 7521, 7525, 7541, 7542 and 7601.

Statutory authority for the portable gasoline container controls proposed in today's document can be found in sections 183(e) and 111, 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 28, 2006.

**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 proposed to be amended as follows:

#### **PART 59—NATIONAL VOLATILE ORGANIC COMPOUND EMISSION STANDARDS FOR CONSUMER AND COMMERCIAL PRODUCTS**

1. The authority citation for part 59 continues to read as follows:

**Authority:** 42 U.S.C. 7414 and 7511b(e).

2. Subpart F is added to part 59 to read as follows:

## Subpart F—Control of Evaporative Emissions From New and In-Use Portable Gasoline Containers

Sec.

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 59.699 How do I request a hearing?

## Subpart F—Control of Evaporative Emissions From New and In-Use Portable Gasoline Containers

### Overview and Applicability

#### § 59.600 Does this subpart apply for my products?

(a) Except as provided in § 59.605 and paragraph (b) and (c) of this section, the regulations in this subpart F apply for all portable gasoline containers (defined in § 59.680) beginning 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 gasoline containers. Certain prohibitions in § 59.602 apply to all other persons.

(b) New portable gasoline 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 gasoline 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 gasoline 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 complies with the emissions standards for its useful life. After June 30, 2009, no manufacturer or importer may sell, offer for sale, introduce into commerce in the United States, or import any new portable gasoline container that was manufactured prior to January 1, 2009.

(b) *General prohibition for wholesale distributors.* No wholesale distributor

may sell, offer for sale, or distribute any portable gasoline 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 and is labeled as required. After December 31, 2009, no wholesale distributor may sell, offer for sale, or distribute any portable gasoline container that was manufactured prior to January 1, 2009. After December 31, 2009, all new portable gasoline 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 test inspect 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 gasoline 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 gasoline containers, it shall be considered a separate violation for each portable gasoline 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 gasoline 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 of time is specified, you will have 30 days to respond to our notice and specifically address our concerns. After considering your information, we will notify 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 gasoline containers are excluded from this subpart's requirements?**

This section describes exclusions that apply to certain portable gasoline 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 Title 29, part 1926, subpart F, of the Code of Federal Regulations (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., 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 other information contained in the submittal to approve and sign any submission of information to us, and to certify that all of the information submitted is accurate and complete.

**Emission Standards and Related Requirements**

**§ 59.611 What evaporative emission requirements apply under this subpart?**

(a) Emissions from portable gasoline containers may not exceed 0.30 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 gasoline containers include spouts, caps, gaskets, and other parts provided with the container.

(c) The following general requirements also apply for all portable gasoline containers subject to the standards of this subpart:

(1) *Prohibited controls.* You may not design your emission-control systems so that they cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. You may not design your portable gasoline containers to have adjustable parameters unless the containers will meet all the requirements of this subpart when

adjusted anywhere within the physically adjustable range. You may not equip your portable gasoline containers with a defeat device, or intentionally produce your containers to enable the use of a defeat device. A defeat device is an element of design (either original or replacement) that is not approved in advance by EPA and that reduces the effectiveness of emission controls under conditions that the portable gasoline containers may reasonably be expected to encounter during normal use.

(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 gasoline 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 gasoline 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 gasoline 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 gasoline container written instructions for properly maintaining and using the emission-control system.

**§ 59.615 How must I label and identify the portable gasoline containers I produce?**

This section describes how you must label your portable gasoline 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 gasoline 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 and trademark.

(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 GASOLINE CONTAINERS."

(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 gasoline container will be properly maintained and used.

(e) You may request EPA to 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 only be issued to the manufacturer that completes the construction of the portable gasoline 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 gasoline 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. EPA may require new certification prior to the end of the production period if EPA 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 § 59.629).

(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) You may ask us to modify specific provisions for demonstrating compliance with the requirements of this subpart if they cannot be met for your portable gasoline container. We may approve your request if we determine that such a change is consistent with the intent of this subpart. We will not approve your request if it might lead to less effective emission control or prevent us from ensuring compliance with the requirements of this subpart. To make a request, describe in writing which provision you are unable to meet, why you are unable to meet it, and how the provision should be modified to address your concern.

(h) 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 of this subpart.

(f) Include the maintenance and use instructions and warranty information you will give to the ultimate purchaser of each new portable gasoline 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 of process 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 gasoline 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 gasoline 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).

(2) Production method.

(3) Spout design.

(4) Gasket material/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 gasoline containers, test the container with the thinnest barrier layer. Test 3 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 gasoline 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 summary 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 gasoline 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 by emissions family successful warranty claims 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 despite our presenting a warrant or court order (see § 59.698). This includes a failure to provide reasonable assistance.

(5) Produce portable gasoline 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 gasoline 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 gasoline 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 1065.210. 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  $\pm 2.2$  °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 gasoline 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 in the following cases.

(1) You may request to use special procedures if your portable gasoline 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 the standard-setting section.

(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.

(d) You may not use other procedures under paragraph (c) of this section until we approve your request.

#### **§ 59.653 How do I test portable gasoline containers?**

You must test the portable gasoline container as described in your application, with the applicable spout and cap attached. Tighten fittings in a manner representative of how they would be tightened by a typical user.

(a) *Preconditioning for durability.* Complete the following steps at the start of testing, 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) and back to +13.8 kPa for 10,000 cycles at a rate of 60 seconds per cycle.

(2) *UV exposure.* Perform a sunlight-exposure test by exposing the container to an ultraviolet light of at least 24 W/m<sup>2</sup> (0.40 W-hr/m<sup>2</sup>/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 gasoline 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. This test must be performed at a temperature of 28 °C ± 5°C.

(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 will 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 gasoline container with the specified fuel to its nominal capacity, seal it using the spout, and allow it to soak at 28 ± 5 °C for at least 20 weeks. You are not required to soak the container for more than 20 weeks unless it has been determined that a longer soak period is needed to achieve a stabilized emissions rate. Alternatively, the container may be soaked for a shorter period of time at a higher temperature if you can show that the hydrocarbon permeation rate has stabilized. You may count the time of the slosh testing as part of the 20 weeks.

(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) Seal the container using the spout and cap assemblies that will be used to seal the openings in a production container. Leave other openings on the container (such as vents) open unless they are automatically closing and unlikely for the user to leave open during typical storage.

(c) *Reference container.* A reference tank is required to correct for buoyancy effects that may occur during testing. Prepare the reference tank as follows:

(1) Obtain a second tank that is identical to the test tank. You may not use a tank that has previously contained fuel or any other contents that might affect the stability of its mass.

(2) Fill the reference tank with enough dry sand (or other inert material) so that the mass of the reference tank is approximately the same as the test tank when filled with fuel. Use good engineering judgment to determine how similar the mass of the reference tank needs to be to the mass of the test tank considering the performance characteristics of your balance.

(3) Ensure that the sand (or other inert material) is dry. This may require heating the tank or applying a vacuum to it.

(4) Seal the tank.

(d) *Diurnal test run.* To run the test, take the steps specified in this paragraph (d) for a portable gasoline container that was preconditioned as specified in paragraph (a) of this section.

(1) Stabilize the fuel temperature within the portable gasoline 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 portable gasoline container on the balance and record the difference between the test container and the reference container. This value is  $M_{\text{initial}}$ . Take this measurement within 8 hours of filling the test container with fuel as specified in paragraph (b)(2) of this section.

(2) Immediately place the portable gasoline container within a well ventilated, temperature-controlled room or enclosure. Do not spill or add any fuel.

(3) Close the room or enclosure.

(4) Follow the temperature profile in the following table for all portable gasoline 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 GASOLINE CONTAINERS

Time (hours)	Ambient Temperature (C) Profile for Portable Gasoline Containers
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

(5) At the end of the diurnal period, retare the balance using the reference container and weigh the portable gasoline container. Record the difference in mass between the reference container and the test. This value is  $M_{final}$

(6) 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:

$$\text{Emission rate} = (M_{initial} - M_{final}) / (\text{nominal capacity}) / (\text{one day})$$

(7) Round your result to the same number of decimal places as the emission standard.

(8) 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.

(e) For metal containers, you may demonstrate for certification that your portable gasoline 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 gasoline 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 gasoline 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 gasoline containers that you manufacture for export. Any introduction into U.S. commerce 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 gasoline containers that you will purchase, sell, or distribute for the sole purpose of testing them.

(c) You may ask us to exempt portable gasoline 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.

(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 permit you to introduce into commerce 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 gasoline 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.

(b) To apply for an exemption, you must send the Designated 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 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 block letters 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 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 block letters 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 gasoline containers into the United States?**

As specified in this section, we may require you to post a bond if you import into the U.S. 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 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 the process of obtaining a certificate of conformity for an emission family that complies with the emission standards and requirements in this subpart.

*Certified emission level* means the highest official emission level in an emission family.

*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 gasoline container.

*Designated Compliance Officer* means the Manager, Engine Programs Group (6405-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 gasoline 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 gasoline 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 gasoline container.

*Manufacturer* means any person who manufactures a portable gasoline 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 gasoline container* means any reusable container designed and marketed (or otherwise intended) for use by consumers for receiving, transporting, storing, and dispensing gasoline. For the purpose of this subpart, all portable fuel containers that are red in color are deemed to be portable gasoline containers, regardless of how they are labeled or marketed. Portable fuel containers that are not red in color and are clearly and permanently labeled for diesel fuel or kerosene only and not for use with gasoline are not portable gasoline containers.

*Production period* means the period in which a portable gasoline 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.

*Sealed* means lacking openings that would allow liquid or vapor to escape to the atmosphere under normal operating pressures.

*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 gasoline 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.

*Test sample* means the collection of portable gasoline containers selected from the population of an emission family for emission testing. This may include testing for certification, production-line testing, or in-use testing.

*Test unit* means a portable gasoline container in a test sample.

*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 gasoline 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 gasoline 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 gasoline 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 gasoline 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 gasoline 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 gasoline 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 by redesignating paragraph (e) as paragraph (e)(1), redesignating paragraph (f) as paragraph (f)(1), and adding paragraphs (e)(2) and (f)(2) to read as follows:

**§ 80.41 Standards and requirements for compliance.**

\* \* \* \* \*

(e) \* \* \*

(2) Beginning January 1, 2011, or January 1, 2015 for approved small refiners under § 80.1340, the toxic air pollutants emissions performance reduction and benzene content specified in paragraph (e)(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. Beginning January 1, 2007, or January 1, 2008 for approved small refiners under § 80.235, the NO<sub>x</sub> emissions performance reduction specified in paragraph (e)(1) of this section shall no longer apply.

(f) \* \* \*

(2) Beginning January 1, 2011, or January 1, 2015 for approved small refiners 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. Beginning January 1, 2007, or January 1, 2008 for approved small refiners under § 80.235, the NO<sub>x</sub> emissions performance reduction specified in paragraph (f)(1) of this section shall no longer apply.

\* \* \* \* \*

**Subpart E—[Amended]**

5. Section 80.101 is amended by revising paragraph (c)(2) to read as follows:

**§ 80.101 Standards applicable to refiners and importers.**

\* \* \* \* \*

(c) \* \* \*

(2) Beginning January 1, 1998, each refiner and importer shall be subject to the Complex Model standards for each averaging period. However beginning January 1, 2011, or January 1, 2015 for approved small refiners under § 80.1340, such annual average exhaust toxics standard shall apply only to conventional gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235. Beginning January 1, 2007, or January 1, 2008 for approved small refiners under § 80.235, the annual average NO<sub>x</sub>

emissions standard section shall no longer apply.

\* \* \* \* \*

**Subpart F—[Amended]**

6. Section 80.128 is amended by revising paragraph (a) to read as follows:

**§ 80.128 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]**

7. 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) Beginning January 1, 2011, or January 1, 2015 for approved small refiners 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.

\* \* \* \* \*

8. 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 approved small refiners 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.

9. 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 annual 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 benzene credits generated in 2011 and beyond?
- 80.1295 How are gasoline benzene credits used?

#### **Hardship Provisions**

- 80.1335 Can a refiner seek temporary 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 is the definition of a small refiner for the purpose of 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?
- 80.1344 What provisions are available to a large 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**

- 80.1375 What are the attest engagement requirements for gasoline benzene compliance?

#### **Violations and Penalties**

- 80.1400 What acts are prohibited under the gasoline benzene program?
- 80.1405 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
- 80.1410 Who is liable for violations under the gasoline benzene program?

- 80.1415 What penalties apply under the gasoline benzene program?

#### **Foreign Refiners**

- 80.1420 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) Effective with the annual averaging period beginning January 1, 2011, gasoline produced by a refiner at each refinery, or imported into an import facility, must meet the benzene standard specified in § 80.1230, except as otherwise specifically provided for in this subpart.

(2) Approved small refiners under § 80.1340 may defer meeting the benzene standard specified in § 80.1230 until January 1, 2015 as described in § 80.1342.

(b) *Early credit generation.* (1) Beginning June 1, 2007, each refinery which 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.

(3) Early benzene credits may be generated through the end of the averaging period ending December 31, 2014 for approved small refiners 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 benzene credits in accordance with the provisions of § 80.1290.

(2) Effective with the annual averaging period beginning January 1, 2015, an approved small refiner under § 80.1340, for any of its refineries, may generate 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)(1) Except as specified in paragraph (b) of this section, a refinery's or importer's average gasoline benzene concentration in any averaging period shall not exceed 0.62 percent by volume using conventional rounding methodology.

(2) Compliance with the standard specified in paragraph (a)(1) of this section, or creation of a deficit in accordance with paragraph (b) of this section, is determined in accordance with § 80.1240.

(3) The 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 approved small refiners 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, except as provided in § 80.1420.

(b) *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, 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 a deficit to the year the deficit is created. If a refinery or importer carries forward, 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 (b)(2)(i) and (ii) of this section.

(3) In the case of an approved hardship under § 80.1335 or § 80.1336, EPA may allow a briefly extended period of deficit carry-forward.

(c) *Oxygenate blenders, butane blenders and refiners that produce gasoline from transmix.* (1)(i) Refiners and oxygenate blenders that only blend butane or oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, are not subject to the requirements of § 80.1230 for such gasoline.

(ii) Refiners that produce gasoline by separating gasoline from transmix are not subject to the requirements of § 80.1230 for this gasoline.

(2) Any refiner under paragraph (c)(1) of this section that adds any blendstock or feedstock other than, or in addition to, oxygenate and/or butane into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported, or into transmix, or into gasoline produced from transmix, is subject to the requirements of § 80.1230 for this blendstock or feedstock.

#### § 80.1235 What gasoline is subject to the benzene requirements of this subpart?

For the purposes of determining compliance with the requirements of § 80.1230, all reformulated gasoline, RBOB, and conventional gasoline or gasoline blending stock per § 80.101(d) are collectively "gasoline." Unless otherwise specified, all of a refinery's or importer's gasoline is subject to the standards and requirements of § 80.1230, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) 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;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) 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.

(b) California gasoline, as defined in § 80.1236.

(c) Gasoline that is exported for sale outside the U.S.

(d) Gasoline used for research, development or testing purposes if it is exempted for these purposes under the reformulated gasoline and anti-dumping programs, as applicable.

(e) Gasoline produced pursuant to § 80.1230(c)(1).

#### § 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 annual average benzene concentration determined?

(a) The annual average benzene concentration of gasoline produced at a refinery or imported by an importer for the applicable averaging period is calculated according to the following equation:

$$B_{\text{avg}} = \frac{\sum_{i=1}^n (V_i \times B_i)}{\sum_{i=1}^n V_i}$$

Where:

$B_{\text{avg}}$  = Annual average benzene concentration (volume percent benzene).

$i$  = Individual batch of gasoline produced at the refinery or imported.

$n$  = 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) All input batch benzene concentration values used in paragraph (a) of this section shall be expressed to two decimal places.

(c) Annual average benzene concentration values calculated under paragraph (a) of this section shall be expressed to two decimal places using conventional rounding methodology.

(d) 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 (g)(3).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(e) 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 (c) 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.

#### § 80.1240 How is a refinery's or importer's compliance with the gasoline benzene requirements of this subpart determined?

(a)(1) The compliance benzene value for a refinery or importer is:

$$CBV_y = V_y \times \left( \frac{B_{avg}}{100} \right) + D_{y-1} - BC - RC$$

Where:

$CBV_y$  = Compliance benzene value (gallons benzene) for year  $y$ .

$V_y$  = Gasoline volume produced or imported in year  $y$  (gallons).

$B_{avg}$  = Annual average benzene concentration (volume percent benzene), per § 80.1238.

$D_{y-1}$  = Benzene deficit from the previous reporting period, per § 80.1230(b) (gallons benzene).

$BC$  = Banked benzene credits used to show compliance (gallons benzene).

$RC$  = Benzene credits received by the refinery or importer, per § 80.1295(c), used to show compliance (gallons benzene).

(2) If  $CBV_y \leq V_y \times (0.62)/100$ , then compliance is achieved for calendar year  $y$ .

(b)(1) A deficit is created when  $CBV_y > V_y \times (0.62)/100$ .

(2) The deficit value to be included in the following year's compliance calculation per paragraph (a) of this section, is calculated as follows:

$$D_{y-1} = V_y \times \left( \frac{0.62}{100} \right) - CBV_y$$

### Averaging, Banking and Trading (ABT) Program

#### § 80.1270 Who may generate benzene credits under the ABT program?

(a) *Early credits.* (1) Early credits may be generated under § 80.1275 by a refinery for a refinery with an approved benzene baseline under § 80.1285.

(2) Early credits may be generated under § 80.1275 only by refiners that produce gasoline by processing crude oil through refinery processing units.

(3)(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, under § 80.1285.

(b) *Standard Credits.* (1) Standard credits may be generated under § 80.1290 by refineries and importers for gasoline produced or imported for use in the U.S., excluding gasoline exempt from the benzene standard under the provisions of § 80.1235.

(2) Oxygenate blenders, butane blenders, and transmix producers are

not eligible to generate standard credits under § 80.1290.

#### § 80.1275 How are early benzene credits generated?

(a) Early benzene credits may be generated only if a refinery's annual average gasoline benzene concentration is at least 10% lower than the refinery's approved baseline benzene concentration per § 80.1280.

(b) [Reserved]

(c) The early credit annual averaging periods are as follows:

(1) For 2007, the seven-month period from June 1, 2007, through December 31, 2007, inclusive.

(2) For 2008, 2009 and 2010, the 12-month calendar year.

(3) For 2011, 2012, 2013, and 2014, which apply only to approved small refiners per § 80.1340, the 12-month calendar year.

(d) The number of early benzene credits shall be calculated annually for each applicable averaging period as follows:

(1) Proceed to paragraph (d)(2) of this section under the following condition.

$$B_{avg} \leq B_{Base} \times 0.90$$

Where:

$B_{avg}$  = Annual average benzene concentration (volume percent benzene) of gasoline produced at the refinery, per § 80.1238.

$B_{Base}$  = Baseline benzene concentration (volume percent benzene) of the refinery, per § 80.1280(b).

(2) Calculate the number of early credits generated by the refinery for the averaging period as follows:

$$EC_y = \left[ \frac{B_{Base} - B_{avg}}{100} \right] \times V_e$$

Where:

$EC_y$  = Early credits generated in year  $y$  (gallons benzene).

$B_{avg}$  = Annual average benzene concentration (volume percent benzene) of gasoline produced at the refinery, per § 80.1238 that satisfies the condition of paragraph (d)(1) of this section.

$V_e$  = Total volume of gasoline (gallons) produced during the annual averaging period at the refinery.

(e) All input benzene concentration values used in paragraph (d) of this section shall be expressed to two decimal places.

(f) Early benzene credits calculated under paragraph (d) of this section shall be expressed to the nearest gallon using conventional rounding methodology.

(g)(1) Early benzene credits shall be calculated separately for each refinery.

(2) Refiners shall not move gasoline or gasoline blending stocks from one refinery to another for the purpose of generating early credits.

(h) An importer may not generate early credits.

(i) A foreign refiner with an approved baseline may generate early credits subject to the provisions of § 80.1420.

#### § 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) All input batch benzene concentration values used in paragraph (a) of this section shall be expressed to two decimal places.

(c) Baseline benzene concentration values calculated under paragraph (a) of this section shall be expressed to two decimal places using conventional rounding methodology.

(d) Any refiner that, under § 80.69 or § 80.101(d)(4), included oxygenate blended downstream in compliance calculations for RFG or conventional gasoline for calendar years 2004 or 2005 for a refinery must include the volume and benzene concentration of this oxygenate in the baseline calculations for gasoline benzene content for that refinery under paragraph (a) of this section.

#### § 80.1285 How does a refiner apply for a benzene baseline?

(a) A refiner must submit an application to EPA which includes the information specified in paragraph (c) of this section at least 60 days before the refinery plans to begin generating early credits.

(b) The benzene baseline application shall be sent to: U.S. EPA, Attn: Early Gasoline Benzene Credits (6406J), 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial delivery: U.S. EPA Attn: Early Gasoline Benzene Credits (6406J), 501 3rd Street, NW., Washington, DC 20001.

(c) A benzene baseline application must be submitted for each refinery that plans to generate early credits under § 80.1275 and 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(b).

(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) A refiner, for a refinery that qualifies for generating early credits under § 80.1270(a)(3)(ii) 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 inconsistent production, how it affects the baseline and benzene concentration, and whether an alternative calculation to the calculation specified in § 80.1280 produces a more representative benzene baseline value. EPA, upon consideration of the submitted information, may approve a benzene baseline for such a refinery.

(e) Within 60 days of receipt of an application under this section, except for applications submitted in accordance with paragraph (d) of this section, EPA will notify the refiner of approval of the refinery's baseline or any deficiencies in the application.

(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 benzene credits generated in 2011 and beyond?

(a) Gasoline benzene standard credits may be generated by the following parties during any applicable averaging

period specified in paragraph (b) of this section:

(1) A refiner, at any of its refineries that produce gasoline for use in the U.S. (excluding gasoline under § 80.1235 that is exempt from the requirements of this subpart). Credits are generated separately by each refinery;

(2) Importers, for all of their imported gasoline (excluding gasoline under § 80.1235 that is exempt from the requirements of this subpart);

(b) The standard credit averaging periods are the calendar years beginning with 2011, or beginning with 2015 for approved small refiners.

(c) [Reserved]

(d)(1) The number of standard credits generated by a refinery or importer shall be calculated annually according to the following equation:

$$SC_y = \left[ \frac{0.62 - B_{avg}}{100} \right] \times V_y$$

Where:

$SC_y$  = Standard credits generated in year y (gallons benzene).

$B_{avg}$  = 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.

(e) All input benzene concentration values used in paragraph (d) of this section shall be expressed to two decimal places.

(f) Standard benzene credits calculated under paragraph (d) of this section shall be expressed to the nearest gallon using conventional rounding methodology.

(g) Foreign refiners may not generate credits under this section.

#### § 80.1295 How are gasoline benzene credits used?

(a) *Credit use.* (1) Gasoline benzene credits generated under §§ 80.1275 and 80.1290 may be used to comply with the gasoline benzene content requirement of § 80.1230 provided that:

(i) The gasoline benzene credits were generated and reported according to the requirements of this subpart; and

(ii) The conditions of this section § 80.1295 are met.

(2) Gasoline benzene credits generated under §§ 80.1275 and 80.1290 may be used by a refiner or importer to comply with the gasoline benzene content standard of § 80.1230, 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), or may be transferred to

another refinery or importer outside of the company.

(b) *Credit banking.* Gasoline benzene credits generated by a refinery or importer may be banked for use in a later compliance period, or may be transferred to another refiner, refinery, or importer for use as provided in paragraph (c) of this section.

(c) *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 provided the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart, and the transferred credit has not expired, per paragraph (d) 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 refinery or importer that intends to use or 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 (and any deficit carry-forward, if applicable) before transferring any gasoline benzene credits to any other refiner or importer.

(v) The credit transferor would not create a deficit as a result of a credit transfer.

(vi) The transferor supplies to the transferee records 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 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 have otherwise been 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 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 (c)(2)(ii) of this section and after the transferor applies gasoline benzene credits as needed to meet its own compliance requirements at the end of the compliance period, must first be applied to correct the invalid transfers to the transferee, before the transferor uses, trades or banks the gasoline benzene credits.

(d) *Credit life.* (1) Early credits, per § 80.1275, may be used for compliance purposes under § 80.1240 for any calendar year averaging period prior to the 2014 averaging period.

(2) Standard credits, per § 80.1290, shall have a credit life of 5 calendar year averaging periods after the year in which they were generated. Example: Standard credits generated during 2014 may be used to achieve compliance under § 80.1240 for any calendar year averaging period prior to the 2020 averaging period.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, credits traded to or used by approved small refiners per § 80.1340, have an additional credit life of two calendar year averaging periods.

(e) *General limitations on credit use.* A refiner or importer possessing gasoline benzene credits must use all gasoline benzene credits in its possession prior to applying the credit deficit provisions of § 80.1230(b).

### Hardship Provisions

#### § 80.1335 Can a refiner seek temporary relief from the requirements of this subpart?

(a) EPA may permit a refinery to have an extended period of deficit carry-forward, for the shortest period practicable, per § 80.1230(b), if the refiner demonstrates that:

(1) Unusual circumstances exist that impose extreme hardship and significantly affect the ability to comply by the applicable date; and

(2) It has made best efforts to comply with the requirements of this subpart, including making all possible efforts to obtain sufficient credits to meet the standard.

(b) Applications must be submitted to EPA by September 1, 2009.

(1) Approval of a hardship under this section shall be in the form an extended period of deficit carry-forward, per § 80.1230(b), for such period of time as

EPA determines is appropriate, but shall not extend beyond December 31, 2014.

(2) EPA reserves the right to deny applications for appropriate reasons, including unacceptable environmental impact.

(c)(1) Applications must include a plan demonstrating how the refiner will comply with the requirements of this subpart 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 this subpart will be met.

(2) Applications must include a detailed description of the refinery configuration and operations including, at minimum, the following information:

(i) The refinery's total reformer unit throughput capacity;

(ii) The refinery's total crude capacity;

(iii) Total crude capacity of any other refineries owned by the same entity;

(iv) Total volume of gasoline production at the refinery;

(v) Total volume of other refinery products; and

(vi) Geographic location(s) where the refinery's gasoline will be sold.

(3) Applications must include, at a minimum, the following information:

(i) Detailed descriptions of efforts to obtain capital for refinery investments;

(ii) Detailed descriptions of efforts to obtain credits;

(iii) Bond rating of entity that owns the refinery; and

(iv) Estimated capital investment needed to comply with the requirements of this subpart

(4) Applicants must also provide any other relevant information requested by EPA.

(d) EPA may impose any reasonable conditions on waivers granted under this section, including the condition that if more credits are available than was anticipated at the time of the hardship approval, the extended period of deficit carry-forward may be shortened.

#### § 80.1336 What if a refiner or importer cannot produce gasoline conforming to the requirements of this subpart?

In extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refinery or importer to extend the deadline for meeting the deficit carry-forward

requirements under § 80.1230(b) for a brief period (e.g., where appropriate, EPA may allow one or more additional weeks after the last day of February to purchase credits), provided the refinery or importer meets all the criteria, requirements and conditions contained in § 80.73(a) through (e).

### Small Refiner Provisions

#### § 80.1338 What is the definition of a small refiner for the purpose of the gasoline benzene requirements of this subpart?

(a) A small refiner is defined as any person, as defined by 42 U.S.C. 7602(e), that—

(1) Produced gasoline at a refinery by processing crude oil through refinery processing units from January 1, 2005, through December 31, 2005; and

(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; and

(3) Had a corporate average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2005; or

(4) Has been approved by EPA as a small refiner under § 80.1340.

(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 and 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, which it 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?**

(a) The following are not eligible for the hardship provisions for small refiners:

(1) Refiners with refineries built after December 31, 2005;

(2) Refiners that exceed the employee or crude oil capacity criteria under § 80.1338 but that meet 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.

(3) Importers.

(4) Refiners that produce gasoline other than by processing crude oil through refinery processing units.

(b)(1)(i) Refiners that qualify as small under § 80.1338 and subsequently cease production of gasoline from processing crude oil through refinery processing units, employ more than 1,500 people or exceed 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, are disqualified as small refiners, except 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.

(ii) Except as provided under paragraph (b)(1)(iii) of this section, any refiner whose status changes under this paragraph (b) shall meet the applicable standards of § 80.1230 within a period of up to 30 months of the disqualifying event for all of its refineries. However, such period shall not extend beyond December 31, 2014.

(iii) A refiner may apply to EPA for an additional six months to comply with the standards of § 80.1230 if 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.

(iv) During the period of time of up to 30 months provided under paragraph (b)(1)(ii) of this section, and any extension provided under paragraph (b)(1)(iii) of this section, the refiner may not generate gasoline benzene credits under § 80.1275 or § 80.1290.

(2) An approved small refiner per § 80.1340 may elect to meet the requirements of § 80.1230 applicable to

non-small refiners by notifying EPA in writing no later than November 15 prior to the year that the change will occur. Any refiner whose status changes under this paragraph (b)(2) shall meet the requirements for non-small refiners under § 80.1230 beginning with the first averaging period subsequent to the status change.

**§ 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) Applications for small refiner status must be sent to: U.S. EPA, Attn: MSAT2 Benzene (6406J), 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial delivery: U.S. EPA Attn: MSAT2 Benzene (6406J), 501 3rd Street, NW., Washington, DC 20001.

(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.* (i) A listing of the names and addresses of each location where any employee worked during the 12 months preceding January 1, 2006;

(ii) The average number of employees at each location based upon the number of employees for each pay period for the 12 months preceding January 1, 2006; and

(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) A listing of the name and address of each location where any employee of the refiner 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; and

(C) The type of business activities carried out at each location.

(vi) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.

(vii) For government-owned refiners, the total employee count includes all government employees.

(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) intended to be utilized at the refinery.

(5) A letter signed by the president, chief operating 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 all 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 until the annual averaging period beginning January 1, 2015.

(2) If disapproved, all refineries of the refiner must meet the standard specified in § 80.1230 beginning with the annual averaging period beginning January 1, 2011.

(f) If EPA finds that a refiner provided false or inaccurate information on its application for small refiner status, upon notice from EPA, the refiner's small refiner status will be void ab initio.

(g) Prior to January 1, 2014, and upon notification to EPA, an approved small refiner 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) Defer meeting the standard specified in section § 80.1230 until the annual averaging period January 1, 2015; or

(2) Meet the standard specified in § 80.1230 beginning January 1 of any of

the following annual averaging periods: 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014.

(b) The provisions of paragraph (a) of this section shall apply separately for each of an approved small refiner's refineries.

**§ 80.1344 What provisions are available to a large refiner that acquires one or more of a small refiner's refineries?**

(a) In the case of a refiner without approved small refiner status that acquires a refinery from an approved small refiner per § 80.1340, the small refiner provisions of the gasoline benzene program of this subpart may 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 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 an approved small refiner 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.* Refiners and importers shall collect a representative sample from each batch of gasoline produced or imported. Each sample shall be tested in accordance the methodology specified at § 80.46(e) to determine its benzene concentration for compliance with the requirements of this subpart.

(b) *Batch numbering.* The batch numbering convention of § 80.365(b)(2) shall apply to batches of conventional gasoline.

(c) The requirements of this section apply to any refiner or importer subject to the requirements of this subpart, including those generating early credits per § 80.1275, all non-small refiners and importers beginning January 1, 2011, and small refiners beginning January 1, 2015.

**§ 80.1348 What gasoline sample retention requirements apply to refiners and importers?**

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.* Beginning January 1, 2007, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information (including any supporting calculations as applicable):

(1) Its compliance benzene value per § 80.1240, and the calculations used to obtain that value.

(2) Its benzene baseline value, per § 80.1280, if the refinery or importer submitted a benzene baseline application to EPA per § 80.1285;

(3) The number of early benzene credits generated under § 80.1275, separately by year of generation;

(4) The number of early benzene credits obtained, separately by generating refinery and year of generation;

(5) 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;

(6) The number of standard credits generated by the refinery or importer under § 80.1290, separately by transferor (if applicable), and by year of generation;

(7) The number of credits used, separately by generating facility and year of generation;

(8) 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;

(9) The number of credits that expired at the end of the averaging period, separately by generating facility and year of generation;

(10) The number of credits that will be carried over into the subsequent averaging period, separately by generating facility and year of generation;

(11) Contracts or other commercial documents that establish each transfer of credits from the transferor to the transferee; and

(12) A copy of all reports submitted to EPA under §§ 80.1352 and 80.1354, however, duplicate records are not required.

(c) *Length of time records shall be kept.* The records required by this section shall be kept for five years from the end of the annual averaging period during which they were created, or seven years for records pertaining to credits traded to a small refiner in accordance with § 80.1295(d)(3), except where longer record retention is required elsewhere in this subpart.

(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 to EPA beginning June 1, 2008, and annually thereafter through June 1, 2011, or through June 1, 2015, for small refiners:

(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) These volume estimates must be provided for the periods of June 1, 2007, through December 31, 2007, and calendar years 2008, 2009 and 2010.

(4) Benzene concentration. An estimate of the average gasoline benzene

concentration corresponding to the time periods specified in paragraph (a)(3) of this section.

(5) **ABT Participation.** If the refinery is expecting to participate in the credit trading program under § 80.1275 and/or § 80.1290, the actual or estimated, as applicable, numbers of early credits and standard credits expected to be generated and/or used each year through 2015.

(6) Information on any project schedule by quarter of known or projected completion date by the stage of the project, for example, following 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 actual values where available.

(c) The pre-compliance reporting requirements of this section do not apply to refineries exempted under the provisions of § 80.1230(c)(1).

**§ 80.1354 What are the reporting requirements for the gasoline benzene program?**

(a) Beginning with the 2011 annual averaging period, or the 2015 annual averaging period for small refiners, and continuing for each averaging period thereafter, every refiner, for each of its refineries, and every importer shall submit to EPA the information required in this section, and such other information as EPA may require.

(b) Beginning with the 2007 annual averaging period for refiners generating early credits pursuant to § 80.1275 or § 80.1290(b) for approved small refiners, every refiner for each of its refineries shall submit to EPA the information required in this section, and such other information as EPA may require.

(c) *Refiner and importer annual reports.* Any refiner, for each of its refineries, and any importer for the gasoline it imports, shall submit a Gasoline Benzene Report containing 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) The annual average benzene concentration, per § 80.1240, § 80.1275 or § 80.1290, as applicable;

(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 specified in § 80.1240;

(11) The number of banked benzene credits;

(12) Projected credit generation through compliance year 2015; and

(13) Projected credit use through compliance year 2015.

(d) EPA may require submission of additional information to verify compliance with the requirements of this subpart.

(e) The report required by paragraph (a) of this section shall be:

(1) Submitted on forms and following procedures specified by the Administrator of EPA;

(2) Submitted to EPA by the last day of February each year for the prior calendar year averaging period; and

(3) Signed and certified as correct by the owner or a responsible corporate officer of the refiner or importer.

**Attest Engagements**

**§ 80.1375 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 procedures and requirements each year.

(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 which 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.* 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 representation from the company representative stating 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 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 with the report to EPA.

(4) Obtain the refiner's or importer's representation 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 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 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:

(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

##### § 80.1400 What acts are prohibited under the gasoline benzene program?

No person shall:

(a) *Averaging violation.* Produce or import gasoline subject to this subpart that does not comply with the applicable benzene average standard requirement under § 80.1230.

(b) *Causing an averaging violation.* Cause another person to commit an act in violation of paragraph (a) of this section.

(c) Fail to meet the recordkeeping and reporting requirements, or any other requirements of this subpart.

##### § 80.1405 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 standard of this subpart shall be determined based on the benzene concentration of the gasoline, measured using the methodologies specified in § 80.46(e). 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 standard, 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.

##### § 80.1410 Who is liable for violations under the gasoline benzene program?

(a) Persons liable for violations of prohibited acts.

(1) *Averaging violation.* Any refiner or importer that violates § 80.1400(a) is liable for a violation of § 80.1400(a).

(2) *Causing an averaging violation.* Any person that causes another party to violate § 80.1400(a) is liable for a violation of § 80.1400(b).

(3) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(4) *Joint venture and joint owner liability.* 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 facility that is owned by the joint owners, or that is committed by the joint venture operation or any of the joint owners of the facility.

(b) Persons liable for failure to meet other provisions of this subpart.

(1) Any person that fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any person that caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

##### § 80.1415 What penalties apply under the gasoline benzene program?

(a) Any person liable for a violation under § 80.1410 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 § 80.1400(a) for a violation of the applicable benzene average standard or causing another person to violate the requirement 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 § 80.1410(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 § 80.1410(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

#### § 80.1420 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.

(7) *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, applicable to volume baselines in §§ 80.91 through 80.93 to establish the volume of gasoline that was produced at the refinery and imported into the United States during the applicable years for purposes of establishing a baseline under § 80.1280 for applicable fuels produced for use in the United States.

(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 § 80.1400; and

(vi) The independent audit requirements in this section and in § 80.1375.

(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(e)(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, or other applicable attest engagement provisions, and must be submitted to the Administrator of EPA by August 31 of each year for the prior annual compliance period. 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 for 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 80.1420 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

10. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

### Subpart P—[Amended]

11. 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 NMHC 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 NMHC 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” to read as follows:

#### § 86.1803–01 Definitions.

\* \* \* \* \*

*Banking* means one of the following:

(1) The retention of NO<sub>x</sub> 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 which 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 (4 °C) (the upper bound of the cold test range) and 68 °F (20 °C) (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 (4 °C) and the CO standard applicable at 68 °F (20 °C). The guideline for NMHC emission congruity across the intermediate temperature range is the linear interpolation between the NMHC FEL applicable at 25 °F (4 °C) and the Tier 2 NMOG standard to which the vehicle was certified at 68 °F (20 °C), 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 (7 °C) 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 (7 °C) FEL, the vehicle will automatically be considered to be equipped with a defeat device without further investigation.

(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, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section.

(d) 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 or Supplemental Federal emissions test procedures (FTP or SFTP) when the vehicle is operated under conditions which 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 will 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 shall provide an explanation which must 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 degrees 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) shall 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 shall submit an engineering evaluation indicating that common calibration approaches are utilized at high altitudes. Any deviation from low altitude emission control practices shall be included in the auxiliary emission control device (AECD) descriptions submitted at certification. Any AECD specific to high altitude shall 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 compliance with the LDV/LLDT evaporative emissions standards in Table S09–2 of § 86.1811–09(e) until 2014. (The hardship relief may be extended one additional model year—2 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 compliance with the HLDT/MDPV evaporative emissions standards in Table S09–2 of § 86.1811–09(e) until 2015. (The hardship relief may be extended one additional model year—2 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—2 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—2 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	Model year	3 day diurnal+hot soak	Supplemental 2 day diurnal+hot soak
LDVs .....	2012	0.50	0.65
LLDTs .....	2012	0.65	0.85
HLDTs .....	2013	0.90	1.15
MDPVs .....	2013	1.00	1.25

(2) through (6) [Reserved]. For guidance see § 86.1811-04.

(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. For example, evaporative families first certified to the LDV/LLDT standards in Table S09-1 in the 2011 model year shall 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. For example, evaporative families first certified to the

HLDT/MDPV standards in Table S09-1 in the 2012 model year shall 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).

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. For the following cold temperature CO exhaust emission standards, a useful life of 50,000 miles or 5 years (whichever occurs first) applies:

(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 Table S10-1, which follows:

**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) & .....	0.5
MDPVs (>8,500 10,000 lbs GVWR) .....	.....

(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 0.3 grams per mile for LDV/LLDTs and below 0.5 grams per mile for HLDT/MDPVs. 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 of this paragraph. 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 alternative 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 alternative 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 alternative phase-in schedule will be acceptable if it satisfies the following equations:

LDV/LLDTs:  
 $(6 \times API_{2008}) + (5 \times API_{2009}) + (4 \times API_{2010}) + (3 \times API_{2011}) + (2 \times API_{2012}) + (1 \times API_{2013}) \geq 500\%$

HLDT/MDPVs:  
 $(6 \times API_{2010}) + (5 \times API_{2011}) + (4 \times API_{2012}) + (3 \times API_{2013}) + (2 \times API_{2014}) + (1 \times API_{2015}) \geq 500\%$

Where:

API = anticipated phase-in percentage for the referenced model year

(ii) If the sum of products is greater than or equal to 500%, which is the sum of products from the primary phase-in schedule ( $4 \times 25\% + 3 \times 50\% + 2 \times 75\% + 1 \times 100\% = 500\%$ ), then the alternative 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, and 2012 and earlier for HLDT/MDPVs. For example, a phase-in schedule for LDV/LLDTs of 5/10/10/45/80/100 that begins in 2008 would calculate as  $(6 \times 5\%) + (5 \times 10\%) + (4 \times 10\%) = 120\%$  and would be acceptable for 2008–2010. The full phase-in would calculate as  $(6 \times 5\%) + (5 \times 10\%) + (4 \times 10\%) + (3 \times 45\%) + (2 \times 80\%) + (1 \times 100\%) = 515\%$  and would be acceptable for 2008–2013.

(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 alternative 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 one tenth of a 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 to the Compliance and Innovative Strategies Division. 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. (f) 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 STANDARD FOR APPLICABLE PHASE-IN LDV/LLDTs

Table with 7 columns: Model year of introduction, 2008, 2009, 2010, 2011, 2012, 2013. Row 1: Models years that the interim in-use standard is available. Data points range from 2008-2011 for the first column and 2008-2014 for the others.

TABLE S10-5.—IN-USE STANDARDS FOR APPLICABLE PHASE-IN HLDT/MDPVs

Table with 7 columns: Model year of introduction, 2010, 2011, 2012, 2013, 2014, 2015. Row 1: Models years that the interim in-use standard is available. Data points range from 2010-2013 for the first column and 2010-2016 for the others.

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 CO emission standards. At the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold CO test data to determine compliance with cold 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 NMHC emission standards, the 68-86 degree 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 which are 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 vehicle expected to emit the highest NMHC emissions at 20 degrees F on candidate in-use vehicles shall be selected 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 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 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. One EDV in each durability group shall be tested 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 requested by the manufacturer and 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) All certificates are conditional upon the following conditions being met:

(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 shall not be covered by the certificate.

(4) For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, 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 will be 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.

(i) Failure to meet the fleet average NO<sub>x</sub> requirements of 0.07g/mi, 0.30 g/mi or 0.20 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<sub>x</sub> 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).

(iv) For paragraphs (c)(7)(i) through (iii) of this section:

(A) 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.

(B) 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.

(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.

(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).

(iv) For paragraphs (c)(8)(i) through (iii) of this section:

(A) 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.

(B) 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.

(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 NMHC standards. For determining compliance with full useful life cold

temperature NMHC emission standards, the 68–86 degree 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 do not decrease as a result of an alternative testing procedure.

(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 in-use across all altitudes, 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. 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 will 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 one decimal point. 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 tenth:

Fleet average cold temperature NMHC exhaust emissions =

$$\frac{\sum(N \times \text{FEL})}{\text{Total number of vehicles sold of the applicable weight category}} \quad (\text{i.e., either LDV + LLDTs, or HLDT + MDPVs})$$

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.

(n) *Certification compliance and enforcement requirements for cold temperature NMHC standards.* (1) In addition to the compliance and enforcement requirements provided throughout § 86.1864–10, additional conditions are included in the provisions of § 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 appropriate, and 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 shall also report their credit balances or deficits.

(iii) If a manufacturer fails to meet the corporate average cold temperature NMHC standard for two consecutive years, as required in paragraph (o)(8) of this section, the vehicles causing the corporate average exceedence will be considered not covered by the certificate of conformity. 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 a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. 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) *How does the cold temperature NMHC averaging, banking and trading (ABT) program work?* (1) Manufacturers shall average the cold temperature NMHC emissions of their vehicles and comply with the cold temperature NMHC fleet average corporate standard. Credits may be generated during and after the phase-in period. Credits may also be generated prior to the phase-in periods as described in paragraph (5) of this section. A manufacturer whose cold temperature NMHC fleet average emissions exceed the 0.3 g/mile standard for LDV/LLDTs, or 0.5 g/mi for HLDT/MDPVs, 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 0.3 g/mile standard for LDV/LLDTs, or less than 0.5 g/mi for HLDT/MDPVs, must complete the calculation in paragraph (o)(4) of this section if it desires 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 shall be enforced 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 tenth:

$$\text{NMHC Credits or Debits} = (\text{Cold Temperature NMHC Standard} - \text{Manufacturer's Sales-Weighted Fleet Average Cold Temperature NMHC Emissions}) \times (\text{Total Number of Vehicles Sold})$$

Where:

$$\text{Cold Temperature NMHC Standard} = 0.3 \text{ g/mi for LDV/LLDTs or } 0.5 \text{ g/mi for HLDT/MDPV, per } \S 86.1811-10(g)(2).$$

$$\text{Manufacturer's Sales-Weighted Fleet Average Cold Temperature NMHC Emissions} = \text{average calculated according to paragraph (m) of this section.}$$

$$\text{Total Number of Vehicles Sold} = \text{Total 50-State sales based on the point of first sale.}$$

(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 in order 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 in order 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.” In order 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 shall be no discounting of unused credits. NMHC credits shall 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 only be used 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 0.3 or 0.5 g/mi standard for LDV/LLDTs and HLDT/MDPVs, respectively. Credits may be exchanged between the LDV/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 shall occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity shall be conditioned upon compliance with the averaging provisions. The certificate shall 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 shall 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 shall be allowed to 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 shall be subject to an enforcement action, as described in this paragraph (o)(8). Manufacturers are not permitted to run a 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 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 a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. 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 and indexed records for each model year:

(A) Model year.

(B) Applicable fleet average cold temperature NMHC standard: 0.3g/mi for LDV/LLDTs; 0.5 g/mi for HLDT/MDPVs.

(C) Fleet average cold temperature NMHC value achieved.

(D) All values used in calculating the fleet average cold temperature NMHC value achieved.

(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 and indexed 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/T or MDPV is certified.

(G) Information on the point of first sale, including the purchaser, city, and state.

(iii) Manufacturers must retain all records required to be maintained under this section 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) Nothing in this section limits the Administrator's discretion to 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 fleet average cold temperature NMHC value achieved, 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 alternative 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) 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 must adjust erroneous debits. In the case of traded

erroneous credits, EPA must adjust the selling manufacturer's credit or debit balance to reflect the sale of such credits and any resulting generation of debits.

(3) *Notice of opportunity for hearing.* Any voiding 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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# Federal Register

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**Wednesday,  
March 29, 2006**

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**Part III**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 17  
Endangered and Threatened Wildlife and  
Plants—Designation of Critical Habitat;  
Proposed Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AU45

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus ampullarioides* (Shivwits Milk-Vetch) and *Astragalus holmgreniorum* (Holmgren Milk-Vetch)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for two endangered plants, *Astragalus ampullarioides* (Shivwits milk-vetch) and *Astragalus holmgreniorum* (Holmgren milk-vetch), pursuant to the Endangered Species Act of 1973, as amended (Act or ESA). In total, approximately 2,620 hectares (ha) (6,475 acres (ac)) fall within the boundaries of the proposed critical habitat designation for *A. holmgreniorum* in Mohave County, Arizona, and Washington County, Utah, and approximately 980 ha (2,421 ac) fall within the boundaries of the proposed critical habitat designation for *A. ampullarioides* in Washington County, Utah.

**DATES:** We will accept comments from all interested parties until May 30, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by May 15, 2006.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Henry Maddux, Field Supervisor, U.S. Fish and Wildlife Service, Utah Fish and Wildlife Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

2. You may hand-deliver written comments to our office, at the above address.

3. You may send comments by electronic mail (e-mail) to [hsmilkvetch@fws.gov](mailto:hsmilkvetch@fws.gov). Please see Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to 801-975-3331.

5. You may submit comments via the Federal E-Rulemaking Portal at <http://www.regulations.gov>.

Comments and materials received, as well as supporting documentation used

in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Utah Fish and Wildlife Office at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Field Supervisor, Utah Fish and Wildlife Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. (telephone 801-975-3330; facsimile 801-975-3331).

**SUPPLEMENTARY INFORMATION:****Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Astragalus holmgreniorum* and *A. ampullarioides* habitat, and what habitat has features essential to the conservation of the species and why;

(3) Specific information on the potential significance of a small site of *Astragalus holmgreniorum*, found north of Atkinville wash and west of Interstate Highway 15 (I-15) and not currently included in the proposed designation, to the conservation of the species (see *Occupied Area not Included in Proposal*);

(4) Information regarding the inclusion of: (a) Occupied habitat for *Astragalus holmgreniorum* and *A. ampullarioides* found in intervening areas of I-15 (i.e., between the northbound and southbound lanes and within the highway right-of-way but outside the highway prism) (see *Proposed Critical Habitat Designation for A. holmgreniorum*, Subunit 1a: State Line, and *Proposed Critical Habitat Designation for A. ampullarioides*, Subunit 4a: Harrisburg Bench and Cottonwood); and (b) the intervening lands between occupied sites in Arizona (see *Proposed Critical Habitat Designation for A. holmgreniorum*, Subunit 1a: State Line);

(5) Information regarding the benefits of excluding specific lands from, or including specific lands in, the designation of critical habitat including

but not limited to, lands managed by Shivwits Band of Paitutes, Utah School and Institutional Trust Lands Administration (SITLA), Arizona State Land Department (ASLD), and lands recently burned due to wildfire (see Proposed Critical Habitat Designation for *Astragalus holmgreniorum*, Unit 4a);

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(7) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to [hsmilkvetch@fws.gov](mailto:hsmilkvetch@fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Shivwits or Holmgren milk-vetch" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Utah Fish and Wildlife Office at phone number 801-975-3330. Please note that the Internet address [hsmilkvetch@fws.gov](mailto:hsmilkvetch@fws.gov) will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals

identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### *Role of Critical Habitat in Actual Practice of Administering and Implementing the ESA*

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under ESA section 4(b)(2), there are significant limitations on the regulatory effect of designation under ESA section 7(a)(2). In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 470 species, or 37 percent of the 1,264 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,264 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*. In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making

section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

#### *Procedural and Resource Difficulties in Designating Critical Habitat*

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically

imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

#### **Background**

We intend to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the *Astragalus holmgreniorum* and *A. ampullarioides* refer to the final listing rule published in the **Federal Register** on September 28, 2001 (66 FR 49560).

Both *Astragalus holmgreniorum* and *A. ampullarioides* are members of the pea family (Fabaceae or Leguminosae). *A. holmgreniorum* is found in both Washington County, Utah (UT), and Mohave County, Arizona (AZ), while *A. ampullarioides* is only found in Washington County, UT. Both species are narrowly distributed Mojave Desert endemics. Three populations of *A. holmgreniorum* and five populations of *A. ampullarioides* are known to exist (66 FR 49560; September 28, 2001). However, the distribution of plants within these populations is not always continuous; therefore, some populations are split into more than one site or proposed critical habitat unit.

For the purposes of this proposed rule, the term "population" refers to an area of species concentration of either *Astragalus holmgreniorum* or *A. ampullarioides* individuals. The term "occurrence" indicates a record of one

or more individual plants. A "site" refers to the land that supports individuals of the species, while a "unit" refers to specific sites that are being considered for critical habitat designation.

#### *Astragalus holmgreniorum*

All known populations of *Astragalus holmgreniorum* occur within approximately 16 kilometers (km) (10 miles (mi)) of St. George, UT in Washington County, UT and in Mohave County, AZ. Populations are found between 756 and 914 meters (m) (2,480 and 3,000 feet (ft)) in elevation in areas that drain to the Santa Clara and Virgin rivers. The landscape has small and large hill and plateau formations which are broken up by water erosion. *A. holmgreniorum* is most frequently found on the skirt edges of hill and plateau formations, slightly above or on the edge of drainage areas (e.g., Harper and Van Buren 1997, 2004; Service, unpublished data, 2005). In areas where *A. holmgreniorum* is found, a large portion of the soil surface is non-vegetated, and is characterized by small stone and gravel deposits (Van Buren and Harper 2003a). *A. holmgreniorum* frequently occur near intermittent drainage and receive "run on" water from nearby sloping areas (Harper 1997; Harper and Van Buren 1997). This, combined with slower evaporation due to shading produced by the small stone and gravel, may create better water relations in excess of regional rainfall (Harper 1997; Harper and Van Buren 1997).

*Astragalus holmgreniorum* is a short-lived perennial; few plants live past three years, with 4 years being the oldest documented lifespan (Stubben 1997; Van Buren and Harper 2003a). Second-year and older plants appear several weeks before seedlings, generally in late February or early March. The best time to detect the species is while it is producing flowers (typically between March and April) and fruit (the majority of plants set fruits by the end of April). Seed pods are persistent until the end of May. Plants die back to roots between late May and mid-June (Van Buren and Harper 2003a).

Annual fluctuations in the number of individuals within a population are great. Years with adequate precipitation produced a population estimated at 10,000 individuals, while populations in dry years may be as few as 500 individuals (Van Buren and Harper 2003a). Surveys conducted in different areas in 2003 and 2004 found individual numbers at 12,315 and 15,902 respectively (Van Buren 2003; Van Buren 2004). These more intensive

surveys indicate that in some years population numbers are higher than the 10,000 individuals estimated at the time of the listing rule. However, surveys in 2003 and 2004 occurred in the spring and nearly all individuals counted were seedlings. More seedlings are found when precipitation in the first quarter of the year is higher (Van Buren and Harper 2003a). In the most recent years (2000, 2001, 2003, 2004), high flushes of seedlings have been coupled with a low survivorship rate (58.9 to 96.8 percent mortality) most likely due to the timing of precipitation; this mortality has resulted in relatively few reproductive adults (Van Buren and Harper 2004a). There is not a current total population estimate.

Although the landscape holds an unknown quantity of seeds (referred to as a seed bank), high mortality may be depleting the seed bank (Van Buren 2004). Low survivorship and reproductive results would make this species vulnerable to extinction due to chance events, in the event that the population declines. In addition, in relationship to genetic fitness, seed germination may decrease as a population declines in size (Menges 1991; Heschel & Paige 1995). According to Menges (1990), if a population is to survive, offspring must be produced in quantity to replace the parent population. Currently, *A. holmgreniorum* seedling mortality continues to be very high, and adults are lacking (Van Buren 2003 and 2004; Van Buren and Harper 2004a).

Habitat is often dynamic, and species may move from one area to another over time. Seeds are thought to be dispersed by water as plants are generally found on the skirt edges of washes or in run-off channels around mounds (Harper and Van Buren 1997; Van Buren and Harper 2003a). Rodents and smaller ground-dwelling birds are likely other dispersal agents (Dr. Stanley Welsh, Brigham Young University, pers. comm. 2005).

*Astragalus holmgreniorum* does not reproduce through vegetative methods; therefore, the setting of seed is necessary for future offspring. Flowers on some *A. holmgreniorum* plants can produce fruit without insect visitation (i.e., autogamously) (Tepedino 2005). However, self-fertilized flowers produced fewer fruits, and this ultimately negatively influences the number of offspring. A loss in pollinators could decrease genetic diversity and population fitness (Tepedino 2005).

#### *Astragalus ampullarioides*

All known populations of *Astragalus ampullarioides* occur within Washington County, UT. Locations of *A. ampullarioides* populations are associated with the Chinle Formation, an often purple-hued patch of soft clay soil (Harper and Van Buren 1997; Stubben 1997). Isolated outcrops of the Chinle formation are found around St. George, UT (Armstrong and Harper 1991; Stubben 1997). This substrate, which is light and airy when dry, expands greatly with precipitation, becoming slick and glue-like (Harper 1997). In dry periods, this soil is considered unstable (Van Buren and Harper 2003b). During soil expansion, areas rise up into mounds (Harper 1997). Equal contraction upon drying often results in the formation of deep, wide cracks (Harper 1997). This quality tends to constrict root systems so that few perennial plants persist on the Chinle formation (Harper 1997). Within Zion National Park (Zion NP), known sites of *A. ampullarioides* may possibly contain materials from later geologic formations.

*Astragalus ampullarioides* populations are found between 920 to 1330 m (3,018 to 4,367 ft) in elevation. Because occupied sites are small in area, it is difficult to link the presence of *A. ampullarioides* to any given soil type. Soil series information for 6 locations, representing 42 *A. ampullarioides* occurrences, lacked strong correlations between presence of *A. ampullarioides* and any given soil type (Service, unpublished, 2005). *A. ampullarioides* is documented from the following soil types described by USDA *et al.* (1977): Stony colluvial land; Naplene silt loam, 2 to 6 percent slope; Eroded land-Shalet complex; Badland, very steep; Mathis-Rock outcrop complex, 20 to 50 percent slopes; Rock land, stony; Bond sandy loam, 1 to 10 percent; Clovis fine sandy loam, 1 to 5 percent slopes; Badland; and Rock land Hobog association (Service, unpublished, 2005).

*Astragalus ampullarioides* is a perennial herb. Its lifespan is unknown, but available data indicate a lifespan of at least 9 years (Van Buren and Harper 2004b). Flowering occurs between March and late May. In most years, plants dry up by the end of June; however, vestiges of dried plants may persist longer. The perennial rootstock allows *A. ampullarioides* to survive dry years; in a drought year (e.g., 2002) plants may not emerge (Van Buren and Harper 2003b). Dormancy is one documented method by which longer-lived plant species can survive changing climatic conditions, particularly in areas

with variable and unpredictable rainfall (Epling and Lewis 1952). Epling and Lewis (1952) indicate that the adaptive traits of a plant species utilizing dormancy, with some individuals remaining dormant in one growing season while others develop and reproduce, produces populations with some resiliency to environmental fluctuation.

Due to climatic or other conditions, the number of *Astragalus ampullarioides* individuals documented in a given year at a given site varies. The total number of *A. ampullarioides* individuals was estimated at 1,000 individuals at the time of listing, with numbers in Zion NP estimated at 300 to 500 individuals (R. Van Buren 2000, in 66 FR 49560). More recent site visits and surveys at Zion NP have expanded this number to 1,500 individuals (J. Alexander, pers. comm. 2004). Yearly information at other sites has varied, and total numbers are likely to be under 2,000 individuals (Dr. Renee Van Buren, Utah Valley State College, pers. comm. 2005). Variables (such as plant dormancy and population shift due to extinction and colonization of new sites) make estimating the total number of individuals in any given year difficult.

According to Van Buren and Harper (2003a), the number of new *Astragalus ampullarioides* seedlings is related to precipitation in the year of observation, while percent mortality reflects moisture relations experienced in the prior year. Excluding 2002, when plants were not seen due to extreme drought conditions, the percent of adults and overall representation of age classes documented at a single site (Pahcoon Spring Wash) is considered stable (Van Buren and Harper 2003a; Van Buren and Harper 2004b). In the years 2000, 2001, 2003, 2004, seedlings comprised 7.5 to 54 percent of the population, and adults ranged from 40 to 77 percent (Van Buren and Harper 2004b). However, data on population size, reproductive output, and percent survivorship indicate a decline occurred in conjunction with severe drought in 2002 (Van Buren and Harper 2004b). The small population size of most *A. ampullarioides* populations and limited geographic range make these populations vulnerable to randomly occurring catastrophic events, as well as small-scale habitat degradation (66 FR 49560).

No methods of seed dispersal have been documented. Water drainage patterns, landscape erosion, and soil slumping may contribute to the development of appropriate habitat sites and may move seeds within sites (Van

Buren and Harper 2003). The disjunct populations of *Astragalus ampullarioides* suggest bird dispersal, as pockets of Chinle are sufficiently far apart (Dr. S. Welsh, pers. comm. 2005).

#### Previous Federal Actions

For more information on previous Federal actions concerning the *Astragalus holmgreniorum* and *A. ampullarioides*, refer to the final listing rule published in the **Federal Register** on September 28, 2001 (66 FR 49560).

On September 27, 2004, Center of Biological Diversity and Utah Native Plant Society filed a lawsuit against the Department of Interior (DOI) and the Service. The plaintiffs alleged that we were in violation of the ESA because we had failed to designate critical habitat and we had not developed a recovery plan for the two species. On July 15, 2005, a court settlement was approved with a proposed critical habitat designation to be submitted to the **Federal Register** by March 17, 2006, and a final critical habitat designation to be submitted to the **Federal Register** by December 16, 2006. Recovery planning for these species is ongoing; however, a recovery plan for these species has not yet been completed.

#### Critical Habitat

Critical habitat is defined in section 3 of the ESA as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the ESA means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the ESA through the

prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the ESA, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the ESA and with the use of the best

scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the ESA requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the ESA and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally-funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

#### Methods

As required by the section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), we use the best scientific data available in determining areas that contain the physical and biological features that are

essential to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides* (see Primary Constituent Elements section). We reviewed available information that pertains to the habitat requirements of these species. This information included data from our files that we used for listing the species; biological surveys; peer-reviewed articles; agency reports and databases; soil series maps, including regional Geographic Information System (GIS) coverages for Mohave County, AZ, and Washington County, UT; geologic maps; aerial photography; information provided from the Bureau of Land Management (BLM), Zion NP, and SITLA; and discussions with field experts. We also made several visits to *A. holmgreniorum* and *A. ampullarioides* sites with representatives from the BLM, SITLA, the Shivwits Band of the Paiute Tribe, and other botanical experts and interested parties.

We utilized herbarium locations assembled by Armstrong and Harper (1991) and Lee Hughes, BLM Arizona, (pers. comm. 2005); hand-sketches reconnaissance records from the late 1980s and early 1990s; and location polygons provided by BLM (2004). In addition, we examined 2,824 occurrence points for *Astragalus holmgreniorum* and 42 occurrence points for *A. ampullarioides* provided by SITLA, Zion NP, and Dr. R. Van Buren. Field surveyors gathered these points in 2003, 2004, and 2005 using handheld Global Positioning System (GPS) units. Although these points may have some spatial errors due to positions of satellites and overlay of different map layers, we used them as reference for baseline information.

The long-term conservation of both *Astragalus holmgreniorum* and *A. ampullarioides* is dependent upon the protection of existing populations and the maintenance of ecological functions within these sites, including: Connectivity within and between populations within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms; population expansion; and the ability to maintain these areas free of major ground-disturbing activities. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the *A. holmgreniorum* and *A. ampullarioides*. We do not propose any areas outside the geographical area presently occupied by the species. In addition, information provided in comments on the proposed critical habitat designation and draft economic analysis will be evaluated and

considered in the development of the final designation for *A. holmgreniorum* and *A. ampullarioides*.

#### Primary Constituent Elements

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of the two *Astragalus* species. These include, but are not limited to—space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for reproduction, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* are occupied, within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

The primary constituent elements required for *Astragalus holmgreniorum* and *A. ampullarioides* are derived from their biological needs as described in the Background section of this proposal. They include those habitat components essential for the biological needs of each species, including seed germination and seedling growth, flower production, pollination, seed set and fruit production, and genetic exchange.

#### *Astragalus holmgreniorum*

Space for Individual and Population Growth and Food, Water, Air, Light, Minerals or Other Nutritional or Physiological Requirements

*Astragalus holmgreniorum* has a limited distribution; it is found only in a small area in UT and AZ. Within these areas, *A. holmgreniorum* requires appropriate soils, associated formations, slope, drainage and plant community within the landscape to provide space for individual and population growth and to provide food, water, air, light minerals or other nutritional or physiological requirements. In UT, *A. holmgreniorum* is found on the Virgin Limestone, upper redbed subunits of the Moenkopi formation, and on the Chinle shale formation (Petrified Forest member) with a thin gravel layer from the Shinarump Conglomerate member (Harper and Van Buren 1997). Sites in UT are most affiliated with the following soil series: Both Badland and Badland, very steep; Hobog-Rock Land association; Isom cobbly sandy loam, 3–30 percent slope; Eroded land-Shalet complex, warm (USDA *et al.*, 1977).

Sites in AZ are believed to be associated with the Virgin Limestone member and middle red member of the Moenkopi Formation (L. Hughes, pers. comm. 2005). These sites may be affiliated with the following soil series: Ruesh very gravelly fine sandy loam, 3–20 percent slopes; Gypill-Hobog complex, 6–35 percent slopes; Gypill very cobbly sandy loam, 15–40 percent; and Hobog-Grapevine complex, 2–35 percent slopes (USDA *et al.* 2000).

*Astragalus holmgreniorum* occurs at elevations from 756 to 914 m (2,480 to 3,000 ft) on sites with slight to moderate slope (Service, unpublished data, 2005). Slopes range from 0 to 46.55 percent (Service, unpublished, 2005), although most individuals of *A. holmgreniorum* are found between 1.54 and 14.01 percent slope (Service, unpublished data, 2005).

*Astragalus holmgreniorum* occurs in sparsely vegetated warm desert communities. Ninety-eight percent of known sites in UT occur within the landcover described as Sonora-Mojave Creosote-White Bursage Desert Scrub (NatureServe 2004). This classification contains a matrix of desert scrub, sparse to moderately dense (2 to 50 percent cover), found in the broad valleys, plains, and low hills of the Mojave and lower Sonora Deserts. *A. holmgreniorum* is not found within the lower Sonora Desert. Typical dominant shrubs within this landcover type are *Larrea tridentata* (creosote bush) and *Ambrosia dumosa* (white burrobush). However, in UT, areas where *A. holmgreniorum* is found are generally without *Larrea tridentata* and lack shrub density (Dr. R. Van Buren, pers. comm. 2005). In Arizona, the species occurs within Mohave Mixed Shrub and Mohave Creosote/Bursage habitats (Bennett, Kunzmann, and Graham 2004). Within this ecological system *A. holmgreniorum* is found in low vegetated areas where shrubs are sparse and creosote rarely resides.

Woody plant species associated with *Astragalus holmgreniorum* are *Acamptopappus sphaerocephalus* (desert goldenhead), *Ambrosia dumosa* (white burrobush), *Ephedra nevadensis* (Nevada jointfire), *E. torreyana* (Torrey's jointfir), *Krameria grayi* (White ratany), *K. parvifolia* (range ratany), *Lycium andersonii* (Anderson wolfberry), *Gutierrezia microcephala* (threadleaf snakeweed), and *G. sarothrae* (broom snakeweed). Other commonly-associated, nonwoody species include: *A. nuttallianus* (small flowered milkvetch), *Chaenactis* sp. (pincushion flower), *Cryptantha* sp. (cryptantha), annual *Eriogonum* sp. (buckwheat), *Eriogonum inflatum* (desert trumpet),

*Hilaria rigida* (big galleta), and *Plantago patagonica* (wholly plantain) (Armstrong and Harper 1991; Van Buren and Harper 2003a and b, 2004a). Depending on the moisture regime, *A. holmgreniorum* also can be seen with native annuals that are often ephemeral (seen only in the spring) and, like many Mohave Desert plant species, seasonally abundant based on climatic conditions.

#### Sites for Reproduction, Germination, Seed Dispersal or Pollination

*Astragalus holmgreniorum* is a native species of sparsely vegetated warm desert communities. Sites for reproduction, germination, and seed dispersal, and pollination providers are found within the communities described above.

*Astragalus holmgreniorum* relies solely on the production of seeds for reproduction. Optimal seed set occurs through insect visitation and pollination (Tepedino 2005). Thus, the presence of pollinator populations is essential to the conservation of *A. holmgreniorum* (Tepedino 2005). Bees require a sufficient quantity of flowers to attract and support their survivorship (Harper *et al.* 2000; Tepedino 2005). Native bees, such as *Anthophora coptognatha*, *A. dammersi*, *A. porterae*, *Anthophora* sp., *Eucera quadricincta*, *Osmia titusi*, two types of *Dialictus* species, and the introduced honeybee, *Apis mellifera*, are the primary visitors and pollinators of *A. holmgreniorum* (Tepedino 2005). The majority of pollinator species associated with *A. holmgreniorum* likely nest in the ground, either in vertical embankments or on flat surfaces (Tepedino 2005). Unlike other types of bee species who have aggregated nesting areas, the five anthophorid bees (*A. coptognatha*, *A. dammersi*, *A. porterae*, *Anthophora* sp., and *Eucera quadricincta*) have nests that are most likely dispersed and well-hidden (Tepedino 2005). The nesting substrate for *O. titusi* is unknown, while the two species of *Dialictus* nest in the ground.

Many bees expend considerable effort to produce few offspring. Solitary bees, in conditions without predators and with abundant floral resources, have been shown to produce only 15–20 offspring per female (Tepedino 1979). Because solitary bees have low reproductive rates, their populations rebound slowly after habitat perturbations (Tepedino 1979). Additionally, the lack of favorable natural habitat can negatively influence pollination productivity (Kremen *et al.* 2004). Bee populations fluctuate from year to year (Roubik 2001; Tepedino and Stanton 1980 in Tepedino 2005). Redundancy of pollinator species is

important because a pollinator species may be abundant one year and less so the next year (Tepedino 2005). Maintaining a full suite of pollinators allows the likelihood that another pollinator species will stand in for a less abundant one (Tepedino 2005), and is essential in assuring adequate pollination.

Several of the bees visiting *Astragalus holmgreniorum* are fairly generalized in their choices of flowers (*Eucera quadricincta*, *Anthophora coptognatha*, and two types of *Dialictus*); others are known to have flower preferences (Tepedino 2005). *Anthophora porterae* and *Osmia titusi* have a preference for plants in the legumes or pea family (Tepedino 2005). *Anthophora porterae*, a fast and effective forager, is frequently captured or observed visiting *Astragalus* flowers (Tepedino 2005). *Anthophora dammersi* is also known to be a specialist of *Camissonia* and is known to inhabit only areas where *Camissonia* is present (Tepedino 2005).

Bees have a limited foraging range strongly correlated to body size (Greenleaf, 2005; Steffan-Dewenter and Tscharntke 1999). Fragmentation of habitat can result in isolating plants from pollinator nesting sites. When the distance between plants and the natural habitats of pollinators increases, plant reproduction (as measured by mean seed set) can decline by as much as 50 percent in some plant species (Steffan-Dewenter and Tscharntke 1999). Optimal pollination occurs when there is abundance of individual pollinators and a species-rich bee community (Greenleaf 2005).

Greenleaf (2005) defines the typical homing distance of a bee taxon as the distance at which 50 percent of individual bees of that taxon have the ability to return to their home (nest, etc). Pollinators for *Astragalus holmgreniorum* have average body sizes that correlate with typical homing distances of 0.1 to 2.9 km (0.06–1.8 mi), based on Greenleaf (2005). The pollinators with the smallest body size (which constitute one-third of *A. holmgreniorum* visitors) have typical homing distances of around 400 m (1,312 ft) or less (Service, unpublished, 2005). A radius of 400 m (1,312 ft) around a single plant contains approximately 50 ha (124 ac). Thus, in the delineation of proposed critical habitat units when the units/subunits were smaller than 124 ac, we expanded the boundary outward to encompass a full 124 ac to ensure that pollinators would have a sufficient land base to establish nesting sites and to provide pollinating services for *A. holmgreniorum*.

### Disturbance, Protection, and the Historical Geographical Distributions

The areas being proposed as critical habitat are representative of the known historic, geographical, and ecological distributions for *Astragalus holmgreniorum*. In total, three units are being proposed that correspond to the three populations described in the final listing rule (66 FR 49560, September 28, 2001). Within these units, three subunits are proposed for the first population and two subunits for the second population, while the third is a single site. All sites contribute to ecological distribution and function for this species by providing representation across the species' limited current range.

### Primary Constituent Elements for *Astragalus holmgreniorum*

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, the primary constituent elements for *A. holmgreniorum* are:

(1) Appropriate geological layers or soils that support individual *Astragalus holmgreniorum* plants. *A. holmgreniorum* is found on the Virgin Limestone member, middle red member, and upper red member of the Moenkopi Formation and the Petrified Forest member of the Chinle Formation (Harper and VanBuren 1997; L. Hughes, pers. comm. 2005). Associated soils are defined by USDA *et al.* (1977 and 2000 as Badland; Badland, very steep; Eroded land-Shalet complex, warm; Hobog-rock land association; Isom cobbly sandy loam; Ruesh very gravelly fine sandy loam; Gypill Hobog complex, 6–35 percent slopes; Gypill very cobbly sandy loam, 15–40 percent slopes; and Hobog-Grapevine complex, 2–35 percent slopes. These soils are generally found at elevations from 756 to 914 m (2,430 to 3,000 ft) and support the associated native plant species described above with low presence or lack of *Larrea tridentata* (creosote bush).

(2) Topographic features/relief (mesas, ridge remnants, alluvial fans and fan terraces, their summits and backslopes, and gently rolling to steep swales) and the drainage areas along formation edges with little to moderate slope (0 to 20 percent).

These topographic features/relief contribute to the soil substrate and vegetative community described above, natural weathering and erosion, and the natural surface and subsurface structure that provides minimally altered or unaltered hydrological conditions (e.g.,

seasonally available moisture from surface or subsurface runoff).

(3) The presence of insect visitors or pollinators, such as *Anthophora captognatha*, *A. dammersi*, *A. porterae*, *Anthophora* sp., *Eucera quadricincta*, *Osmia titus*, and two types of *Dialictus* sp.

### *Astragalus ampullarioides*

Space for Individual and Population Growth, and Food, Water, Air, Light, Minerals or Other Nutritional or Physiological Requirements

*Astragalus ampullarioides* has a limited distribution and is found on clay outcroppings associated with the Chinle Formation (Harper and Van Buren 1997; Stubben 1997) and possibly landslide materials from later geologic periods (Zion NP, unpublished, 2005) in a small area in UT. *A. ampullarioides* requires appropriate soils, associated formations, slope, drainage, and plant community within the landscape to provide space for individual and population growth and to provide food, water, air, light minerals or other nutritional or physiological requirements. The texture of this soil is approximately 48.9 percent clay (Van Buren and Harper 2003a). The high content of minerals non-oxidized iron minerals gives the soils purplish red hues. These clay outcroppings are found in limited pockets in Washington County, UT. Topographic relief that contains the Chinle Formation is necessary to maintain the soil and natural hydrologic conditions upon which *A. ampullarioides* relies, such as surface or subsurface runoff, water erosion, and water drainages.

*Astragalus ampullarioides* occurs at elevations from 920 to 1331 m (3,018 to 4,367 ft) on sites with slight to moderate slope. Individual sites range from 3.1 to 24 percent slope (Service, unpublished, 2005). Most individuals of *A. ampullarioides* are found between 4 and 14 percent slope (Service, unpublished, 2005).

*Astragalus ampullarioides* is found on sparsely vegetated soil outcroppings within a variety of plant communities. Living plant cover is low, approximately 12.3 percent of the landscape, with annual exotics representing a high proportion (approximately half) of plants seen (Van Buren and Harper 2003a and 2004b). Associated native plant species include annual forbs, such as annual species, *Lotus humistratus* (hairy deer vetch) and *Plantago patagonica* (woolly plantain); perennials, such as *Calochortus flexuosus* (sego lily) and *Dichelostemma pulchellum* (bluedicks); native grass,

such as, *Hilaria rigida* (big galetta); and shrubs, such as *Coleogyne ramosissima* (blackbrush) and *Gutierrezia microcephala* (broom snakeweed) (Van Buren and Harper 2003a and 2004b).

### Sites for Reproduction, Germination, Seed Dispersal or Pollination

Sites for reproduction, germination, and seed dispersal, and pollination providers are found within the sparsely vegetated soil outcroppings of the Chinle Formation and their surrounding communities. The Chinle Formation provides sites for reproduction, germination, and seed dispersal. However, habitat for pollinator nesting and foraging extend beyond occupied habitat of *Astragalus ampullarioides* because of the home range size of the pollinators and the need for most pollinators to visit a variety of plant species. Like *A. holmgreniorum*, *A. ampullarioides* relies solely on the production of seeds for reproduction; therefore, pollination is highly linked to its survival as a species. Automatic self-pollination (without insect visitation) produces significantly fewer seeds than the number produced through pollination or insect visitation (Tepedino 2005). A lack of pollinators would gradually decrease the number of seeds in the seed bank (Tepedino 2005).

For optimal pollination, many plants require a diversity of pollinators; these pollinators in turn rely upon a sufficient quantity of floral resources for their survivorship (Rathcke and Jules 1993; Steffan-Dewenter and Tschardt 1999; Kremen et al. 2004; Greenleaf 2005). *A. ampullarioides* has many of the same insect visitors as *A. holmgreniorum* (*Anthophora captognatha*, *A. dammersi*, *A. porterae*, *Anthophora* sp., *Apis mellifera*, *Eucera quadricincta*, *Osmia titusi*, and two types of *Dialictus* species). Additionally, *A. ampullarioides* pollinators include *Bombus morrisoni*, *Hoplitis grinnelli*, *Osmia clarescens*, and *O. marginata*. *Bombus morrisoni* is one of the most abundant bumblebee species in the arid areas of Utah and is the most abundant bumblebee in Washington County (Tepedino 2005). Queens overwinter and nest in rodent holes, under bark, and in wood piles. *B. morrisoni* are social bumblebees. Worker *B. morrisoni* bumblebees are active for most or all of the flowering season and must be capable of gathering pollen and nectar from a variety of flowers. Most individual workers specialize on one or a few species of flowering plants during their lifetime of approximately 3 to 4 weeks. The other three species *O. clarescens*, *O. marginata*, and *H.*

*grinnellii*, are generalists that visit a wide range of flowers (Tepedino 2005).

As with *Astragalus holmgreniorum*, the associated anthophorid bees for *A. ampullarioides* have well-hidden nests in the ground, either in vertical embankments or on flat surfaces. *Osmia clarescens*, *O. marginata*, and *Hoplitis grinnellii* nest in existing holes in wood made by other insects (e.g., beetles). *O. clarescens* is also known to make its nests in abandoned mud-dauber nests (Tepedino 2005; Tepedino, pers. comm. 2005).

As with *Astragalus holmgreniorum*, reproduction, germination, and pollination of *A. ampullarioides* is accomplished by bee populations. If bees are to be kept active in the area where rare plants occur, then they must be provided with adequate flowers for the whole flight season (Tepedino 2005). Known pollinators for *A. ampullarioides* have body sizes that correlate with typical homing distances ranging from 0.06 mi to 1.8 mi (0.1 km to 2.9 km) (derived from Greenleaf, 2005). The smallest pollinators are limited in the range they can fly, with typical homing distances of around 400 m (1,312 ft) or less (Service, unpublished, 2005). A radius of 400 m (1,312 ft) around a single plant contains approximately 50 ha (124 ac). Thus, in the delineation of proposed critical habitat units when the units/subunits were smaller than 124 ac, we expanded the boundary outward to encompass a full 124 ac to ensure that pollinators would have a sufficient land base to establish nesting sites and to provide pollinating services for *A. ampullarioides*.

#### Disturbance, Protection, and the Historical Geographical Distributions

The areas being proposed as critical habitat are representative of the known historic, geographical, and ecological distributions for *Astragalus ampullarioides*. In total, we are proposing five units, which correspond to the five populations described in the final listing rule (66 FR 49560; September 28, 2001). We are dividing one unit into two subunits for the Harrisburg Junction population, which was described in the final listing rule as having four disjunct sites (66 FR 49560; September 28, 2001). All sites contribute to ecological distribution and function for this species by providing representation across the known occupied range of the species.

#### Primary Constituent Elements for *A. ampullarioides*

Based on our current knowledge of the life history, biology, and ecology of

the species, the primary constituent elements for *A. ampullarioides* are:

(1) Outcroppings of soft clay soil, often purple-hued, within the Chinle Formation, at elevations from 920 to 1,330 m (3,018 to 4,367 ft).

Plant species that are characteristically found on these clay soils within the Chinle Formation and can indicate the presence of this PCE for *A. ampullarioides* are listed above under *Space for Individual and Population Growth, and Food, Water, Air, Light, Minerals or Other Nutritional or Physiological Requirements*.

(2) Topographic features/relief, including alluvial fans and fan terraces, and gently rolling to steep swales that are often markedly dissected by water flow pathways from seasonal precipitation with little to moderate slope (3 to 24 percent).

Associated topographic features/relief contribute to the soil substrate and vegetative community described above, natural weathering and erosion, and the natural surface and subsurface structure that provide minimally altered or unaltered hydrological conditions (e.g., seasonally available moisture from surface or subsurface runoff) upon which *Astragalus ampullarioides* depends.

(3) The presence of insect visitors or pollinators, such as *Anthophora captognatha*, *A. damnersi*, *A. porterae*, *Anthophora* species, *Eucera quadricincta*, *Bombus morrisonis*, *Hoplitis grinnelli*, *Osmia clarescens*, *O. marginata*, *O. titus*, *O. clarescens*, and two types of *Dialictus* species.

All areas designated as critical habitat for *Astragalus holmgreniorum* and *Astragalus ampullarioides* are within the geographic area occupied by the species and were known to be occupied at the time of listing. This proposed designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the proposal for each species. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs. Each of the areas proposed in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of *Astragalus holmgreniorum* or *Astragalus ampullarioides*. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

#### Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* on lands that we have determined were occupied at the time of listing and contain the identified primary constituent elements. In identifying proposed critical habitat units for *A. holmgreniorum* and *A. ampullarioides*, we proceeded through a multi-step process.

We obtained records of *A. holmgreniorum* and *A. ampullarioides* distribution from BLM Arizona Strip Field Office (BLM AZ); BLM St. George Field Office (BLM UT); SITLA; Zion NP; Utah Valley State College (R. VanBuren, unpublished GIS data); and both published and unpublished documentation from our files. This information included BLM hand-mapped polygons that outlined occupied or potentially occupied habitats in AZ and UT, primarily developed prior to the species listing (66 FR 49560, September 28, 2001).

For some sites, recent 2003 to 2005 survey information was available and evaluated to identify currently known plant locations (provided by Zion NP, BLM UT, BLM AZ, SITLA, and Van Buren). Although occupied sites may gradually change, recent survey results confirm that plant distribution is similar to known distributions at the time of listing (66 FR 49560; September 28, 2001).

Our approach to delineating critical habitat units was applied in the following manner:

(1) We overlaid plant locations into a GIS database. This provided us with the ability to examine slope, aspect, elevation, vegetation community, and topographic features, such as drainages. These datapoints verified and slightly expanded the previously recorded elevation ranges for both species. Additionally, we found no correlation between aspect and occurrence location for either species. Some affiliation of slope for both species was noted; however, statistical correlation was not conclusive.

To better understand the landscape, we also examined soil series layers, aerial photography, and hardcopy geologic maps. For *Astragalus holmgreniorum*, we focused on soil type and topographic features to maintain slope and natural drainage; for *A. ampullarioides* topographic features to maintain slope and natural drainage were the focus. We were unable to find GIS layers pertaining to geologic survey. For this we visually compared known sites to hard-copy geologic maps. Since

the maps were not of sufficient resolution to further evaluate the purplish red clay soil found in small outcroppings within the Chinle Formation, aerial photography at times was employed to further our understanding of these areas. We verified that *Astragalus ampullarioides* is associated with the Petrified Forest member of the Chinle Formation and *A. holmgreniorum* is associated with the Virgin Limestone member, upper red member of the Moenkopi Formation, Chinle Shale, and Shinarump conglomerate member of the Chinle Formation (Harper and Van Buren 1997) and may also be affiliated with the middle red member of the Moenkopi Formation (Lee Hughes, BLM AZ, pers. comm. 2006).

For both *A. holmgreniorum* and *A. ampullarioides*, we looked at soil survey layers. No two sites of *A. ampullarioides* contained the same type of United States Geological Survey (USGS) soil description. From this, we determined that the clay outcroppings associated with the Petrified Forest Member of the Chinle Formation on which *A. ampullarioides* is found may not be of size significant to be labeled under the USGS soil series. In Utah, *A. holmgreniorum* individuals are associated with Badland and Badland, very steep (84 percent); Hobog-Rock land association (9 percent); and Isom cobbly sand loam, 3–30 percent slope (5 percent). Although we lacked the same degree of information in Arizona, we found that documented sites appeared to be related to Ruesh very gravelly fine sandy loam, 3–20 percent slopes; Gypill-Hobog complex, 6–35 percent slopes; Gypill very cobbly sandy loam, 15–40 percent slopes; and Hobog-Grapevine complex, 2–35 percent slopes (as defined in USDA et al. 2000).

(2) When appropriate, we used geographic features (e.g., ridge lines, valleys, streams, elevation) or manmade features (e.g., roads) that created an obvious boundary to delineate a unit area boundary. In some cases, we were unable to provide obvious boundaries, so unit boundaries were drawn to encompass PCEs on the basis of the best available information.

(3) We then drew critical habitat boundaries that captured the locations, soils, and slopes elucidated under (1) above while considering the boundaries identified in (2) above. Critical habitat designations were then described and mapped using Universal Transverse Mercator (UTM) North American Datum 83 (NAD 83) coordinates.

(4) Finally, when the resulting units were smaller than 124 acres, we increased the unit size to 124 acres by

using the average travel distance for the pollinators of *Astragalus holmgreniorum* and *A. ampullarioides*. We believe that this increase in unit size is essential to ensure sufficient pollinator populations for the reproduction of *A. holmgreniorum* and *A. ampullarioides*. Specifically, where necessary, units or subunits were enlarged to 124 acres by including habitat within a 400 m (1,312 ft) radius of the known plant locations within the unit. This step applied to *A. holmgreniorum* subunits 2b and 3 and *A. ampullarioides* units 1, 2, 3, and subunit 4 a. Unit 3 for *A. ampullarioides* is bordered by development on its western edge; therefore, we did not incorporate 400 m (1,312 ft) on the western edge of Unit 3.

The proposed critical habitat designation includes representatives of all known populations of *Astragalus holmgreniorum* and *A. ampullarioides*, and habitats that possess the physical and biological features essential to the conservation of the species and require special management considerations or protection. Application of these criteria: (1) Protects habitat that contain the PCEs in areas where *A. holmgreniorum* and *A. ampullarioides* are known to occur; (2) maintains the current ecological distribution to preserve genetic variation within the range of *A. holmgreniorum* and *A. ampullarioides* to minimize the effects of local extinction; (3) minimizes fragmentation by establishing contiguous occurrences and maintaining existing connectivity; (4) includes sufficient pollinator habitat; and (5) protects the seed bank to ensure long term persistence of the species.

Much of the survey and field data on which this proposed designation is based represents observed individuals during one point in time. Due to annual population fluctuations associated with varying local environmental factors (e.g., precipitation, seed germination), it is likely that individual plants and occurrences exist but were not identified in recent surveys (Van Buren and Harper 2003b; 66 FR 49560, September 28, 2001). Identification of these areas as critical habitat ensures maintenance of connectivity between currently known occupied habitats over the long term. Gene flow is also maintained by securing sufficient area for pollinator habitats and travel corridors.

These habitats also ensure protection of seed banks, seed dispersal, and pollinator services that are essential for long-term persistence of *Astragalus holmgreniorum* and *A. ampullarioides* (Dr. R. Van Buren, pers. comm. 2005; Dr. V. Tepedino, pers. comm. 2005).

These seeds represent genetic information of past parents and the retention of these seeds affects fitness and demography and reduces the expected inbreeding coefficient (McCue and Holtsford 1998). Seed banks also ensure population persistence in periods of drought or other stressful environmental conditions (Dr. R. Van Buren, pers. comm. 2005). The surrounding plant community provides the floral resources and habitat necessary to maintain pollinators and potential seed dispersers (e.g., birds, small mammals). Land within this unit supports the PCEs for the species that are necessary for the growth, reproduction, and establishment of *A. holmgreniorum* and *A. ampullarioides*.

When determining proposed critical habitat boundaries, we made an effort to avoid proposing the designation of developed areas such as buildings, paved areas, boat ramps and other structures that lack PCEs for *Astragalus holmgreniorum* and *A. ampullarioides*. Manmade features within the boundaries of the mapped unit, such as buildings, roads, parking lots, and other paved areas, do not contain any of the primary constituent elements for *A. holmgreniorum* or *A. ampullarioides*. However, the scale of maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

We anticipate that the boundaries of the mapped units may be refined based on additional information received during the public comment period. Areas that support newly discovered populations in the future, but are outside of the critical habitat designation, will continue to be subject to the applicable prohibitions of section 9 of the ESA, and regulatory protections afforded by the section 7(a)(2) jeopardy standard.

#### Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and contain the primary constituent elements may require special management considerations or protections. Threats to the PCEs for

*Astragalus holmgreniorum* and *A. ampullarioides* include the direct and indirect effects of: Habitat loss and degradation from urban development; invasive plant species; recreational activities; cattle grazing; and fire management (66 FR 49560; September 28, 2001).

Loss and degradation of habitat from development was cited in the final listing rule as a primary cause for the decline of *Astragalus holmgreniorum* and *A. ampullarioides*. Most of the populations of these species occur within Washington County, UT. This county has had and continues to have increasing human population, land speculation, and development pressures. Some of the units being proposed are adjacent to major roads and urban development. Urban development can remove the plant community components and associated soils, soil formations, and hydrology as identified in the PCEs. This development can eliminate or fragment the populations of *A. holmgreniorum* and *A. ampullarioides*. Special management to protect the features essential to the conservation of these species from the effects of urban development includes creating managed plant preserves and open spaces, limiting disturbances to and within suitable habitats, and evaluating the need for and conducting restoration or revegetation of native plants in open spaces or plant preserves.

Proposed Federal land sales or trades need to be evaluated in terms of benefit or habitat loss to both plant species. The Record of Decision and Resource Management Plan for the St. George Field Office of BLM (1999) states "Generally, public lands supporting federally-listed or sensitive plant species will be retained in public ownership unless exchange or transfer will result in acquisition of better habitat for the same species or provide for suitable management by another qualified agency or organization." One proposed land sale contains approximately 588 ha (1,453 ac) of land managed by BLM UT and lies directly south of Santa Clara (Bob Douglas, BLM UT, pers. comm. 2004). This proposed sale includes part of the second population as identified in the listing rule for *Astragalus holmgreniorum* (66 FR 49560). If this land sale occurs, BLM UT has indicated that land with equal or better habitat would be acquired. One area being considered for acquisition by BLM UT is located west of I-15 and is included in the primary population as described in the listing rule (66 FR 49560). An evaluation must consider that the traded or sold lands will likely

be developed, resulting in a net loss of these plant species. Special management includes long-term conservation of the plants on lands that BLM currently holds or may hold in the future, with an emphasis on improving habitats and potentially increasing plant population numbers in these areas. Special management to protect the features essential to the conservation of these species include conservation measures and actions to minimize effects of grazing and recreation use and to control invasive plant species on these lands.

Some areas require special management due to the threats posed by invasive exotic plants. Invasive plant species may alter the vegetation composition or physical structure identified in the PCEs to an extent that the area does not support *Astragalus holmgreniorum* and *A. ampullarioides* or its associated vegetation. Invasive species, such as nonnative, wind-pollinated grasses, may compete for space and resources and diminish the native flora upon which pollinators forage. Special management to protect the features essential to the conservation of these species may include limiting disturbances to and within suitable habitats by taking measures to ensure that vehicles and/or pedestrians staying on designated routes. In some cases, disturbed areas may need to be evaluated for re-vegetation and restoration with native plant species.

Recreational activities such as hiking and off-highway vehicle use may impact the vegetation composition and soil structure to an extent that the area will no longer have intact soil surfaces and natural vegetative covering. Natural drainage and erosion patterns may be also be negatively altered. Special management that may be necessary to protect the features essential to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides* from this threat includes deflection of recreational use away from and outside of habitat, fencing small populations, removing or limiting access routes, ensuring land use practices do not disturb the hydrologic regime, and avoiding activities that might concentrate water flows or sediments into plant-occupied habitat.

Some aspects of livestock grazing may preclude the full and natural development of *Astragalus holmgreniorum* and *A. ampullarioides*. Direct grazing is not a known threat for *A. holmgreniorum*, but is a primary threat for *A. ampullarioides* (66 FR 49560; September 28, 2001). Direct grazing may reduce the production and dispersal of seeds, alter the associated

vegetation needed for pollinator activity, or reduce the number and vigor of plants present by loss of inflorescences (flowering stalks) or leaves. Livestock grazing can lead to the trampling of individuals, which potentially has many of the same results. Livestock trampling can also result in soil disturbance, such as compaction or erosion. This impact can cause alterations of natural drainage and erosion patterns. Special management may be necessary to protect features essential to the conservation of *A. holmgreniorum* and *A. ampullarioides* from this threat, including fencing populations; avoiding activities, such as water trough placement, that might concentrate livestock near or in occupied habitat; and removing livestock from occupied lands during plant growing seasons, especially during periods of flowering and fruiting.

In a healthy system, both *Astragalus holmgreniorum* and *A. ampullarioides* are found in sparsely vegetated habitat that is not prone to fire. Neither species is believed to be fire-adapted. However, invasive grasses such as *Bromus rubens* (red brome) and *Bromus tectorum* (cheatgrass) are now invading these areas, creating dense, continuous fuels, and a potential threat to these endangered plant species. This phenomenon has resulted in fires within the habitats for these species, which has created the need to respond to wildfires. Major activities involved with fire and fire management are: Wildfire suppression, wildland fire use, prescribed burning, non-fire fuels treatments (mechanical and chemical), and emergency stabilization and rehabilitation following wildfires. Fire suppression methods may involve fireline construction, off-road travel, and use of fire suppression agents and retardants. Threats related to fire and fire-related activities include crushing and trampling of plants, damage to seedbank due to fire severity, fire suppression or treatment activities, soil erosion, and an increase of invasive plant species that may compete with native plant species. Special management that may be necessary to protect the features essential to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides* from these threats include: development of adequate fire management buffers for these plant species and their habitat; control of invasive nonnative plant species; education of fire management staff on the location of the plants; and if post-fire restoration is planned, a careful evaluation to ensure that the native plant community is maintained.

No current management plans exist for *Astragalus holmgreniorum* or *A. ampullarioides*. Utah's SITLA, The Nature Conservancy, the Service, BLM UT, and UT Department of Transportation signed a Letter of Intent to identify, create, and maintain plant preserves for *A. holmgreniorum* on some portion of the occupied lands currently held by SITLA (2005). As the result of a formal section 7 consultation for the Southern Corridor Highway Project located in Washington County, UT, one site on SITLA lands, containing approximately 7 ha (17 ac), is in the process of being purchased as a plant preserve for *A. holmgreniorum*. To date, no other plant preserves have been established.

The BLM and National Park Service (NPS) are coordinating with us in development and implementation of a Recovery Plan for *A. holmgreniorum* and *A. ampullarioides*. BLM has drafted a Santa Clara River Reserve Recreation and Open Space Management Plan (ROMP) that includes a portion of proposed critical habitat for *A. holmgreniorum*. The intent of the ROMP is to reduce habitat impacts associated with currently unregulated recreational use. Specific plans relative to known plant locations are not identified in this document, so we do not consider the ROMP to currently provide adequate special management for plants at this location. Additionally, the Zion NP Fire Management Plan (2005) and Utah Statewide Land Use Plan Amendment

for the Proposed Fire and Fuels Management and Five Fire Management Plans (2005) considered some special management for *A. holmgreniorum* on BLM UT managed lands and for *A. ampullarioides* on Zion NP lands and BLM UT managed lands. However, these plans do not address other necessary special management independent of fire (e.g., recreational use).

Should areas proposed within critical habitat units have a finalized plan that provides for the conservation of *Astragalus holmgreniorum* or *A. ampullarioides* prior to our final determination, we will consider whether it provides special management and we may exclude these areas if we determine that no additional special management is required.

*Proposed Critical Habitat Designation for Astragalus holmgreniorum*

Critical habitat for *Astragalus holmgreniorum* is being proposed for known occupied sites and associated habitat. The maintenance of existing populations and their associated landscape is important to: Ensure population fitness and genetic variation; sufficient habitat for pollinators; an adequate seed bank; and geological extent (Karron 1989; Barrett and Kohn 1991; Ellstrand and Elam 1993; Heshel and Paige 1995; McCue and Hoftsford 1998; Steffan-Dewenter and Tscharntke 1999; Steffan-Dewenter 2003; Greenleaf 2005; Tepedino 2005). We also believe that the proposed designation is of

sufficient size to maintain landscape-scale processes and minimize the secondary impacts resulting from land use activities in adjacent areas. We have not included one site that contains *A. holmgreniorum* plants due in part to its small size and isolation; however, we are seeking public comment on this site to ensure the accuracy of our assessment (see "Occupied Area Not Included in Proposal" below).

We mapped the units with a degree of precision commensurate with the available information and the size of the unit. We anticipate that the boundaries of the mapped units may be refined based on additional information received during the public comment period.

The final listing rule (66 FR 49560; September 28, 2001) identified three known populations of *Astragalus holmgreniorum*. Our proposed critical habitat designation corresponds with the distribution of these populations. Proposed critical habitat Unit 1 represents the primary population, comprising three subunits located just north and south of the Utah-Arizona State border. Proposed critical habitat Unit 2 includes the second population, consisting of two subunits located south of the city of Santa Clara, UT. Proposed critical habitat Unit 3 represents the third population, consisting of a single unit located in UT. Table 1 identifies acreage of the proposed critical habitat units and subunits by land management authority.

TABLE 1.—PROPOSED CRITICAL HABITAT UNITS AND SUBUNITS FOR ASTRAGALUS HOLMGRENIORUM

[Area estimates reflect all land within program critical habitat unit boundaries]

Unit or Subunit	BLM AZ Federal	BLM UT Federal	AZ State Lands	UT State Lands	Private Lands	Totals
<b>Occupied Acres (Hectares)</b>						
Unit 1—Utah-Arizona Border:						
1a—State Line .....	362 (146)	1,766 (716)	935 (378)	754 (305)	210 (85)	4,027 (1,630)
1b—Gardner Well .....			564 (288)			564 (288)
1c—Central Valley .....				1,148 (466)		1,148 (466)
Unit 2—Santa Clara:						
2a—Stucki Spring .....		412 (168)				412 (168)
2b—South Hills .....		142 (57)			5 (2)	147 (59)
Unit 3—Purgatory Flat .....		120 (49)			57 (23)	177 (72)
Totals .....	362 (146)	2,440 (988)	1,499 (607)	1,902 (770)	272 (110)	6,475 (2,620)

We present brief descriptions and rationale for the proposed critical habitat units of *A. holmgreniorum*, as follows.

*Unit 1: Utah-Arizona Border*

This unit consists of approximately 2,324 ha (5,739 ac) divided into 3 subunits: State Line, Gardner Well, and

Central Valley. This unit contains PCEs and is important to the conservation of *Astragalus holmgreniorum* because it is one of only three populations of the plant and is the largest population of the species.

Subunit 1a: State Line

This subunit, known to be occupied at the time of listing, consists of 1,630 ha (4,027 ac), with 9 percent managed by BLM AZ, 44 percent managed by BLM UT, 23 percent managed by ASLD, 19 percent managed by SITLA, and 5 percent private land or land ownership

unknown. Subunit 1a is located east and west of I-15 as this highway crosses the State line of AZ and UT and is bounded by the Atkinville Wash and Virgin River to the north. Documents pertaining to occupancy, soil type, and land formations were evaluated to determine unit boundaries. Administrative lines were used for north-south boundaries on the west and east sides of the unit, while soil type, land features, and straight connecting lines were used for northern and southern boundaries of the unit.

Recent surveys on lands managed by SITLA (Van Buren 2004) and BLM UT (Dr. R. Van Buren, pers. comm. 2005), west and east of I-15 confirmed occupancy of *Astragalus holmgreniorum* individuals, and BLM AZ (L. Hughes, BLM AZ, pers. comm. 2005) verified *A. holmgreniorum* in several locations on BLM and ASLD lands. Suitable habitat conditions supporting the identified PCEs occur throughout the area. Land between sections 31, 32, and 8 contains known PCEs for *A. holmgreniorum*; however, information is incomplete on intervening occupancy. We are seeking additional information on the actual distribution of the species in this area.

Subunit 1a has features that are essential to the conservation of the species and it supports the highest number of individuals documented to date (Service, unpublished, 2006) within a continuous geographic area, fragmented only by I-15. *Astragalus holmgreniorum* also occupies land found between the northbound and southbound lanes of I-15. This intervening area within the highway right-of-way may allow pollinator flow between sites situated west and east of the highway (B. Douglas, BLM UT, pers. comm. 2005). As a large population, subunit 1a retains importance as a representation of the species potential range of genetic diversity. Species surveys documented a high number of seedlings and absence of reproductive adults (Van Buren 2004 and 2005), which indicates that this subunit supports a large seed bank. This information indicates a viable seed bank, the protection of which enhances the genetic diversity and boosts the likely persistence of this species (Van Buren 2003). Seed bank protection is necessary for long-term species persistence (McCue and Holtsford 1998).

Special management considerations may be required to control invasive plant species, to control habitat degradation due to activities that lead to erosion, and to maintain the identified associated vegetation, as well as

pollinator habitat essential to the conservation of the species. The BLM AZ and BLM UT do not currently have a management plan specific to *Astragalus holmgreniorum*; however, the agency is working in partnership with the Service on a recovery plan for this species. The BLM UT states that the timing of cattle grazing has been adjusted to avoid the flowering period for the species (B. Douglas, BLM UT, pers. comm. 2004). Additionally SITLA is signatory to a Letter of Intent which intends to place roughly 71 ha (175 ac) of land occupied by *A. holmgreniorum* into long-term conservation.

#### Subunit 1b—Gardner Well

Subunit 1b consists of 228 ha (564 ac), entirely managed by ASLD. This subunit is found in AZ, south of the AZ-UT State border, (2 miles) east of I-15. Reconnaissance maps dating to the early 1990s and herbarium information for *Astragalus holmgreniorum* indicate plant occupancy on ASLD lands. The acreage proposed within this subunit was further refined based on known plant locations, geologic maps, and occurrence of PCEs including soil types.

This subunit is determined to be critical habitat because it contains features essential to the conservation of *Astragalus holmgreniorum*, is occupied by the species, and represents the southeastern-most site in AZ within the primary population, as discussed in the final listing rule (66 FR 49560; September 28, 2001). Yearly monitoring indicates a relatively high density of *A. holmgreniorum* (Van Buren and Harper 2004a). In 2005, the Gardner Well monitoring site contained an estimated 150 plants, all seedlings (Van Buren, pers. comm. 2005). The abundance of seedlings indicates a persistent seed bank which is considered important for genetic diversity and local survivorship (McCue and Holtsford 1998; Van Buren 2003; Van Buren, pers. comm. 2005). This subunit also is historically significant because it includes the type locality (the location of the specimen from which the original species description was made) for the species.

Special management may be required to minimize disturbance to the surface structure within this subunit, to control invasive species, and to maintain the identified vegetation types, as well as pollinator habitat essential to the conservation of the species. Currently, no management plan has been developed for these lands.

#### Subunit 1c—Central Valley

Subunit 1c consists of 466 ha (1,148 ac), entirely managed by SITLA. This subunit is found north of the Arizona-

Utah State border, west of a geological feature called White Dome, and east of I-15. This subunit is determined to be critical habitat because it contains features essential to conservation of *Astragalus holmgreniorum*, it is occupied by the species, and contains a large, densely occupied portion of the primary population as described in the final listing rule (66 FR 49560; September 28, 2001). This subunit contains the second largest continuous land base for *A. holmgreniorum* and the second largest number of individuals counted to date (Van Buren 2003).

Approximately 99.8 percent of plants identified in the 2003 surveys were seedlings (Van Buren 2003). The high number of seedlings and near lack of reproductive adults indicates a historic seed bank (Van Buren and Harper 2004a). Protection of known seed banks is essential for long-term species survival. The retention of these seeds can have a dramatic effect on demography and reduce the expected inbreeding coefficient (McCue and Holtsford 1998). Seed banks also ensure population persistence in differing periods of environmental conditions (Facelli, Chesson, and Barnes 2005).

Plants within this subunit are threatened by urban development. Special management may be required to minimize disturbance to the surface and subsurface structure within this subunit and to maintain the identified soil and vegetation types. No management plan currently exists. A Letter of Intent signed by SITLA indicates a willingness to develop a management plan for this species on a limited portion of their property; however, SITLA plans to develop a master planned community in the area (SITLA et al. 2005).

#### Unit 2: Santa Clara Unit

Unit 2 comprises 227 ha (559 ac) divided into two subunits—Stucki Spring and Santa Clara. Unit 2 contains the PCEs, and is also important to conserving genetic diversity of the taxon because plants in this area contain a unique genetic marker not present in the other two populations (Stubben 1997). Therefore, the two subunits in the Santa Clara units are needed to conserve genetic variation held within the gene pool for this taxon (Dr. R. Van Buren, pers. comm. 2005). Additionally, it represents one of only three known populations of the species.

#### Subunit 2a: Stucki Spring

Subunit 2a consists of 168 ha (412 ac) managed by BLM UT. This unit is found west of Box Canyon, in an area before Box Canyon Wash narrows; and near Stucki Spring. *Astragalus*

*holmgreniorum* was known to occupy this subunit at the time of listing (66 FR 49560; September 28, 2001). In 2005 individuals were confirmed in a roadside visit (Dr. R. Van Buren, pers. comm. 2005).

This subunit is determined to be critical habitat because it contains features essential to conservation of *Astragalus holmgreniorum*, is occupied by the species, supports genetic diversity, and provides connectivity between Subunits 1a (State Line) and 1c (Central Valley) to the south and Subunit 2b (South Hills) to the north. The land within this unit supports the PCEs for the species that are necessary for the growth, reproduction, and establishment of *A. holmgreniorum*.

Special management may be required in this subunit to minimize habitat fragmentation, to minimize disturbance to the surface and subsurface structure due to recreation or other activities, and to maintain the identified soil and vegetation types. Plants within this subunit are currently threatened by unmanaged off-road vehicle (ORV) use. Additionally, the BLM is considering selling adjacent areas for urban development; we anticipate that the proximity of the development would result in indirect effect to *Astragalus holmgreniorum*. The BLM UT does not currently have a management plan specific to *A. holmgreniorum*, but is working in conjunction with us to develop a recovery plan for this species. The intent of the BLM Santa Clara River Reserve Recreation and Open Space Management Plan is to develop user-specific trails and areas of activities to reduce unregulated and potentially damaging uses on biological resources, including plants. However, specific details regarding facility locations, impacts, and conservation measures have not been identified.

#### Subunit 2b: South Hills

Subunit 2b consists of approximately 59 ha (147 ac), with 97 percent managed by BLM UT and 3 percent private lands (or land ownership unknown). This subunit was known to be occupied at the time of listing (66 FR 49560; September 28, 2001). A survey of the area in 2005 indicated a healthy number of plants in this subunit (Dr. R. Van Buren, pers. comm. 2005).

This subunit is determined to be critical habitat because it contains features essential to conservation of *Astragalus holmgreniorum*, is occupied by the species, it supports genetic diversity, and represents the northcentral-most occupied site of *A. holmgreniorum*. The land within this subunit supports the PCEs for the

species that are necessary for the growth, reproduction, and establishment of the *A. holmgreniorum*.

Special management may be required to minimize urban encroachment, maintain land in Federal ownership, reduce disturbance to the surface and subsurface structure, control invasive species, and maintain the identified vegetation types as well as pollinator habitat essential to the conservation of the species. Plants within this subunit are threatened by urban development, land trades, and recreation. Public land sales are authorized for eligible parcels under the Federal Land Transaction Facilitation Act of 2000 (J. Crisp, Field Office Supervisor, BLM UT, pers. comm. 2004). BLM is working with the city of Santa Clara and the local community to sell approximately 1,400 ac (567 ha) in the Santa Clara area. This proposed sale is believed to contain all *A. holmgreniorum* individuals in this subunit. The intent of the local community would be to develop the land for residential housing.

#### Unit 3: Purgatory Flat

Unit 3 consists of approximately 177 ac (72 ha) of land; 68 percent is managed by BLM UT, while 32 percent is under private ownership (or ownership is unknown). The final listing rule (66 FR 49561) indicated that there were 30 to 300 plants at this location. More recent site visits confirm the presence of plant individuals (H. Barnes, pers. comm. 2005 and Dr. R. Van Buren, pers. comm. 2005); however, a census was not conducted.

Purgatory Flat is determined to be critical habitat because it contains features essential to conservation of *Astragalus holmgreniorum*, is occupied by the species, and represents the northeastern-most occupied site and third known population. This unit is at the furthest distance from all other proposed critical habitat units. Distant populations are often the most active regions of speciation and may be important for protecting genetic diversity (Lesica and Allendorf 1995). The land within this unit supports the PCEs for the species that are necessary for the growth, reproduction, and establishment of the *A. holmgreniorum*.

Special management may be required to minimize disturbance to the surface structure within this subunit, control invasive species, and maintain the identified vegetation types as well as pollinator habitat essential to the conservation of the species.

#### Occupied Area Not Included in Proposal

*Astragalus holmgreniorum* is known to occur in the following area. We are not proposing this area for critical habitat designation, primarily because the best available information indicates that only a small number of plants occur on the site, which is small and distant from other populations. Thus, we could not determine that it is needed for the conservation of the species. However, we are requesting comments or additional information if it is available. In UT, near the border of Section 23 and 24 (T43S, R16W), several *A. holmgreniorum* seedlings were found in spring 2004. These individuals are separated by the Atkinville Wash (a natural watershed) from Unit 1a, and intervening land between this site and Unit 1a does not contain known PCEs. This site is separated by I-15 from Unit 1c. We lack information to determine that this site is important to the conservation of this species.

#### Proposed Critical Habitat Designation for *Astragalus ampullarioides*

In our delineation of the proposed critical habitat units, we selected areas to provide for the conservation of the five populations where *Astragalus ampullarioides* is currently known to occur. All sites are necessary because, as described earlier, *A. ampullarioides* has a limited geographical distribution, exhibits life history attributes (including dormancy during stress, soil endemism and geological restriction) that make it prone to threats. Dormancy potentially leads to the mistaken error that a population is extirpated (Epling and Lewis 1952), while soil endemism and geological restriction limit the area available to support its growth cycle. Like *A. holmgreniorum*, the maintenance of existing populations and their associated landscape is important for conservation of seed banks, pollinators, geologic extent and maintaining population fitness and genetic variation (Steffan-Dewenter and Tschardt 1999; Steffan-Dewenter 2003; Lande 2002; Greenleaf 2005; Tepedino 2005).

All plant populations experience fluctuations in size; however, small, geographically restricted populations, like those exhibited by *Astragalus ampullarioides*, are more likely to fluctuate to zero than large populations (Lienert 2004). Population fitness is often related to population size. Lienert (2004) conducted a literature review and concluded that smaller numbers of plant individuals are more likely to succumb to natural catastrophes or environmental

stochasticity, demographic stochasticity, and genetic drift. For these reasons, conservation of all known populations of *A. ampullarioides* is necessary to increase the species' overall survival and recovery.

We developed the proposed designation for *Astragalus ampullarioides* to be sufficient size to maintain landscape-scale processes and to minimize the secondary impacts resulting from land use activities in adjacent areas. The probability of long-term survival and recovery depends upon the protection of existing population sites and providing connectivity within and between

occupied sites and suitable sites for occupancy. Habitats included within these units and subunits act to maintain and facilitate pollinator activity, seed dispersal mechanisms, and intact ecosystems. We mapped the units with a degree of precision commensurate with the available information, the size of the unit, and the time allotted to complete this proposal. We anticipate that the boundaries of the mapped units may be refined based on additional information received during the public comment period.

The final listing rule (66 FR 49560; September 28, 2001) identified five known populations of *Astragalus*

*ampullarioides*. We are similarly proposing five units as critical habitat for the *A. ampullarioides*. Unit 4 in the area of Harrisburg Junction has two subunits; all other populations are represented by one unit each. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, to contain the PCEs, and that may require special management. Table 2 identifies acreage of the proposed critical habitat units and subunits by land management agency.

TABLE 2.—PROPOSED CRITICAL HABITAT UNITS AND SUBUNITS FOR *Astragalus ampullarioides*  
[Area estimates reflect all land within proposed critical habitat unit boundaries]

Unit or subunit name	BLM—UT Federal	NPS Federal	Tribal lands—Shivwits band of Paiute Tribe	UT State Lands	Private lands	Totals
<b>Occupied Acres (Hectares)</b>						
Unit 1—Pahcoon Spring Wash ....	134 (54)	.....	.....	.....	.....	134 (54)
Unit 2—Shivwits .....	.....	.....	240 (97)	.....	.....	240 (97)
Unit 3—Coral Canyon .....	10 (4)	.....	.....	76 (31)	1 (.4)	87 (35)
Unit 4—Harrisburg Junction:						
4a—Harrisburg Bench & Cottonwood .....	260 (105)	.....	.....	.....	37 (15)	297 (120)
4b—Silver Reef .....	415 (168)	.....	.....	.....	47 (19)	462 (187)
Unit 5—Zion .....	.....	1,201 (486)	.....	.....	.....	1,201 (486)
Totals .....	819 (331)	1,201 (486)	240 (97)	76 (31)	85 (34)	2,421 (980)

We present brief descriptions and rationale for the proposed critical habitat units for *Astragalus ampullarioides* below.

*Unit 1—Pahcoon Spring Wash*

This unit includes 54 ha (134 ac), all on BLM UT lands adjacent to the Shivwits Indian Reservation. *Astragalus ampullarioides* was known to occupy this area at the time of listing. This population occurs in a small area where the density of *A. ampullarioides* is high (Van Buren and Harper 2004b). In 2005, this population was estimated to contain approximately 300 to 350 individuals (Van Buren, pers. comm. 2005). Unit 1 is determined to be critical habitat because it contains features essential to conservation of *A. holmgreniorum*, is occupied by the species, and represents the northwestern-most occurrence of *A. ampullarioides*. Resources within this unit support the identified PCEs associated with outcroppings of the Chinle Formation.

Special management may be required to minimize disturbance to the surface and subsurface structure within this unit, to control invasive species, and to

maintain the identified vegetation types as well as pollinator habitat essential to the conservation of the species. Cattle grazing activities are present within this unit. As previously discussed, the Chinle soils are soft and easily susceptible to erosion. A cost-share agreement between BLM UT and The Nature Conservancy (TNC) provides funding for signs and protective fencing; contracting for the fence is in process. As a part of the agreement, BLM UT and TNC will compare past plant survey data with population surveys to be completed in 2007 and 2009, to evaluate the effectiveness of the fence in eliminating habitat degradation.

*Unit 2—Shivwits*

At the time of the final listing rule (66 FR 49560; September 28, 2001), this population consisted of approximately 50 individuals. A recent count of individuals has not been conducted. A visit to the site after plants became dormant in 2005 indicated the presence of PCEs and evidence of several dormant plants (Heather Barnes, Service, pers. obs. 2005). All 97 ha (240 ac) occur on lands managed by the Shivwits Band of the Paiute Tribe. This

unit is included because it contains PCEs, is the type locality for the species, and is the site which provides the common name for this taxon. It has the lowest amount of human use of all the *Astragalus ampullarioides* sites, contains features essential to conservation of *A. ampullarioides*, is occupied by the species, and is one of five known populations.

Plants within this subunit are not known to be threatened by urban development or recreation. However, special management may be required to control domestic animals and invasive plant species, minimize disturbance to the surface and subsurface structure, and maintain the identified soil and vegetation types. The Shivwits Band of the Paiute Tribe has provided protective fencing for the dominant area of *Astragalus ampullarioides* occupancy that is adjacent to a utility corridor. The fencing provides protection from maintenance activities in this utility corridor and from activities associated with intermittent cattle grazing (G. Rogers, Shivwits Band of Paiutes, Band Chairman, pers. comm. 2005). However, the existing management (*i.e.*, protective fencing) does not address the threat to

this population from nonnative plants. Additionally, some individuals may exist in an area outside of this protective fence. A dirt road traverses a portion of this *A. ampullarioides* unit.

#### Unit 3—Coral Canyon

This unit, known to be occupied at the time of listing, is located adjacent to a golf course near Harrisburg Junction and is estimated to contain 100 individuals based on visitation in 2005 (Dr. R. Van Buren, pers. comm. 2005). Land ownership for all 87 acres (35 ha) is: 87 percent SITLA, 12 percent BLM UT lands, and 1 percent private lands. We have included occupied habitats and adjacent areas of suitable soils and vegetation to allow for maintenance of the seed bank, seed dispersal, and pollinator services.

This unit is determined to be critical habitat because it contains features essential to conservation of the taxon, is occupied by the taxon, is centrally located and may provide connectivity between populations, and contains a persistent occupied site of *Astragalus ampullarioides*.

Plants within this subunit face threats from urban development. Special management may be required to minimize disturbance to the surface and subsurface structure within this subunit, maintain the identified soil and vegetation types, and control invasive weeds.

#### Unit 4—Harrisburg Junction

In 2001, the final listing rule (66 FR 49560; September 28, 2001) referred to a population near Harrisburg Junction that contained four separate sites. Unit 4 is comprised of two subunits encompassing 307 ha (759 ac) that are spatially separated based on geography (Harrisburg Bench/Cottonwood and Silver Reef). Each of these subunits contains two of the plant occurrence sites that were known to be occupied at the time of the final listing rule (66 FR 49560; September 28, 2001). In 1999, the four sites contained approximately 300 plants (L. England, pers. comm. 1999; Utah Natural Heritage Program 1999; Van Buren, pers. comm. 2000).

In the area of Harrisburg Junction, milk-vetch populations or subpopulations are restricted to outcroppings of the Chinle soil. Each area may be relatively self-sustaining; however, the long-term persistence and stability of these areas arise from balancing site extinctions with the colonization of suitable unoccupied outcroppings through dispersal events (Hanski 1985; Olivieri *et al.* 1990; Hastings and Harrison 1994).

#### Subunit 4a—Harrisburg Bench and Cottonwood

The 120 ha (297 ac) in this subunit are 88 percent BLM lands and 12 percent private lands. Approximately 100 individual plants were located during 2005 surveys in this subunit (Dr. R. Van Buren, pers. comm. 2005). This subunit contains PCEs necessary to support *Astragalus ampullarioides* and its growth, reproduction, and establishment. Additionally, land found between the northbound and southbound lanes of Highway I-15 contains an occupied site. This intervening area within the highway right-of-way may allow pollinator flow between occupied sites (B. Douglas, BLM, pers. comm. 2005). Habitat areas between known occupied sites are included in the proposed critical habitat designation to support pollinators and seed dispersal between sites. Pollinator habitat and seed dispersal are considered important for the species' long-term survival (Steffan-Dewenter and Tschardt 1999; Steffan-Dewenter 2003; Greenleaf 2005; Van Buren and Harper 2003a).

This subunit is determined to be critical habitat because it contains features essential to conservation of *Astragalus ampullarioides*, is occupied by the species, and contains a persistent occupied site for *A. ampullarioides* that is centrally located and may provide connectivity between other units.

At the Harrisburg site, *B. tectorum* is a closely associated species (Van Buren 2005). The eastern part of this unit (east of I-15) burned during a wildfire in 2005; however, no suppression occurred in areas of occupied habitat. The status of seeds within the seed bank is unknown. Also, unknown, but likely, is that most of the aboveground stems and foliage died back at the time of the fire (Van Buren 2005).

Plants within this subunit may be threatened by urban development, recreation, and invasive plant species. Special management may be required to control invasive plant species, minimize disturbance to the surface and subsurface structure, and to maintain the identified soil and vegetation types. The BLM UT and TNC have entered into a cost-share agreement to provide signs and protective fencing to minimize human use at one area of occupancy within this subunit.

#### Subunit 4b: Silver Reef

The 462 ac (187 ha) in this subunit is composed of 90% BLM lands and 10% private lands. *Astragalus ampullarioides* individuals are found along intermittent outcroppings of the

Chinle Formation. Approximately 150 individuals were identified in a partial survey in 2005 (Dr. R. Van Buren, pers. comm. 2005). This subunit is determined to be critical habitat because it contains features essential to conservation of *A. ampullarioides*, is occupied by the species, contains a thriving population, and maintains a prevalence of soil substrate necessary for future expansion to maintain metapopulation dynamics.

Special management may be required to minimize recreational use and disturbance to the surface and subsurface structure within this subunit, control invasive plant species and domestic animals, and maintain the identified vegetation types as well as pollinator habitat essential to the conservation of the species. Quantitative information on impacts from cattle grazing and/or recreational use is unknown. One occupied area within this subunit is under a cost-share agreement for protective fencing, which is to begin in the near future. Post-monitoring will evaluate the effectiveness of the fences in eliminating habitat degradation from cattle and recreational use. Additional areas in this subunit remain unfenced, and special management may still be necessary in these areas to reduce impacts to habitat.

#### Unit 5—Zion

The 1,201 ac (486 ha) of Unit 5 occur entirely on lands managed by Zion NP. Population numbers were approximately 300 to 500 individuals in 2000 (66 FR 49560). More recent surveys document almost 1,300 individuals in the unit (J. Alexander, pers. comm. 2004; Zion NP, unpublished data, 2005).

This unit is determined to be critical habitat because it contains features essential to conservation of *A. holmgreniorum*, is occupied by the species, is one of five known populations, represents the northeastern-most range of the species, and contains the largest known population of *A. ampullarioides*. The land within this unit supports the PCEs for the species that are necessary for the growth, reproduction, and establishment of the *A. ampullarioides*.

Special management is necessary in this unit to minimize recreation disturbance to the surface structure and subsurface, to control invasive weedy species, and to maintain the identified vegetation types and pollinator habitat essential to the conservation of the species. Recreational use of the park and disturbance from park visitors and horses may present potential effects to

the milk-vetch. An established hiking and horse trail that is used infrequently from November through April occurs near populations of *A. ampullarioides*.

Plants and habitat within this unit are also threatened by noxious nonnative plants including *Moluccella laevis* (bells of Ireland), an introduced species not found at other sites. Although this unit is in a sparsely vegetated habitat that in the past did not carry fire, the invasions of exotic grasses are creating more continuous fuels. Although no management plan exists that is specific to *Astragalus ampullarioides* for Zion, the current Zion National Park Fire Management Plan includes restrictions on fire management within a 3/4-mi. buffer zone of the area where *A. ampullarioides* is found. Zion NP is also working with us to complete a recovery plan for this species, and is partnering with the USGS to investigate biotic soil conditions and invasive weed interactions for *A. ampullarioides*.

## Effects of Critical Habitat Designation

### Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency

cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical

habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinstatement of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Astragalus holmgreniorum* and *A. ampullarioides* or their designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from

the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

*Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Astragalus holmgreniorum and A. ampullarioides and Their Critical Habitat*

**Jeopardy Standard**

Prior to and following designation of critical habitat, the Service has applied an analytical framework for *Astragalus holmgreniorum* and *A. ampullarioides* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of *Astragalus holmgreniorum* and *A. ampullarioides*. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Astragalus holmgreniorum* and *A. ampullarioides* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

**Adverse Modification Standard**

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting *Astragalus holmgreniorum* and *A. ampullarioides* critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve the intended conservation role for the species. Generally, the conservation role of *Astragalus holmgreniorum* and *A. ampullarioides* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for *Astragalus holmgreniorum* and *A. ampullarioides* include, but are not limited to:

(1) Activities that have the potential to degrade or destroy *Astragalus holmgreniorum* and *A. ampullarioides* habitat (and its PCEs), including off-road vehicle use, heavy recreational use, residential or commercial development, road development, intensive livestock grazing, and herbicide use;

(2) Alteration of existing hydrology by redirection of sheet flow from areas adjacent to formation skirts or hillsides (e.g., clearing upslope from *Astragalus holmgreniorum* or *A. ampullarioides*);

(3) Compaction of the soil through the establishment of trails and roads;

(4) Activities that foster the introduction of nonnative vegetation, particularly noxious weeds, or create conditions that encourage the growth of nonnatives. These activities could include, but are not limited to supplemental feeding of livestock, ground disturbances associated with ORV use, road construction, utility corridors, seeding area with nonnatives, and other soil-disturbing activities;

(5) Activities that directly or indirectly result in increased erosion, decreased soil stability, and changes in vegetation communities (e.g., placing recreational off-road trailheads along critical habitat leading to congregation of recreational users in a sensitive location); and

(6) Sale or exchange of lands by a Federal agency to an entity that intends to develop them or implement activities that would degrade or destroy the PCEs.

*Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the ESA*

We are not proposing or considering any non-inclusions under sections 3(5)(A) or 4(a)(3) of the Act. There are

no military areas associated with this proposed designation.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if [s]he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless [s]he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. The Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, areas may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 242.19.

Pursuant to section 4(b)(2) of the ESA, we must consider relevant impacts in addition to economic ones. We determined that the lands within the proposed designation of critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* are not owned or managed by the Department of Defense. There are currently no habitat conservation plans that include *Astragalus holmgreniorum* and *A. ampullarioides*. Utah's SITLA, TNC, the Service, BLM UT, and Utah Department of Transportation have signed a letter of intent to identify, create, and maintain plant preserves for *A. holmgreniorum* on some of the lands currently held by

SITLA; however, at the time of this proposal, the preserves had not been established.

The proposed designation includes a site found on the Shivwits Band of the Paiute Tribal lands or trust resources that we have determined is important to the conservation of *A. ampullarioides*. By engaging in government-to-government relations with the Shivwits Band of the Paiute Tribe, we have learned of their willingness to have their site designated as critical habitat. We anticipate no impact to national security, tribal lands, partnerships, or habitat conservation plans from this proposed critical habitat designation. As such, we have considered but not proposed to exclude any lands from this designation based on the potential impacts to these factors.

#### *Economic Analysis*

An analysis of the economic impacts of proposing critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://mountain-prairie.fws.gov/species/plants/milkvetche/index.htm>, or by contacting the Utah Fish and Wildlife Office directly (see **ADDRESSES**).

#### *Peer Review*

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will be seeking independent reviews from five peer reviewers of the science in this rule. At least three of the reviewers will be nominated by interests outside of the Service with particular emphasis on recommendations provided by local, State, or Tribal governments. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the

comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### *Public Hearings*

The ESA provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

#### *Clarity of the Rule*

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in **SUPPLEMENTARY INFORMATION** of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### **Required Determinations**

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis

also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the "Adverse Modification Standard" section. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. When it is completed, the draft economic analysis can be obtained from the Web site at <http://mountain-prairie.fws.gov/species/plants/milkvetche/index.htm> or by contacting the Utah Fish and Wildlife Office directly (see **ADDRESSES**).

##### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a

certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Astragalus holmgreniourum* and *A. ampullarioides* is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal

Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the majority of lands proposed in this rule are managed by Federal and State agencies. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in the State of Utah and Arizona. The designation of critical habitat in areas

currently occupied by *Astragalus holmgreniourum* and *A. ampullarioides* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally-sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the *Astragalus holmgreniourum* and *A. ampullarioides*.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act*

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the ESA of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species

includes States within the Tenth Circuit, such as that of *Astragalus holmgreniorum* and *A. ampullarioides*, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and DOI's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. A population of *Astragalus*

*ampullarioides* is found on the tribal lands of the Shivwits Band of Paiutes. Our current understanding is that the Shivwits Band of Paiutes is amenable to the proposed designation of critical habitat on lands under their management for this species (H. Barnes, Botanist, FWS and G. Rogers, Chairman, Shivwits Band of Paiutes, pers. comm. 2005). These lands are included in this proposal as they contain features essential for the conservation.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Utah Fish and Wildlife Office (see **ADDRESSES** section).

**Author(s)**

The primary author of this package is the Utah Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entries for "*Astragalus ampullarioides*" and "*Astragalus holmgreniorum*" under "FLOWERING PLANTS" in the List of Threatened and Endangered Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Species	Scientific name	Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
FLOWERING PLANTS								
*	*	*	*	*	*	*	*	*
	<i>Astragalus ampullarioides</i> .....	Shivwits milk-vetch.	U.S.A. (UT).	Fabaceae	E	711	17.96(a)	NA
*	*	*	*	*	*	*	*	*
	<i>Astragalus holmgreniorum</i> .....	Holmgren milk-vetch.	U.S.A. (UT, AZ).	Fabaceae	E	711	17.96(a)	NA
*	*	*	*	*	*	*	*	*

3. Amend § 17.96(a), by adding entries for *Astragalus ampullarioides* (Shivwits milk-vetch) and *Astragalus holmgreniorum* (Holmgren milk-vetch) in alphabetical order under family Fabaceae to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) *Flowering plants.*  
\* \* \* \* \*

**Family Fabaceae: *Astragalus ampullarioides* (Shivwits milk-vetch)**

(1) Critical habitat units are depicted for Washington County, Utah, on the maps below.

(2) Within these areas, the primary constituent elements of critical habitat for *Astragalus ampullarioides* are:

(i) Outcroppings of soft clay soil, which is often purplish red, within the Chinle Formation, at elevations from 920 to 1,330 meters (3,018 to 4,367 feet);

(ii) Topographic features/relief, including alluvial fans and fan terraces, and gently rolling to steep swales that are often markedly dissected by water flow pathways from seasonal precipitation with little to moderate slope (3 to 24 percent); and

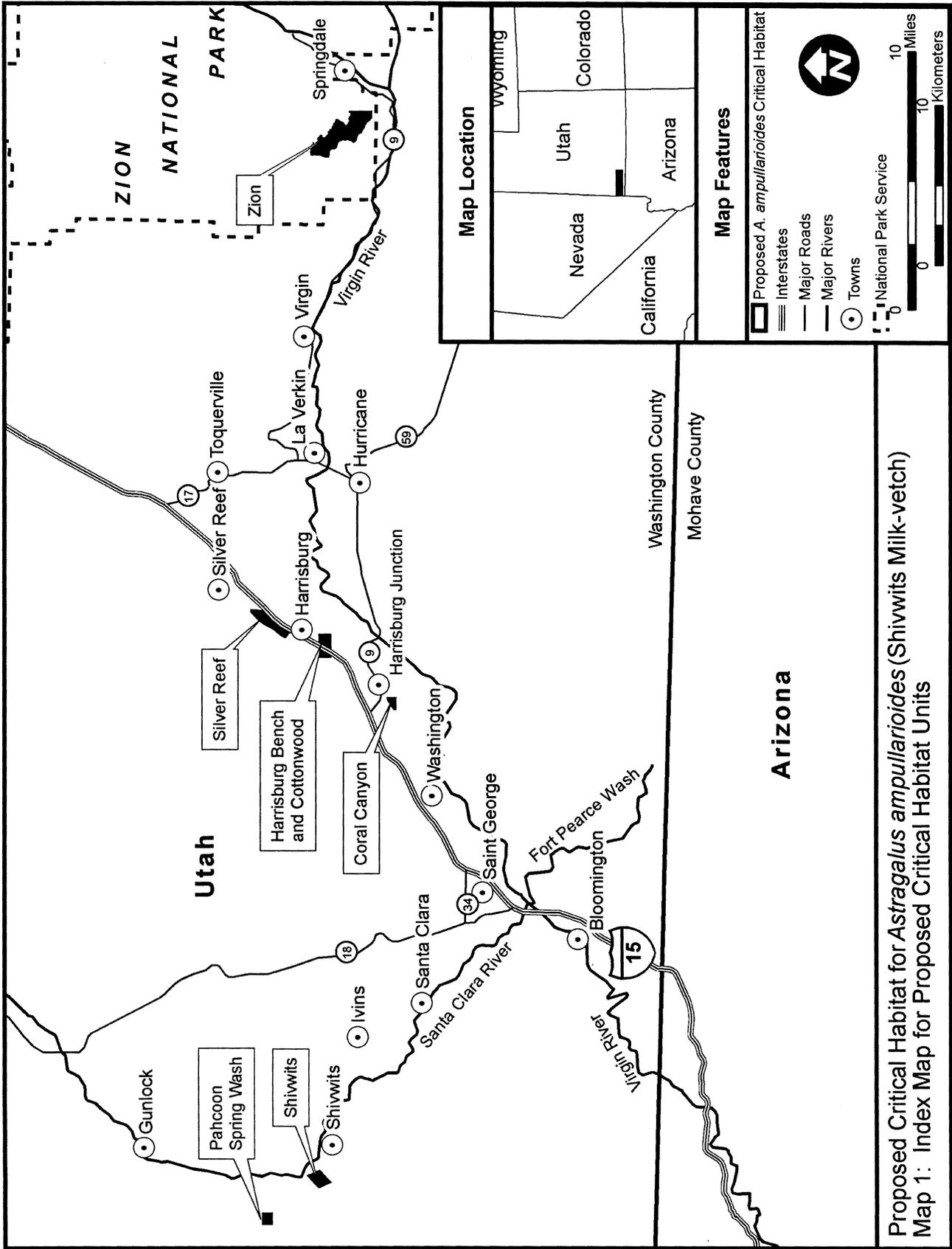
(iii) The presence of insect visitors or pollinators, such as *Anthophora captognatha*, *A. damnersi*, *A. porterae*, other *Anthophora species*, *Eucera quadricincta*, *Bombus morrissonis*, *Hoplitis grinnelli*, *Osmia clarescens*, *O. marginata*, *O. titus*, *O. clarescens*, and two types of *Dialictus* species.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were an electronic base map of USGS 7.5' quadrangles projected to the Universal Transverse Mercator (UTM) coordinate system, Zone 12 NAD 83. Ancillary data used to help refine the unit boundaries included Digital Orthophoto Quadrangles (DOQs); National Agricultural Imagery Program (NAIP); cadastral land survey (Township, Range, and Section); soils data; and the 1:24,000 Utah water courses data set. Critical habitat units were delineated through heads-up digitizing in a Geographic Information System.

(5) **Note:** Index map (Map 1) follows.

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(6) Units 1 and 2—Pahcoon Spring Wash and Shivwits, Washington County, Utah.

(i) Unit 1: Pahcoon Spring. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

250963, 4122043; 250963, 4122040;  
250559, 4122052; 250165, 4122063;  
250165, 4122075; 250165, 4122352;

250165, 4122466; 250165, 4122731;  
250176, 4122731; 250580, 4122731;  
250965, 4122731; 250965, 4122442;  
250965, 4122331; 250965, 4122107;  
250963, 4122047; 250963, 4122043.

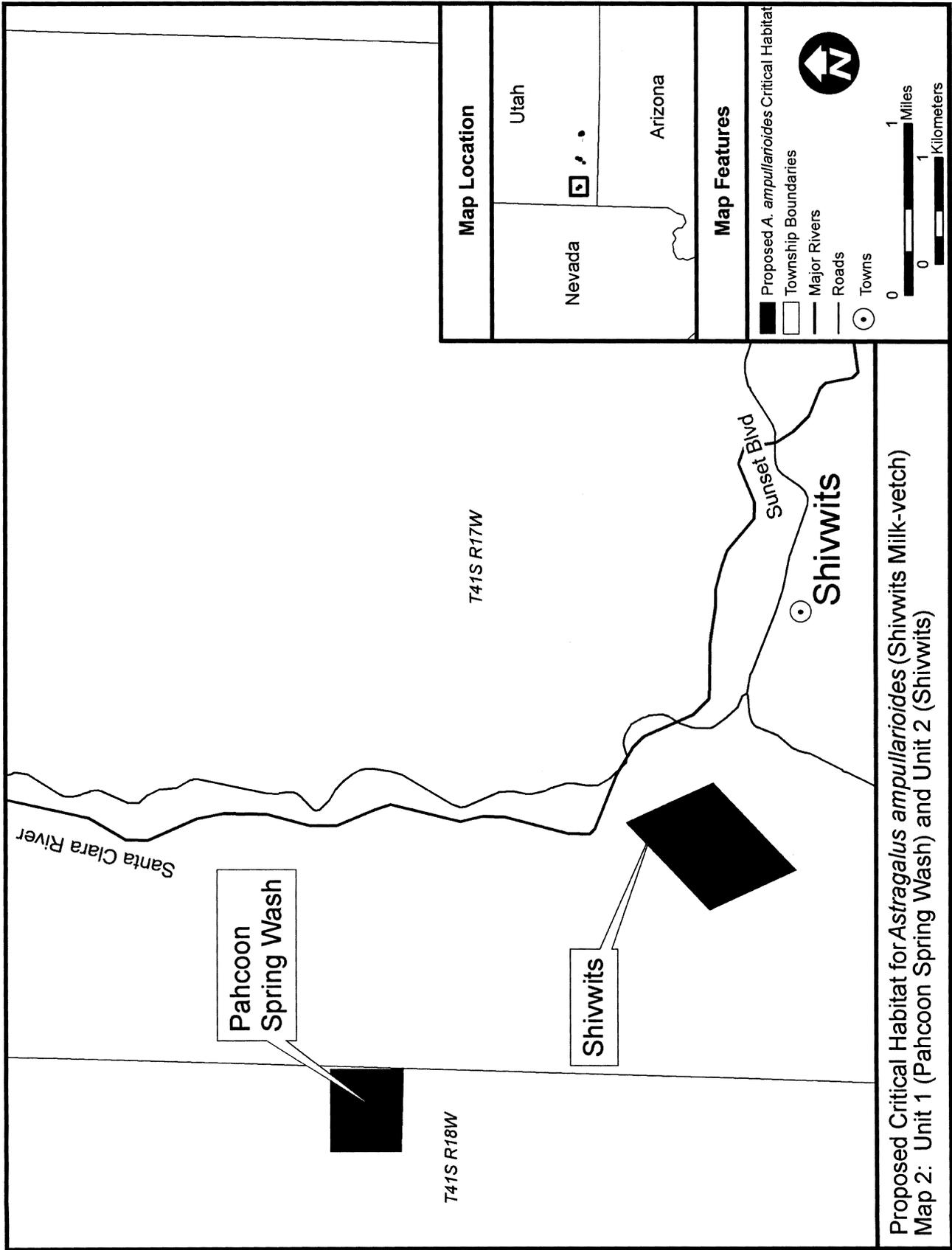
(ii) Unit 2: Shivwits. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

253287, 4119960; 253476, 4119551;  
253666, 4119143; 253666, 4119143;

253252, 4118753; 253252, 4118753;  
253252, 4118753; 252838, 4118362;  
252838, 4118362; 252838, 4118362;  
252648, 4118771; 252459, 4119179;  
252459, 4119179; 252873, 4119570;  
252873, 4119570; 252873, 4119570;  
253287, 4119960; 253287, 4119960.

(iii) **Note:** Map of Units 1 and 2 (Map 2) follows:

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(7) Units 3 and 4—Coral Canyon and Harrisburg Junction, Washington County, Utah. Unit 4, Harrisburg Junction, is divided into two subunits: Harrisburg Bench and Cottonwood, and Silver Reef.

(i) Unit 3: Coral Canyon. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

283348, 4114931; 283341, 4114729;  
283341, 4114729; 283335, 4114525;  
283335, 4114523; 283334, 4114481;  
283329, 4114332; 283328, 4114322;  
283139, 4114327; 283138, 4114327;  
283129, 4114327; 282929, 4114333;  
282929, 4114331; 282529, 4114339;  
282533, 4114481; 282539, 4114493;  
282547, 4114508; 282551, 4114511;  
282560, 4114522; 282589, 4114545;  
282595, 4114551; 282611, 4114559;  
282622, 4114567; 282630, 4114573;  
282640, 4114580; 282649, 4114587;  
282658, 4114593; 282665, 4114594;  
282674, 4114599; 282679, 4114605;  
282680, 4114612; 282680, 4114617;  
282680, 4114622; 282683, 4114624;  
282700, 4114627; 282712, 4114631;  
282724, 4114639; 282732, 4114646;  
282743, 4114651; 282754, 4114659;  
282764, 4114668; 282768, 4114679;  
282776, 4114689; 282786, 4114697;  
282797, 4114705; 282801, 4114711;  
282805, 4114717; 282805, 4114717;  
282808, 4114726; 282812, 4114736;  
282814, 4114750; 282822, 4114760;  
282828, 4114767; 282837, 4114767;  
282846, 4114767; 282856, 4114763;  
282862, 4114753; 282867, 4114741;  
282877, 4114737; 282895, 4114740;  
282905, 4114747; 282914, 4114759;  
282921, 4114771; 282931, 4114782;  
282932, 4114789; 282936, 4114796;  
282943, 4114800; 282943, 4114800;  
282951, 4114800; 282959, 4114796;  
282961, 4114796; 282967, 4114797;  
282972, 4114803; 282975, 4114812;  
282984, 4114820; 282992, 4114825;  
282996, 4114827; 283013, 4114831;  
283027, 4114839; 283030, 4114841;  
283043, 4114849; 283060, 4114856;  
283075, 4114862; 283082, 4114868;  
283086, 4114880; 283090, 4114890;

283092, 4114901; 283097, 4114907;  
283106, 4114918; 283115, 4114923;  
283135, 4114927; 283154, 4114928;  
283161, 4114922; 283179, 4114931;  
283185, 4114936; 283186, 4114936;  
283186, 4114936; 283348, 4114933;  
283348, 4114931.

(ii) Unit 4a: Harrisburg Bench and Cottonwood. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

285767, 4118407; 285767, 4118468;  
285767, 4118584; 285767, 4118777;  
285767, 4118911; 285767, 4119177;  
285833, 4119177; 286237, 4119177;  
286419, 4119177; 286641, 4119177;  
287098, 4119177; 287267, 4119177;  
287267, 4118771; 287267, 4118377;  
287074, 4118377; 286948, 4118377;  
286948, 4118377; 286556, 4118377;  
286150, 4118377; 285767, 4118377;  
285767, 4118407.

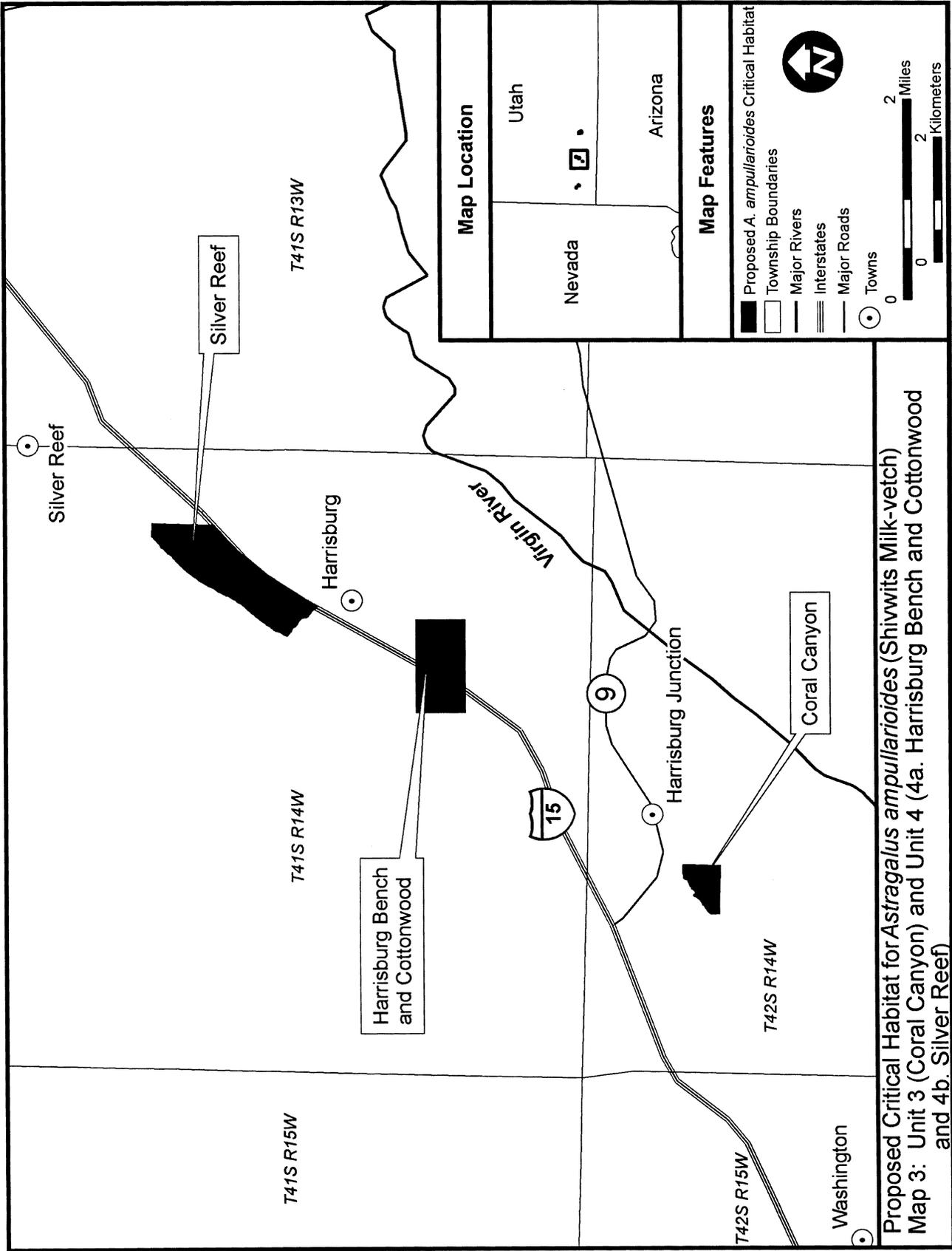
(iii) Unit 4b: Silver Reef. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

287073, 4121370; 287074, 4121376;  
287074, 4121402; 287085, 4121418;  
287093, 4121441; 287126, 4121474;  
287152, 4121505; 287171, 4121542;  
287187, 4121566; 287209, 4121591;  
287226, 4121621; 287251, 4121651;  
287273, 4121682; 287299, 4121713;  
287324, 4121742; 287349, 4121773;  
287375, 4121800; 287406, 4121836;  
287448, 4121887; 287480, 4121919;  
287514, 4121962; 287526, 4121985;  
287552, 4122029; 287550, 4122030;  
287560, 4122040; 287572, 4122052;  
287587, 4122079; 287600, 4122106;  
287618, 4122133; 287637, 4122165;  
287643, 4122195; 287660, 4122216;  
287676, 4122260; 287696, 4122297;  
287711, 4122329; 287729, 4122354;  
287752, 4122375; 287771, 4122405;  
287782, 4122433; 287799, 4122474;  
287840, 4122544; 287862, 4122588;  
287886, 4122629; 287902, 4122644;  
287918, 4122663; 287930, 4122682;  
287942, 4122698; 287952, 4122710;  
287962, 4122727; 287983, 4122757;  
288026, 4122808; 288046, 4122837;  
288063, 4122855; 288091, 4122887;

288115, 4122916; 288144, 4122939;  
288169, 4122966; 288196, 4122989;  
288225, 4123018; 288245, 4123040;  
288270, 4123059; 288294, 4123079;  
288311, 4123104; 288320, 4123126;  
288337, 4123142; 288352, 4123154;  
288369, 4123171; 288382, 4123179;  
288395, 4123199; 288409, 4123223;  
288428, 4123238; 288452, 4123249;  
288461, 4123256; 288462, 4123255;  
288480, 4123271; 288489, 4123286;  
288500, 4123293; 288506, 4123303;  
288521, 4123312; 288538, 4123330;  
288562, 4123347; 288579, 4123361;  
288589, 4123375; 288601, 4123392;  
288815, 4123379; 288802, 4122943;  
288787, 4122380; 288763, 4122359;  
288718, 4122320; 288681, 4122286;  
288661, 4122267; 288596, 4122213;  
288536, 4122161; 288525, 4122149;  
288449, 4122071; 288403, 4122026;  
288368, 4121997; 288368, 4121992;  
288367, 4121992; 288333, 4121955;  
288302, 4121916; 288278, 4121891;  
288268, 4121875; 288227, 4121827;  
288198, 4121792; 288167, 4121757;  
288139, 4121723; 288120, 4121697;  
288089, 4121658; 288065, 4121628;  
288012, 4121559; 287980, 4121512;  
287955, 4121466; 287927, 4121426;  
287875, 4121352; 287875, 4121352;  
287747, 4121144; 287668, 4121023;  
287557, 4120848; 287483, 4120730;  
287443, 4120762; 287421, 4120790;  
287397, 4120822; 287376, 4120836;  
287353, 4120857; 287329, 4120875;  
287309, 4120895; 287292, 4120917;  
287290, 4120944; 287289, 4120970;  
287281, 4120992; 287269, 4121010;  
287246, 4121028; 287220, 4121039;  
287195, 4121055; 287175, 4121069;  
287157, 4121078; 287142, 4121100;  
287135, 4121122; 287121, 4121134;  
287086, 4121149; 287069, 4121153;  
287050, 4121175; 287018, 4121205;  
286995, 4121229; 287002, 4121239;  
287012, 4121264; 287023, 4121292;  
287038, 4121310; 287050, 4121326;  
287058, 4121342; 287068, 4121359;  
287073, 4121370.

(iv) **Note:** Map of Units 3 and 4 (Map 3) follows:

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(10) Unit 5—Zion, Washington County, Utah.

(i) Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

317424, 4119663; 317442, 4119650;  
317463, 4119652; 317502, 4119660;  
317526, 4119660; 317568, 4119660;  
317617, 4119660; 317626, 4119660;  
317657, 4119660; 317685, 4119660;  
317722, 4119650; 317756, 4119634;  
317780, 4119629; 317798, 4119616;  
317821, 4119592; 317829, 4119566;  
317811, 4119556; 317793, 4119548;  
317787, 4119530; 317800, 4119519;  
317832, 4119519; 317863, 4119511;  
317884, 4119503; 317916, 4119503;  
317939, 4119503; 317963, 4119509;  
317984, 4119506; 317986, 4119485;  
317963, 4119477; 317942, 4119464;  
317926, 4119451; 317900, 4119443;  
317874, 4119430; 317855, 4119412;  
317848, 4119404; 317816, 4119383;  
317790, 4119362; 317790, 4119341;  
317866, 4119330; 317932, 4119325;  
317978, 4119300; 318003, 4119280;  
318018, 4119262; 318039, 4119239;  
318064, 4119219; 318115, 4119208;  
318141, 4119225; 318163, 4119236;  
318191, 4119236; 318215, 4119236;  
318250, 4119218; 318274, 4119194;  
318296, 4119173; 318331, 4119144;  
318362, 4119105; 318388, 4119083;  
318416, 4119051; 318416, 4119050;  
318437, 4119003; 318431, 4118998;  
318414, 4118984; 318413, 4118983;  
318402, 4118958; 318404, 4118939;  
318401, 4118929; 318359, 4118934;  
318323, 4118938; 318305, 4118929;  
318295, 4118913; 318300, 4118893;  
318302, 4118873; 318297, 4118860;  
318288, 4118839; 318285, 4118813;  
318292, 4118782; 318302, 4118763;  
318326, 4118737; 318342, 4118709;  
318363, 4118699; 318382, 4118681;  
318408, 4118659; 318413, 4118655;  
318439, 4118628; 318454, 4118612;  
318457, 4118595; 318458, 4118591;  
318466, 4118577; 318482, 4118572;  
318511, 4118557; 318541, 4118553;  
318574, 4118567; 318592, 4118592;  
318595, 4118595; 318600, 4118600;  
318615, 4118596; 318624, 4118591;  
318633, 4118586; 318648, 4118584;  
318652, 4118555; 318659, 4118531;  
318671, 4118513; 318700, 4118493;  
318724, 4118482; 318745, 4118494;  
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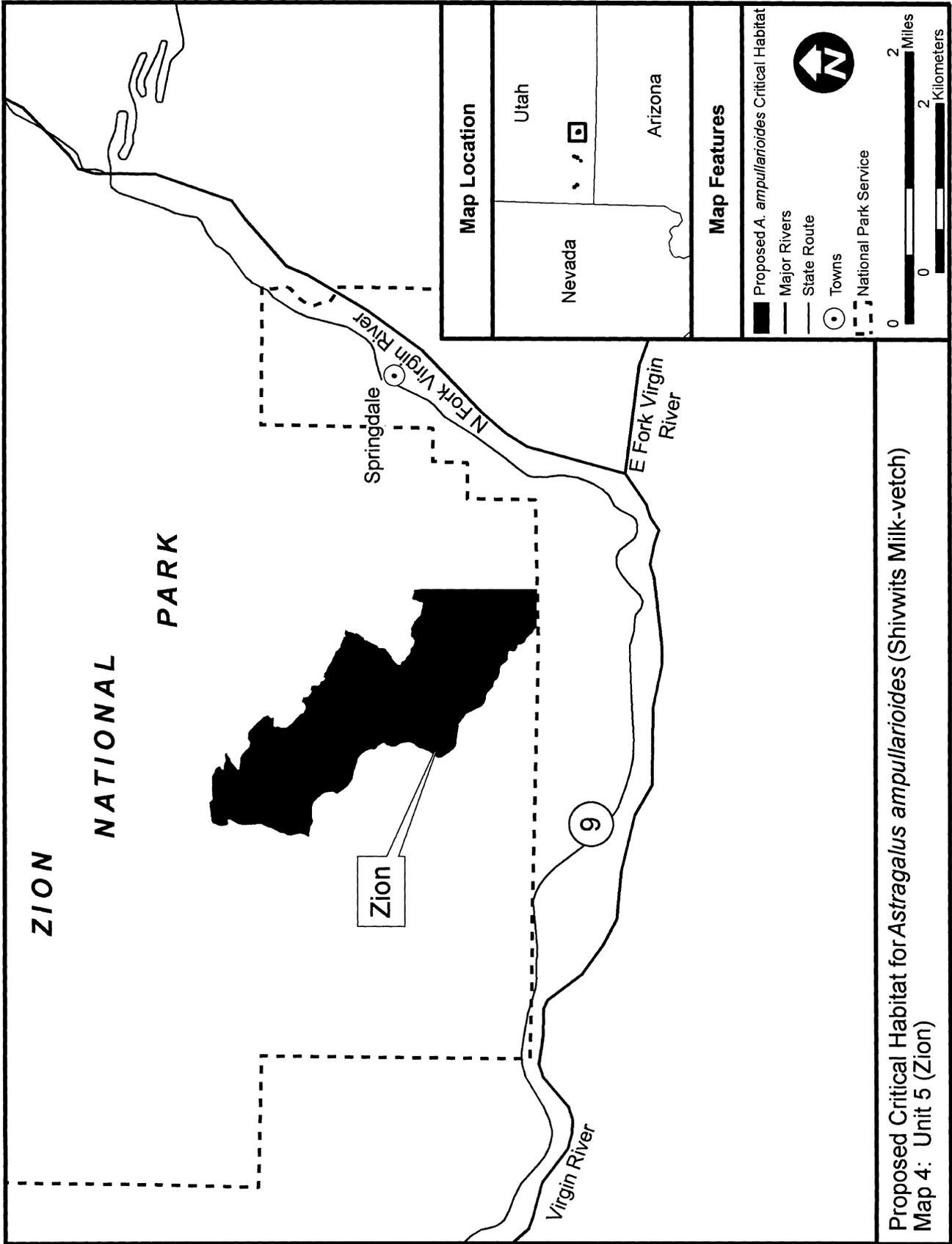
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317224, 4119672; 317259, 4119676;  
317290, 4119676; 317366, 4119689;  
317395, 4119692; 317403, 4119684;  
317424, 4119663.

(ii) **Note:** Map of Unit 5 (Map 4)  
follows:

**BILLING CODE 4310-55-P**



\* \* \* \* \*

**Family Fabaceae: *Astragalus holmgreniorum* (Holmgren Milk-Vetch)**

(1) Critical habitat units are depicted for Mohave County, Arizona, and Washington County, Utah, on the maps and as described below.

(2) Within these areas, the primary constituent elements of critical habitat for *Astragalus holmgreniorum* are:

(i) Appropriate geological layers and/or soils that support individual *Astragalus holmgreniorum* plants. These include the Virgin Limestone member, middle red member, and upper red member of the Moenkopi Formation and the Petrified Forest member of the Chinle Formation. Associated soils are Badland; Badland, very steep; Eroded land-Shalet complex, warm; Hobog-rock land association; Isom cobbly sandy

loam; Ruesh very gravelly fine sandy loam; Gypill Hobog complex, 6 to 35 percent slopes; Gypill very cobbly sandy loam, 15 to 40 percent slopes; and Hobog-Grapevine complex, 2 to 35 percent slopes;

(ii) Topographic features/relief (mesas, ridge remnants, alluvial fans and fan terraces, their summits and backslopes, and gently rolling to steep swales) and the drainage areas along formation edges with little to moderate slope (0 to 20 percent); and

(iii) The presence of insect visitors or pollinators, such as *Anthophora captognatha*, *A. damnersi*, *A. porterae*, other *Anthophora* species, *Eucera quadricincta*, *Omia titus*, and two types of *Dialictus* species.

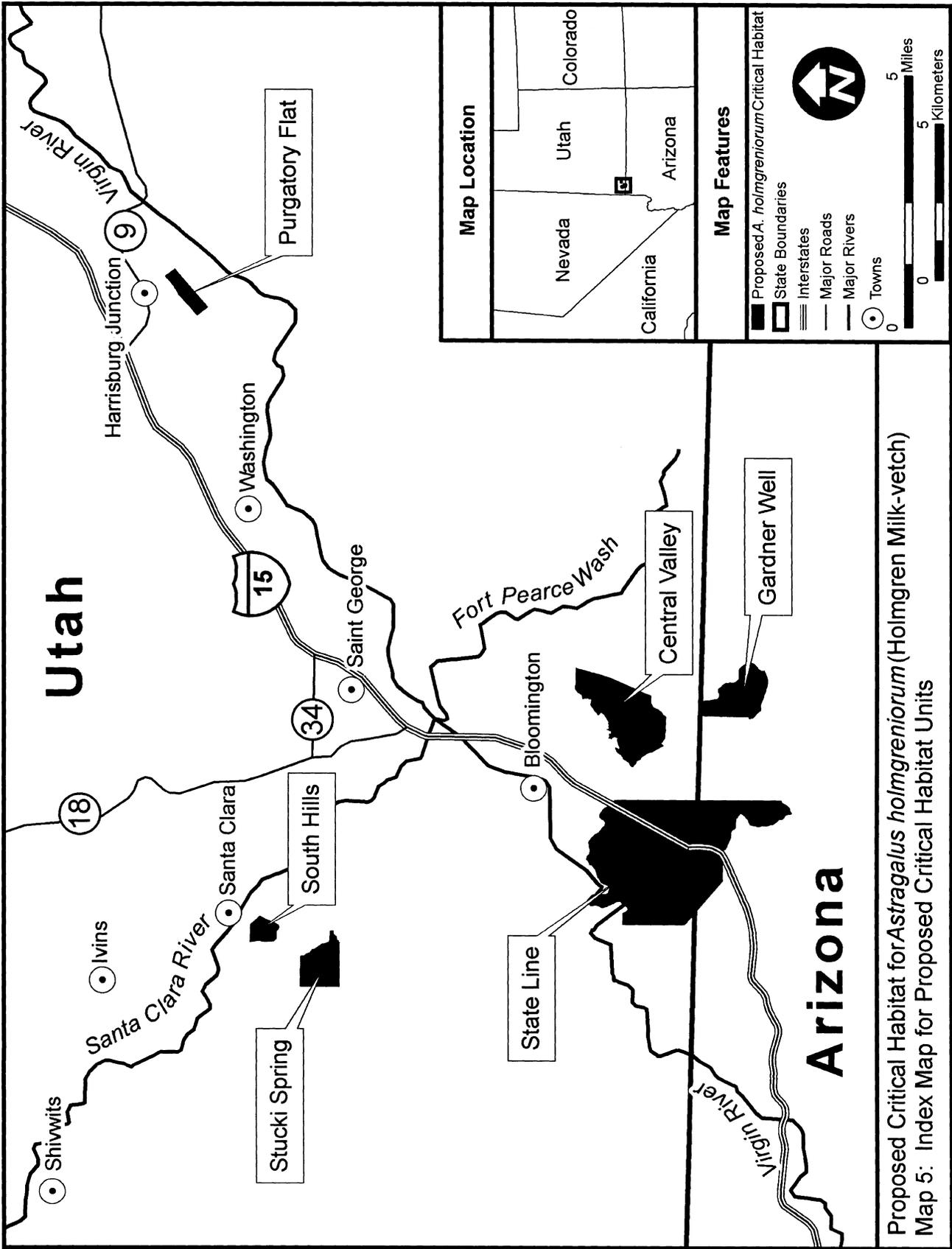
(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary

constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were an electronic base map of USGS 7.5' quadrangles projected to the Universal Transverse Mercator (UTM) coordinate system, Zone 12 NAD 83. Ancillary data used to help refine the unit boundaries included Digital Orthophoto Quadrangles (DOQs); National Agricultural Imagery Program (NAIP); cadastral land survey (Township, Range, and Section); soils data; and the 1:24,000 Utah water courses data set. Critical habitat units were delineated through heads-up digitizing in a Geographic Information System.

(5) **Note:** Index map (Map 5) follows:

**BILLING CODE 4310-55-P**



Proposed Critical Habitat for *Astragalus holmgreniorum* (Holmgren Milk-vetch)  
Map 5: Index Map for Proposed Critical Habitat Units

(6) Unit 1—Utah-Arizona Border Unit: Mohave County, Arizona, and Washington County, Utah. This Unit consists of three subunits: State Line, Gardner Well, and Central Valley.

(i) Unit 1a: State Line, Washington County, Utah. The subunit is bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

265906, 4097003; 265906, 4097003;  
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 264420, 4100041; 264445, 4100041;  
 264486, 4100066; 264528, 4100107;  
 264560, 4100151; 264578, 4100184;  
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 264568, 4100555; 264563, 4100578;  
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 264530, 4100643; 264509, 4100682;  
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(ii) Unit 1b: Gardner Well, Washington County, Utah. The subunit is bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

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270906, 4097680; 270950, 4097680;  
270975, 4097676; 271005, 4097654;  
271019, 4097640; 271048, 4097651;  
271089, 4097673; 271118, 4097676;  
271132, 4097585.

(iii) Unit 1c: Central Valley, Washington County, Utah. The subunit is bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N):

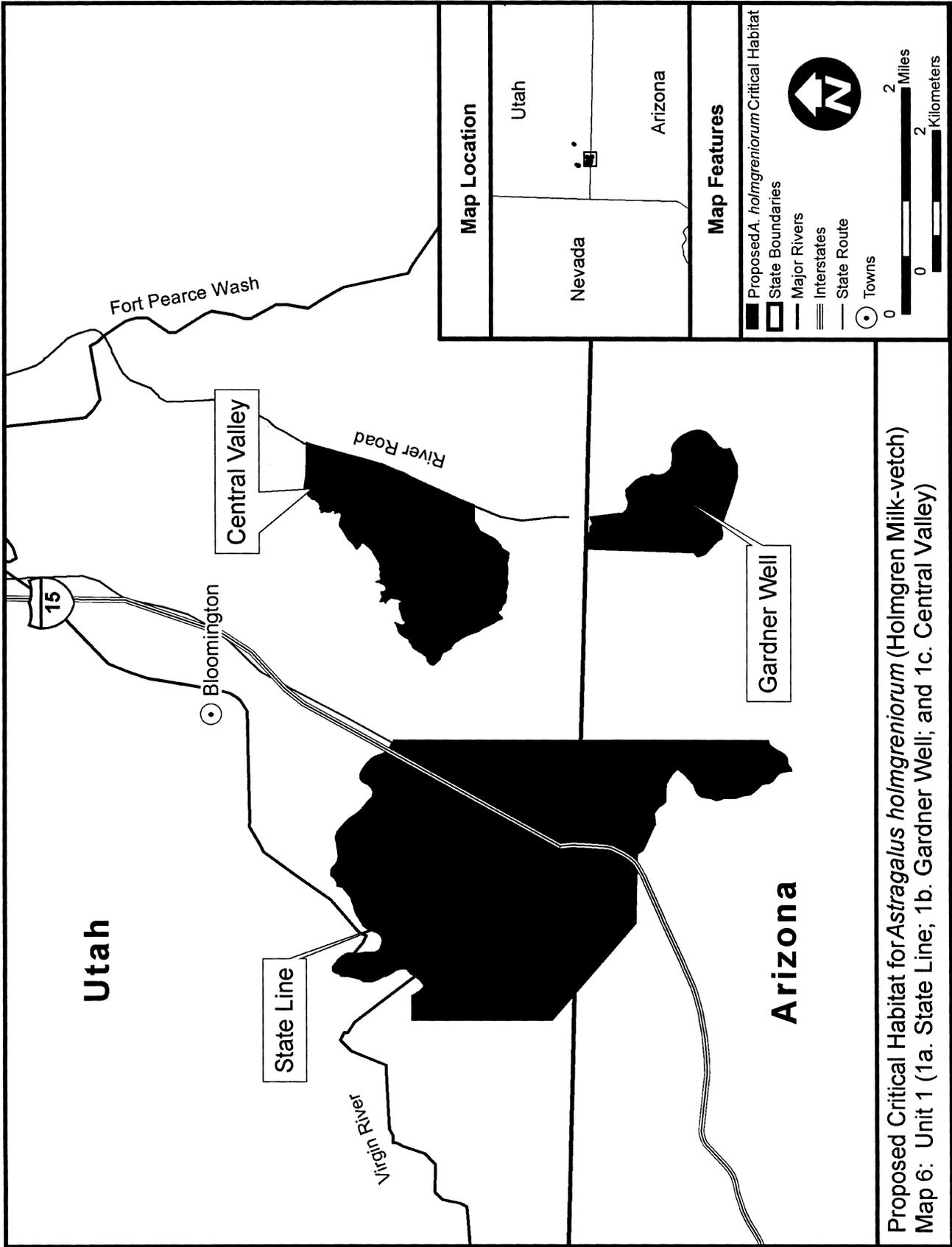
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270786, 4101093; 270822, 4101114;  
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270969, 4101208; 270992, 4101223;  
271004, 4101223; 271021, 4101223;  
271044, 4101213; 271073, 4101206;  
271107, 4101198; 271142, 4101197;  
271154, 4101197; 271163, 4101206;  
271171, 4101222; 271164, 4101242;  
271160, 4101258; 271156, 4101275;  
271163, 4101287; 271180, 4101285;  
271192, 4101285; 271199, 4101299;  
271198, 4101309; 271189, 4101318;  
271182, 4101327; 271174, 4101342;  
271172, 4101370; 271172, 4101390;  
271182, 4101412; 271183, 4101421;  
271179, 4101435; 271172, 4101447;  
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269451, 4100367; 269483, 4100384;  
269520, 4100400; 269553, 4100408;  
269587, 4100423; 269608, 4100437;  
269610, 4100440; 269616, 4100443;  
269621, 4100439; 269618, 4100426;  
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270033, 4100637; 270044, 4100637;  
270048, 4100633; 270048, 4100633;  
270048, 4100633; 270054, 4100628;  
270054, 4100609; 270054, 4100603;  
270058, 4100593; 270068, 4100574;  
270083, 4100564; 270104, 4100564;  
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270311, 4100645; 270320, 4100639;  
270334, 4100639; 270347, 4100639;  
270358, 4100650; 270368, 4100655;  
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270415, 4100654; 270438, 4100654;  
270453, 4100660; 270473, 4100671;  
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270548, 4100712; 270573, 4100725;  
270594, 4100738; 270620, 4100755;  
270638, 4100762; 270651, 4100778;  
270667, 4100795; 270680, 4100808;  
270698, 4100829; 270710, 4100844;  
270723, 4100859; 270731, 4100875;  
270733, 4100886; 270731, 4100899;  
270723, 4100908; 270707, 4100915;  
270694, 4100921; 270684, 4100930;  
270672, 4100937; 270670, 4100941;  
270671, 4100941.

(iv) Note: Map of Unit 1 (Map 6) follows:

BILLING CODE 4310-55-P



(7) Unit 2—Santa Clara Unit: Washington County, Utah. This Unit consists of two subunits: Stucki Spring and South Hills.

(i) Unit 2a: Stucki Spring, Washington County, Utah. Land bounded by the UTM Zone 12 NAD 83 coordinates (meters E, meters N):

263378, 4109549; 263418, 4109530;  
263501, 4109530; 263565, 4109524;  
263638, 4109510; 263675, 4109505;  
263723, 4109495; 263732, 4109391;  
263668, 4109390; 263641, 4109390;  
263582, 4109355; 263545, 4109295;  
263501, 4109289; 263455, 4109290;  
263434, 4109292; 263406, 4109234;  
263354, 4109218; 263352, 4109197;  
262936, 4109206; 262113, 4109203;  
261933, 4109205; 261931, 4110468;

262149, 4110467; 262930, 4110440;  
262937, 4110314; 262963, 4110284;  
262990, 4110253; 263009, 4110216;  
263025, 4110178; 263046, 4110153;  
263067, 4110128; 263086, 4110108;  
263119, 4110079; 263138, 4110045;  
263167, 4109979; 263212, 4109900;  
263256, 4109836; 263304, 4109769;  
263326, 4109697; 263329, 4109655;  
263343, 4109609; 263354, 4109584;  
263378, 4109549.

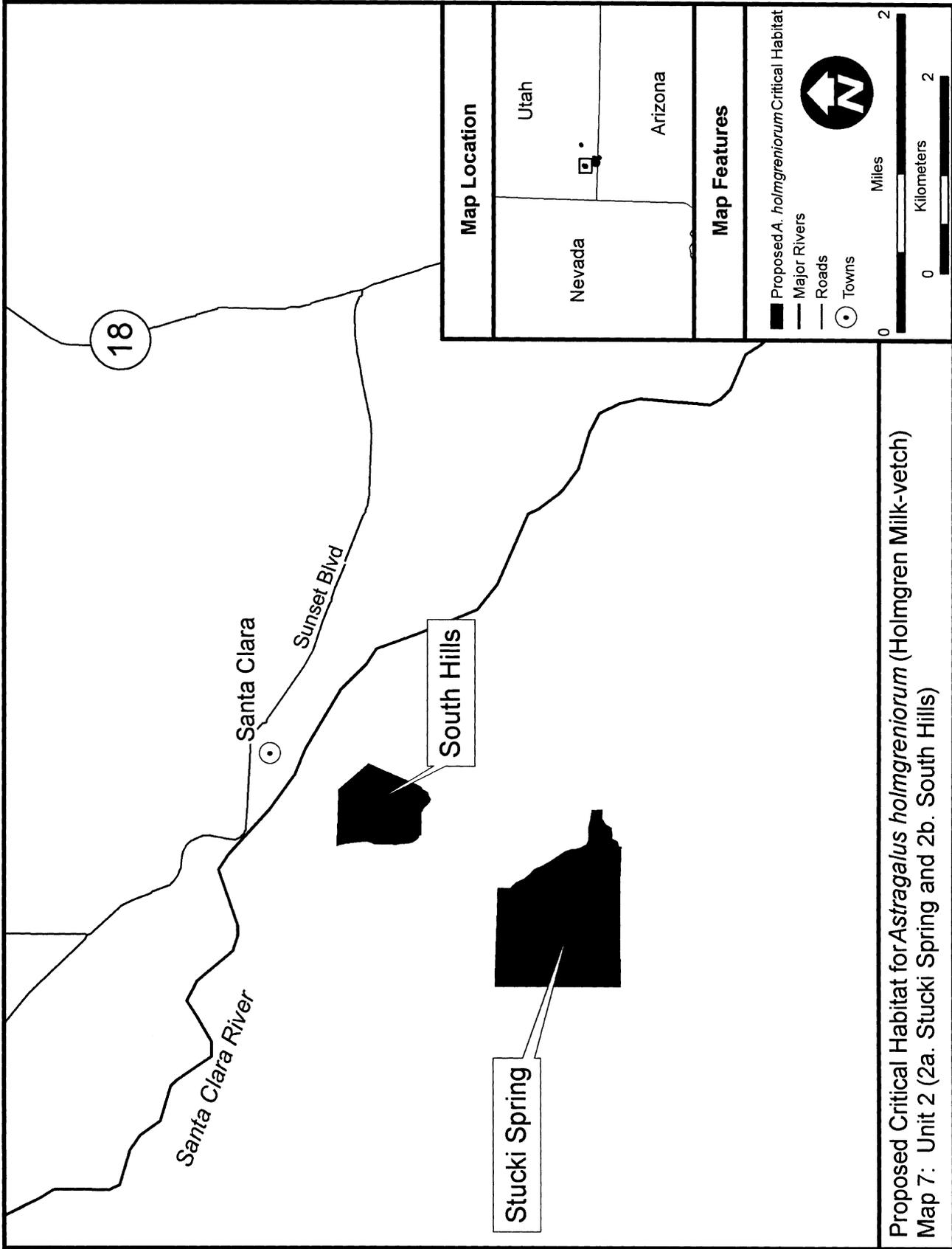
(ii) Unit 2b: South Hills, Washington County, Utah. Land bounded by the UTM Zone 12 NAD 83 coordinates (meters E, meters N):

263701, 4111206; 263464, 4111209;  
263458, 4111228; 263434, 4111232;  
263420, 4111249; 263391, 4111293;  
263380, 4111332; 263375, 4111375;

263371, 4111429; 263366, 4111474;  
263374, 4111510; 263374, 4111568;  
263374, 4111610; 263367, 4111656;  
263373, 4111686; 263387, 4111711;  
263399, 4111756; 263394, 4111813;  
263384, 4111890; 263375, 4111968;  
263364, 4112028; 263347, 4112059;  
263350, 4112060; 263933, 4112042;  
263933, 4112038; 263933, 4112037;  
264193, 4111740; 264131, 4111601;  
263986, 4111269; 263956, 4111211;  
263927, 4111189; 263913, 4111164;  
263894, 4111138; 263865, 4111127;  
263829, 4111113; 263803, 4111120;  
263781, 4111142; 263759, 4111156;  
263738, 4111182; 263705, 4111197;  
263701, 4111206.

(iii) **Note:** Map of Unit 2 (Map 7) follows:

**BILLING CODE 4310-55-P**



Proposed Critical Habitat for *Astragalus holmgreniorum* (Holmgren Milk-vetch)  
Map 7: Unit 2 (2a. Stucki Spring and 2b. South Hills)

(8) Unit 3—Purgatory Flat Unit:  
Washington County, Utah.

(i) Land bounded by the following  
UTM Zone 12 NAD 83 coordinates  
(meters E, meters N):

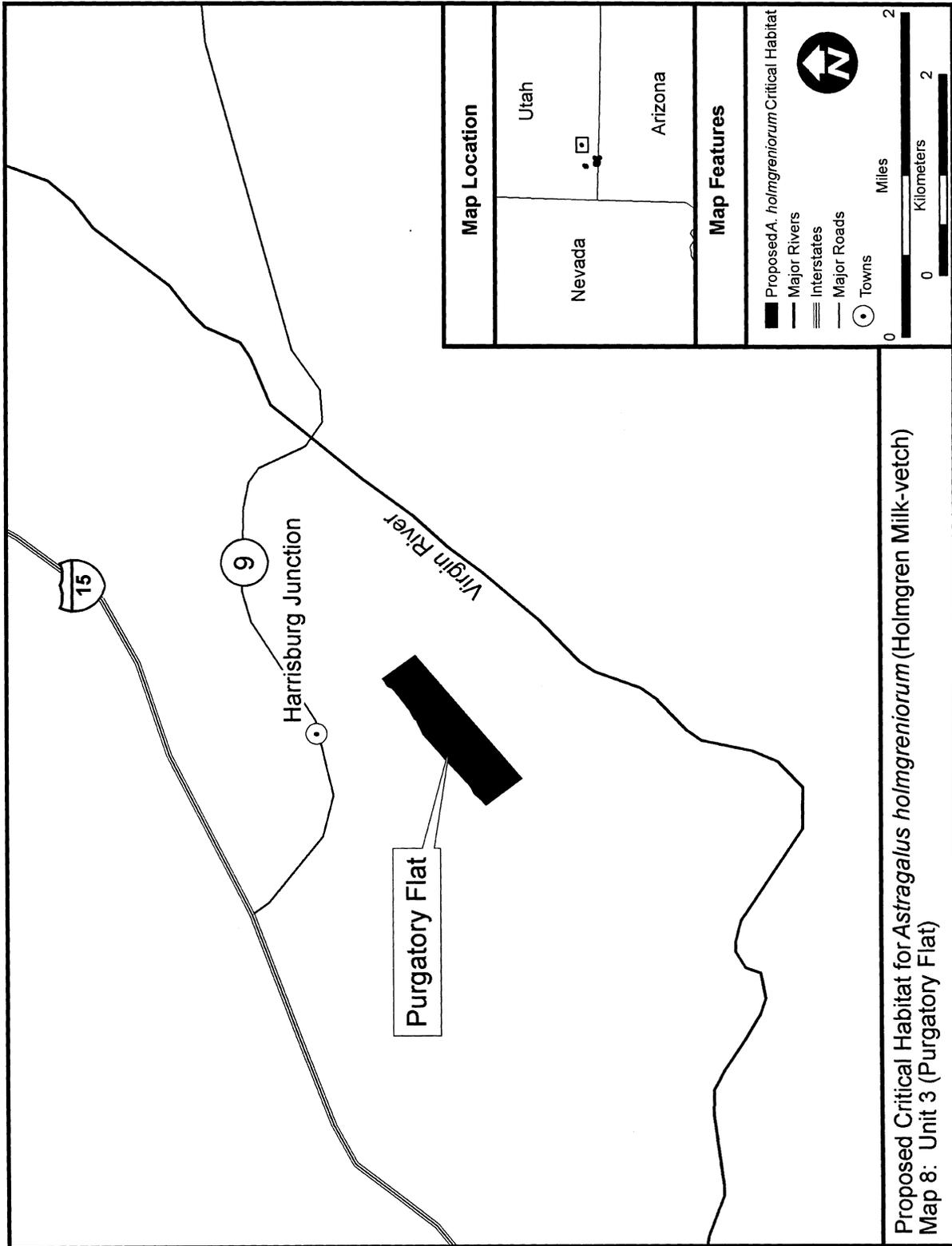
284276, 4114426; 284295, 4114449;  
284375, 4114491; 284510, 4114595;

284590, 4114654; 284617, 4114709;  
284659, 4114733; 284693, 4114759;  
284933, 4114429; 284888, 4114391;  
283702, 4113373; 283429, 4113736;  
283481, 4113781; 283526, 4113829;  
283547, 4113854; 283592, 4113874;  
283640, 4113909; 283672, 4113940;  
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283841, 4114096; 283862, 4114110;  
283886, 4114138; 283949, 4114190;  
283987, 4114228; 284032, 4114262;  
284060, 4114287; 284098, 4114325;  
284139, 4114359; 284276, 4114426.

(ii) **Note:** Map of Unit 3 (Map 8)  
follows:

**BILLING CODE 4310-55-P**



\* \* \* \* \*

Dated: March 17, 2006.  
**Matt Hogan,**  
*Acting Assistant Secretary for Fish and  
 Wildlife and Parks.*  
 [FR Doc. 06-2840 Filed 3-28-06; 8:45 am]  
 BILLING CODE 4310-55-C



# Federal Register

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**Wednesday,  
March 29, 2006**

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## **Part IV**

# **Department of Housing and Urban Development**

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**24 CFR Part 1000**

**Indian Housing Block Grant Program;  
Notice of Proposed Negotiated  
Rulemaking Committee Membership;  
Proposed Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 1000**

[Docket No. FR-4968-N-02]

**Indian Housing Block Grant Program;  
Notice of Proposed Negotiated  
Rulemaking Committee Membership**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of proposed negotiated rulemaking committee membership.

**SUMMARY:** HUD announces its list of proposed members for its Indian Housing Block Grant Negotiated Rulemaking Committee (Committee), and requests public comments on the proposed membership. The Committee will provide advice and recommendations on developing a proposed rule for effectuating changes to the Indian Housing Block Grant (IHBG) Program in response to statutory amendments to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This document follows publication of a February 22, 2005, notice that advised the public of HUD's intent to establish the Committee and solicited nominations for Committee membership.

**DATES:** *Comment Due Date:* April 28, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons may also submit comments electronically through the federal electronic rulemaking portal at: <http://www.regulations.gov>. Facsimile (FAX) comments are not acceptable. All communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Divisions at (202) 708-3055 (this is not a toll-free number). Copies of the public comments submitted electronically are also available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4126, Washington, DC 20410-5000; telephone 202-401-7914 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 22, 2005 (70 FR 8674), HUD published a notice to announce the Department's intent to establish a Committee that will provide advice and recommendations on developing a rule for effectuating certain statutory changes to the IHBG Program. The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The Committee's role will be advisory and the Committee's goal will be to provide recommendations to HUD for development of a proposed rule.

**II. Proposed Membership of Negotiated Rulemaking Committee**

This notice announces HUD's list of proposed members to the Committee, and requests public comment on the proposed Committee membership. In making its proposed selections for membership on the Committee, HUD's goal was to establish a Committee whose membership reflects a balanced representation of Indian tribes. Selections were based on those nominees who met the eligibility criteria for membership contained in the February 22, 2005, **Federal Register** notice. In addition to the tribal members of the Committee, there will be two HUD representatives on the Committee. After consideration of all the public comments received on this proposed list of Committee members, HUD will announce the final composition of the Committee in a subsequent **Federal Register** notice.

HUD proposes to make the following selections for tribal membership on the Committee:

- Jason Adams, Executive Director, Salish-Kootenai Housing Authority
- Steven Angasan, Vice President, Naknek Native Village Council
- Bill Anoatubby, Governor, Chickasaw Nation
- Phil Bush, Executive Director, Modoc Lassen Indian Housing Authority

- Brad Campbell, Executive Director, Iowa, Kansas, & Neb. Housing Authority
- Wesley Edmo, Vice Chairman, The Shoshone-Bannock Tribes (Fort Hall)
- Jamie Garner, Director, Snoqualmie Tribe Housing Authority
- Carol Gore, President, Cook Inlet Housing Authority
- Susie Hay, Executive Director, Chippewa Cree Housing Authority
- Mary Honhongva, Director, Upper Skagit Indian Tribe Housing Authority
- Terry Hudson, Executive Director, Northern Pueblos Housing Authority
- Leon Jacobs, Tribal Administrator, Lumbee Tribe of North Carolina
- Blake Kazama, President, Tlingit & Haida Regional Housing Authority
- Carolyn O'Neil, Housing Director, Sault Ste. Marie Tribe of Chippewa Indians
- Jack Sawyers, Executive Director, Utah Paiute Housing Authority
- Richard Schroeder, Business Manager, Turtle Mountain Housing Authority, TDHE
- Marty Shuravloff, Executive Director, Koniag Inc./Kodiak Island Housing Authority
- Chad Smith, Principal Chief, Cherokee Nation
- Russell Sossamon, Executive Director, Housing Authority of the Choctaw Nation
- Leonard Teller, Chairman, Navajo Housing Authority
- Darlene Tooley, Executive Director, Northern Circle Housing Authority
- Eddie L. Tullis, Chairman, Poarch Band of Creek Indians
- Laurie Voshell, Housing Director, Confederated Tribes of Coos, Lower Umpqua & Suislaw Indians
- Teresa Vogel, Executive Director, Grand Portage Housing Authority

**III. Requests for Representation**

Consistent with section 565 of the Negotiated Rulemaking Act, Committee members shall be selected by HUD. Although this notice announces the results of a request for representation, if you are interested in serving as a member of the Committee or in nominating a different person to serve as a member of the Committee, you may submit a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice. Your nomination for membership on the Committee must include:

1. The name of your nominee and a description of the interests the nominee would represent;
2. Evidence that your nominee is authorized to represent a tribal government, which may include the

tribally designed housing entity of a tribe with the interests the nominee would represent, so long as the tribe provides evidence that it authorizes such representation; and

3. A written commitment that the nominee will actively participate in good faith in the development of the rule.

HUD will determine whether a proposed member will be included in the makeup of the Committee. HUD will make that decision based on whether a proposed member would be significantly affected by the proposed rule, whether the interest of the proposed member could be represented adequately by other members, and whether space permits.

#### **IV. Identification of Issues for Negotiation**

As stated in the February 22, 2005 notice, the NAHASDA Amendments (enacted in 2000 and 2002) that will be the subject of negotiated rulemaking include:

1. Environmental provisions under section 105(d) of NAHASDA (2000);
2. Review and audit provisions under section 405 of NAHASDA (2000);
3. Noncompliance actions under section 401(a) of NAHASDA (2000);
4. Performance Agreement under section 401(b) of NAHASDA (2000);
5. Program income under section 104(a) of NAHASDA (2002); and

6. Definition of "housing related community development" under section 4(22) of NAHASDA (2002).

HUD plans to obtain the services of a convener, whose task will be to consult with interested parties to gain an understanding of their interests and concerns relative to the issues listed above, which will be addressed during the negotiated rulemaking, and to determine what other issues are feasible for negotiation. The convener will contact a representative sampling of stakeholders to discuss the issues to be negotiated and to identify additional potential issues and will provide a report to HUD on the findings and conclusions of the consultation. HUD will then determine what additional issues, if any, will be negotiated in this negotiated rulemaking. Due to limitations on resources, some issues may be scheduled for a subsequent negotiated rulemaking.

#### **V. Committee Meetings**

The negotiated rulemaking sessions will consist of full Committee meetings only. The Committee may decide to establish workgroups, but workgroups sessions will be conducted separately from meetings of the full Committee. HUD will encourage all Committee members to utilize telephone conference calls and the use of electronic media to accomplish work and narrow the issues prior to each Committee meeting.

At this time, HUD has not yet finalized the schedule for the Committee meetings. Advance notice of Committee meetings will be published in the **Federal Register**. HUD anticipates that a maximum of five meetings will be held, subject to the availability of resources. Meetings of the Committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided with an opportunity to make statements during the meeting to the extent that time permits, and file written statements with the Committee for its consideration. In the event that the logistics of the Committee meetings are changed, HUD will advise the public through **Federal Register** notice.

#### **VI. Administrative Support**

HUD will take steps to ensure that the Committee has the dedicated resources it requires to conduct its work in a timely fashion, consistent with the requirements of the Negotiated Rulemaking Act of 1990.

Dated: March 21, 2006.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 06-2984 Filed 3-28-06; 8:45 am]

**BILLING CODE 4210-67-P**



# Federal Register

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**Wednesday,  
March 29, 2006**

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## **Part V**

## **The President**

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**Proclamation 7991—To Implement  
Certain Provisions of the Dominican  
Republic-Central America-United States  
Free Trade Agreement With Respect to El  
Salvador**



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# Presidential Documents

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Title 3—

Proclamation 7991 of March 24, 2006

The President

## To Implement Certain Provisions of the Dominican Republic-Central America-United States Free Trade Agreement With Respect to El Salvador

By the President of the United States of America

### A Proclamation

1. On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement (Agreement) with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. The Agreement was approved by the Congress in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the “Act”) (Public Law 109–53, 119 Stat. 462) (19 U.S.C. 4001 note).

2. Section 201 of the Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Article 3.3 and Annex 3.3 (including the schedule of United States duty reductions with respect to originating goods) of the Agreement.

3. Presidential Proclamation 7987 of February 28, 2006, modified the Harmonized Tariff Schedule of the United States (HTS) to provide for the preferential tariff treatment being accorded under the Agreement for certain goods of El Salvador.

4. Section 604 of the Trade Act of 1974 (the “1974 Act”) (19 U.S.C. 2483), as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

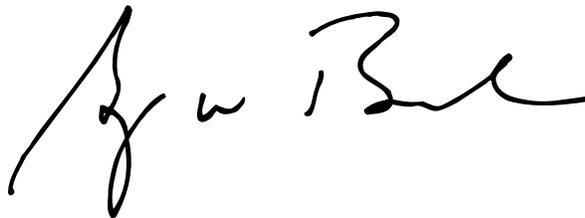
NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 201 of the Act, section 301 of title 3, United States Code, and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide for the preferential tariff treatment being accorded under the Agreement for certain sugar and sugar-containing goods of El Salvador and to provide a tariff-rate quota for such goods of El Salvador, the HTS is modified as set forth in the Annex to this proclamation.

(2) The amendments to the HTS made by paragraph (1) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date of this proclamation.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with a large initial "G" and a distinct "W" and "B".

**ANNEX**

Effective with respect to goods of El Salvador under the terms of general note 29 to the Harmonized Tariff Schedule of the United States (HTS) that are entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation, the HTS is modified as follows:

(1). The Rates of Duty 1-Special subcolumn is modified by inserting in such subcolumn, for each of the subheadings listed in Column A below, the phrase in Column B opposite such subheading.

<u>Column A</u>	<u>Column B</u>
1701.11.50	See 9822.05.20 (P+)
1701.12.50	See 9822.05.20 (P+)
1701.91.30	See 9822.05.20 (P+)
1701.91.48	See 9822.05.20 (P+)
1701.91.58	See 9822.05.20 (P+)
1701.99.50	See 9822.05.20 (P+)
1702.20.28	See 9822.05.20 (P+)
1702.30.28	See 9822.05.20 (P+)
1702.40.28	See 9822.05.20 (P+)
1702.60.28	See 9822.05.20 (P+)
1702.90.20	See 9822.05.20 (P+)
1702.90.58	See 9822.05.20 (P+)
1702.90.68	See 9822.05.20 (P+)
1704.90.68	See 9822.05.20 (P+)
1704.90.78	See 9822.05.20 (P+)
1806.10.15	See 9822.05.20 (P+)
1806.10.28	See 9822.05.20 (P+)
1806.10.38	See 9822.05.20 (P+)
1806.10.55	See 9822.05.20 (P+)
1806.10.75	See 9822.05.20 (P+)
1806.20.73	See 9822.05.20 (P+)
1806.20.77	See 9822.05.20 (P+)
1806.20.94	See 9822.05.20 (P+)
1806.20.98	See 9822.05.20 (P+)
1806.90.39	See 9822.05.20 (P+)
1806.90.49	See 9822.05.20 (P+)
1806.90.59	See 9822.05.20 (P+)
1901.20.25	See 9822.05.20 (P+)
1901.20.35	See 9822.05.20 (P+)
1901.20.60	See 9822.05.20 (P+)
1901.20.70	See 9822.05.20 (P+)
1901.90.54	See 9822.05.20 (P+)
1901.90.58	See 9822.05.20 (P+)
2101.12.38	See 9822.05.20 (P+)
2101.12.48	See 9822.05.20 (P+)
2101.12.58	See 9822.05.20 (P+)
2101.20.38	See 9822.05.20 (P+)
2101.20.48	See 9822.05.20 (P+)
2101.20.58	See 9822.05.20 (P+)
2103.90.78	See 9822.05.20 (P+)
2106.90.46	See 9822.05.20 (P+)

<u>Column A</u>	<u>Column B</u>
2106.90.72	See 9822.05.20 (P+)
2106.90.76	See 9822.05.20 (P+)
2106.90.80	See 9822.05.20 (P+)
2106.90.91	See 9822.05.20 (P+)
2106.90.94	See 9822.05.20 (P+)
2106.90.97	See 9822.05.20 (P+)

(2). Subchapter XXII to chapter 98 is modified by inserting the following new notes and provisions in numerical sequence, with the columnar material related to new subheading 9822.05.20 inserted in the columns labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1 Special", respectively:

- "23. For purposes of this subchapter, the term "goods described in U.S. note 23 to this subchapter" means goods entered under subheading 9822.05.20. Such goods must satisfy the requirements of general note 29(a) to the tariff schedule, except that operations performed in, or material obtained from, the United States shall be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement as defined in general note 29(a) to the tariff schedule. For purposes of determining which country-specific tariff-rate quota applies to such a good, the nonpreferential rules of origin used in the normal course of trade shall be applied.
25. (a) In the period of March 24, 2006 through December 31, 2006, the aggregate quantity of goods described in U.S. note 23 to this subchapter of each party to the Agreement as defined in general note 29(a) enumerated in the table below that is entered under subheading 9822.05.20 shall be limited to the aggregate quantity (set forth in metric tons) specified below for that country:

El Salvador	24,000
-------------	--------

- (b) (i) Beginning in 2007 and in successive years thereafter, the Office of the United States Trade Representative shall publish in the Federal Register a determination for that calendar year, using the most recent annual data available, of the amount of the trade surplus (the amount by which a country's exports to all destinations exceeds its imports from all sources), by volume, of each party to the Agreement as defined in general note 29(a) to the tariff schedule for goods classified in the following subheadings:

1701.11, 1701.12, 1701.91, 1701.99, 1702.40 and 1702.60,

except that a country's exports to the United States of goods classified under subheadings 1701.11, 1701.12, 1701.91 and 1701.99 and its imports of originating goods of the United States classified under subheadings 1702.40 and 1702.60 shall not be included in the calculation of a country's trade surplus.

- (ii) The aggregate quantity of goods described in U.S. note 23 to this subchapter of each party to the Agreement as defined in general note 29(a) that may be entered under subheading 9822.05.20 in any calendar year set forth herein shall be the quantity of goods equal to the lesser of the amount of that country's trade surplus determined under subdivision (b)(i) of this note or the aggregate quantity of goods specified below for that country for that year.

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	
			(metric tons)		
El Salvador	24,480	24,960	28,000	28,560	
	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
			(metric tons)		
El Salvador	29,120	29,680	31,000	31,620	32,240

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
			(metric tons)		
El Salvador	32,860	34,000	34,680	35,360	36,040
	<u>2021</u>				
	(metric tons)				
El Salvador	36,720				

In each successive calendar year after 2021, the aggregate quantity for each enumerated country shall be increased, from the aggregate quantity permitted in the prior calendar year, by the quantity set forth herein:

	<u>Quantity</u>
	(metric tons)
El Salvador	680

The quantities of goods of subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20 and 2106.90.46 that are entered under subheading 9822.05.20 shall be determined on a raw-value equivalent basis. For purposes of this note, the term "raw value" means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations or instructions issued by the Secretary of the Treasury. Such regulations or instructions may, among other things, provide: (i) for the entry of such articles pending a final determination of polarity; and (ii) that positive or negative adjustments for differences in preliminary and final raw values be made in the same or succeeding quota periods. The principal grades and types of sugar shall be translated into terms of raw value in the following manner--

- (A) For articles described in subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50 and 2106.90.46 by multiplying the number of kilograms thereof by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).
- (B) For articles described in subheading 1702.90.20, by multiplying the number of kilograms of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

	:Goods described in U.S. note 23 to this subchapter:	:	:	:
	: Of a party to the Agreement as defined in general	:	:	:
	: note 29(a) to the tariff schedule:	:	:	:
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	: 1701.91.58, 1701.99.50, 1702.20.28,	:	:	:
	: 1702.30.28, 1702.40.28, 1702.60.28,	:	:	:
	: 1702.90.20, 1702.90.58, 1702.90.68,	:	:	:
	: 1704.90.68, 1704.90.78, 1806.10.15,	:	:	:
	: 1806.10.28, 1806.10.38, 1806.10.55,	:	:	:
	: 1806.10.75, 1806.20.73, 1806.20.77,	:	:	:
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	: 1901.90.54, 1901.90.58, 2101.12.38,	:	:	:
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	: 2101.20.48, 2101.20.58, 2103.90.78,	:	:	:
	: 2106.90.46, 2106.90.72, 2106.90.76,	:	:	:
	: 2106.90.80, 2106.90.91, 2106.90.94 or	:	:	:
	: 2106.90.97, subject to the quantitative limits	:	:	:
	: specified in U.S. note 25 to this subchapter . . . .	:	:Free (P+)"	:
	:	:	:	:

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			591		

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT MARCH 28, 2006****ENERGY DEPARTMENT****Federal Energy Regulatory Commission**

Oil pipeline rate methodologies and procedures:

Oil pipeline pricing index; five-year review; published 3-28-06

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

New Mexico; published 1-27-06

Pesticide programs:

Pesticides unregistered uses under emergency conditions; emergency exemption process; revisions; published 1-27-06

**INTERIOR DEPARTMENT****Special Trustee for American Indians Office**

American Indian Trust Fund Management Reform Act; amendments; published 3-28-06

**LABOR DEPARTMENT****Veterans Employment and Training Service**

Uniformed Services Employment and Reemployment Rights Act of 1994; implementation

Correction; published 3-28-06

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Egg Research and Promotion Program; regulatory review; comments due by 4-7-06; published 2-6-06 [FR E6-01563]

Oranges, grapefruit, tangerines, and tangelos grown in—

Florida; comments due by 4-3-06; published 2-1-06 [FR 06-00947]

**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Plant-related quarantine, foreign:

Tomatoes from certain Central American countries; importation; comments due by 4-7-06; published 2-6-06 [FR E6-01553]

**AGRICULTURE DEPARTMENT****Federal Crop Insurance Corporation**

Crop insurance regulations:

Mint crop insurance provisions; comments due by 4-7-06; published 2-6-06 [FR E6-01529]

**COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands and Gulf of Alaska groundfish, crab, salmon, and scallop; comments due by 4-7-06; published 2-6-06 [FR 06-01083]

Northeastern United States fisheries—

Monkfish; comments due by 4-3-06; published 3-22-06 [FR E6-04158]

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 4-4-06; published 3-20-06 [FR 06-02654]

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

AmeriCorps participants, programs, and applicants:

Professional corps programs; AmeriCorps grant applications; comments due by 4-3-06; published 3-2-06 [FR 06-01934]

Program Fraud Civil Remedies Act; implementation; comments due by 4-3-06; published 2-1-06 [FR E6-01220]

**DEFENSE DEPARTMENT**

Right to Financial Privacy Act of 1978; obtaining information from financial institutions; practices and procedures; comments due by 4-3-06; published 2-2-06 [FR E6-01326]

**ENERGY DEPARTMENT****Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:

Residential clothes washers; Federal preemption of California water conservation standards; California Energy Commission exemption petition; comments due by 4-7-06; published 2-6-06 [FR 06-01041]

**ENERGY DEPARTMENT****Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act):

Long-term transmission rights; public utilities operated by regional transmission organizations and independent system operators; comments due by 4-3-06; published 3-8-06 [FR E6-03286]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Pennsylvania; comments due by 4-3-06; published 3-2-06 [FR E6-02949]

Air quality implementation plans; approval and promulgation; various States:

Virginia; comments due by 4-3-06; published 3-3-06 [FR 06-01942]

Motor vehicles; fuel economy labeling; comments due by 4-3-06; published 2-1-06 [FR 06-00451]

Reports and guidance documents; availability, etc.:

Lead hazard information pamphlet; comments due by 4-7-06; published 3-8-06 [FR E6-03283]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Economic Growth and Regulatory Paperwork Reduction Act; implementation:

Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

**FEDERAL RESERVE SYSTEM**

Economic Growth and Regulatory Paperwork Reduction Act; implementation:

Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

Human drugs:

Current good manufacturing practices—

Investigational new drugs; Phase 1 drugs exemption; comments due by 4-3-06; published 1-17-06 [FR 06-00353]

Investigational new drugs; Phase 1 drugs exemption; comments due by 4-3-06; published 1-17-06 [FR 06-00350]

**INTERIOR DEPARTMENT****Land Management Bureau**

Oil and gas leasing:

Carbon dioxide injection enhanced oil and natural gas production; comments due by 4-7-06; published 3-8-06 [FR 06-02170]

Gas hydrate production incentives; comments due by 4-7-06; published 3-8-06 [FR 06-02169]

**INTERIOR DEPARTMENT****Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—  
Alabama beach mouse; comments due by 4-3-06; published 2-1-06 [FR 06-00688]

**INTERIOR DEPARTMENT****Minerals Management Service**

Royalty management:

Carbon dioxide injection enhanced oil and natural gas production; comments due by 4-7-06; published 3-8-06 [FR 06-02170]

Gas hydrate production incentives; comments due by 4-7-06; published 3-8-06 [FR 06-02169]

**JUSTICE DEPARTMENT****Prisons Bureau**

Inmate control, custody, care, etc.:

Non-inmates; searching and detaining or arresting; comments due by 4-3-06; published 1-31-06 [FR E6-01159]

**PERSONNEL MANAGEMENT OFFICE**

Senior Executive Service:

Pay and performance awards; rate increase; comments due by 4-3-06; published 3-3-06 [FR E6-03016]

#### POSTAL SERVICE

Domestic Mail Manual:

Periodicals flats in mixed area distribution center bundles and sacks; new preparation; comments due by 4-6-06; published 3-7-06 [FR E6-03143]

#### STATE DEPARTMENT

Exchange Visitor Program:

Au Pair Exchange Programs; comments due by 4-3-06; published 2-2-06 [FR E6-01413]

#### TRANSPORTATION DEPARTMENT

##### Federal Aviation Administration

Airports:

Passenger facility charges; debt service, air carrier bankruptcy, and miscellaneous changes; comments due by 4-3-06; published 2-1-06 [FR 06-00896]

Airworthiness directives:

Airbus; comments due by 4-7-06; published 3-8-06 [FR E6-03264]

Boeing; comments due by 4-3-06; published 2-15-06 [FR E6-02170]

Bombardier; comments due by 4-6-06; published 3-7-06 [FR 06-02159]

Dassault; comments due by 4-3-06; published 2-1-06 [FR 06-00824]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 4-6-06; published 3-7-06 [FR 06-02158]

McDonnell Douglas; comments due by 4-3-06; published 2-15-06 [FR E6-02176]

Rolls-Royce plc.; comments due by 4-3-06; published 2-1-06 [FR 06-00826]

Saab; comments due by 4-6-06; published 3-7-06 [FR E6-03227]

Class E airspace; comments due by 4-3-06; published 2-15-06 [FR E6-02180]

#### TREASURY DEPARTMENT

##### Comptroller of the Currency

Economic Growth and Regulatory Paperwork Reduction Act; implementation:

Prompt corrective action, etc.; burden reduction

recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

#### TREASURY DEPARTMENT

##### Internal Revenue Service

Employment taxes and collection of income taxes at source:

Employment tax returns filing time and deposit rules modifications; comments due by 4-3-06; published 1-3-06 [FR 05-24563]

Correction; comments due by 4-3-06; published 3-17-06 [FR C5-24563]

#### TREASURY DEPARTMENT

##### Thrift Supervision Office

Economic Growth and Regulatory Paperwork Reduction Act; implementation:

Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

#### TREASURY DEPARTMENT

##### Alcohol and Tobacco Tax and Trade Bureau

Alcohol, tobacco, and other excise taxes:

Small alcohol excise taxpayers; quarterly excise tax filing; cross-reference; comments due by 4-3-06; published 2-2-06 [FR 06-00980]

#### VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Informed consent; health care professionals designation; comments due by 4-3-06; published 2-1-06 [FR E6-01218]

#### 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 "PLUS" (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. 1287/P.L. 109-184

To designate the facility of the United States Postal Service located at 312 East North Avenue in Flora, Illinois, as the "Robert T. Ferguson Post Office Building". (Mar. 20, 2006; 120 Stat. 292)

#### H.R. 2113/P.L. 109-185

To designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the "John F. Whiteside Joliet Post Office Building". (Mar. 20, 2006; 120 Stat. 293)

#### H.R. 2346/P.L. 109-186

To designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the "John J. Hainkel, Jr. Post Office Building". (Mar. 20, 2006; 120 Stat. 294)

#### H.R. 2413/P.L. 109-187

To designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the "Lillian McKay Post Office Building". (Mar. 20, 2006; 120 Stat. 295)

#### H.R. 2630/P.L. 109-188

To redesignate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the "J.M. Dietrich Northeast Annex". (Mar. 20, 2006; 120 Stat. 296)

#### H.R. 2894/P.L. 109-189

To designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the "Abraham Lincoln Birthplace Post Office Building". (Mar. 20, 2006; 120 Stat. 297)

#### H.R. 3256/P.L. 109-190

To designate the facility of the United States Postal Service located at 3038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the "Congressman James Grove Fulton Memorial Post Office Building". (Mar. 20, 2006; 120 Stat. 298)

#### H.R. 3368/P.L. 109-191

To designate the facility of the United States Postal Service located at 6483 Lincoln Street

in Gagetown, Michigan, as the "Gagetown Veterans Memorial Post Office". (Mar. 20, 2006; 120 Stat. 299)

#### H.R. 3439/P.L. 109-192

To designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the "Ava Gardner Post Office". (Mar. 20, 2006; 120 Stat. 300)

#### H.R. 3548/P.L. 109-193

To designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the "Heinz Ahlmeyer, Jr. Post Office Building". (Mar. 20, 2006; 120 Stat. 301)

#### H.R. 3703/P.L. 109-194

To designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the "Staff Sergeant Michael Schafer Post Office Building". (Mar. 20, 2006; 120 Stat. 302)

#### H.R. 3770/P.L. 109-195

To designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the "Grant W. Green Post Office Building". (Mar. 20, 2006; 120 Stat. 303)

#### H.R. 3825/P.L. 109-196

To designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, as the "Clayton J. Smith Memorial Post Office Building". (Mar. 20, 2006; 120 Stat. 304)

#### H.R. 3830/P.L. 109-197

To designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida, as the "U.S. Cleveland Post Office Building". (Mar. 20, 2006; 120 Stat. 305)

#### H.R. 3989/P.L. 109-198

To designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the "Albert H. Quie Post Office". (Mar. 20, 2006; 120 Stat. 306)

#### H.R. 4053/P.L. 109-199

To designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California, as the "Lillian Kinkella Keil Post Office". (Mar. 20, 2006; 120 Stat. 307)

#### H.R. 4107/P.L. 109-200

To designate the facility of the United States Postal Service

located at 1826 Pennsylvania Avenue in Baltimore, Maryland, as the "Maryland State Delegate Lena K. Lee Post Office Building". (Mar. 20, 2006; 120 Stat. 308)

**H.R. 4152/P.L. 109-201**

To designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the "Raymond J. Salmon Post Office". (Mar. 20, 2006; 120 Stat. 309)

**H.R. 4295/P.L. 109-202**

To designate the facility of the United States Postal Service located at 12760 South Park Avenue in Riverton, Utah, as the "Mont and Mark Stephensen Veterans Memorial Post Office Building". (Mar. 20, 2006; 120 Stat. 310)

**S. 2089/P.L. 109-203**

To designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu,

Hawaii, as the "Hiram L. Fong Post Office Building". (Mar. 20, 2006; 120 Stat. 311)

**S. 2320/P.L. 109-204**

To make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes. (Mar. 20, 2006; 120 Stat. 312)

**H.R. 1053/P.L. 109-205**

To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine. (Mar. 23, 2006; 120 Stat. 313)

**H.R. 1691/P.L. 109-206**

To designate the Department of Veterans Affairs outpatient clinic in Appleton, Wisconsin, as the "John H. Bradley Department of Veterans Affairs Outpatient Clinic". (Mar. 23, 2006; 120 Stat. 315)

**S. 2064/P.L. 109-207**

To designate the facility of the United States Postal Service

located at 122 South Bill Street in Francesville, Indiana, as the Malcolm Melville "Mac" Lawrence Post Office. (Mar. 23, 2006; 120 Stat. 316)

**S. 2275/P.L. 109-208**

National Flood Insurance Program Enhanced Borrowing Authority Act of 2006 (Mar. 23, 2006; 120 Stat. 317)

**H.R. 4826/P.L. 109-209**

To extend through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. (Mar. 24, 2006; 120 Stat. 318)

**S. 1184/P.L. 109-210**

To waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member. (Mar. 24, 2006; 120 Stat. 319)

**S. 2363/P.L. 109-211**

To extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999. (Mar. 24, 2006; 120 Stat. 320)

**Last List March 23, 2006**

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