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Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–6 of December 6, 2006

Presidential Determination on Waiver of Conditions on Obligations and Expenditure of Funds for Planning, Design, and Construction of a Chemical Weapons Destruction Facility in Russia for Calendar Year 2007

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 1303 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) (the ''Act''), I hereby certify that waiving the conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65), as amended, is important to the national security interests of the United States, and include herein, for submission to the Congress, the statement, justification, and plan described in section 1303 of the Act. This waiver shall apply for calendar year 2007.

You are authorized and directed to transmit this certification, including the statement, justification, and plan, to the Congress and to arrange for the publication of this certification in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 6, 2006.

[FR Doc. 06–9913
Filed 12–26–06; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

Vol. 71, No. 248

Wednesday, December 27, 2006

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN: 0580–AA90

United States Standards for Soybeans

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: In a final rule published in the **Federal Register** on September 6, 2006, we amended regulations concerning the United States Standards for Soybeans. The final rule contained an error in the rule portion; inadvertently, footnote reference numbers were left off of Table 17 in 7 CFR 800.86. This document corrects that error.

DATES: *Effective Date:* September 1, 2007.

FOR FURTHER INFORMATION CONTACT: Becca Riese at GIPSA, USDA, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Telephone (202) 720–4116; Fax Number (202) 720–7883; e-mail *Rebecca.A.Riese@usda.gov*.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on September 6, 2006, (71 FR 52403–52406) we amended regulations concerning the United States Standards for Soybeans, including Table 17 in 7 CFR 800.86. Inadvertently, footnote reference numbers were left off of Table 17 in 7 CFR 800.86.

In rule FR Doc. E6–14719 published on September 6, 2006, (71 FR 52403–52406) make the following correction. On page 52405, in Table 17, in the first column, insert:

(1) Footnote reference number 1 immediately following ''U.S. No. 3'' and

(2) footnote reference number 2 immediately following ''U.S. No. 4.''

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–22044 Filed 12–26–06; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. AMS–FV–06–0182; FV06–948–2 IFR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule modifies the grade and maturity requirements for potatoes handled under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). This rule relaxes the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for all Area No. 2 potato varieties, other than round, red-skinned varieties, measuring from 1 ½-inch minimum diameter to 2 ¼-inch maximum diameter (size B), and 1-inch minimum diameter to 1 ¾-inch maximum diameter. This rule also changes from August 25 to August 1 of each year the date minimum maturity requirements are implemented. These changes are intended to facilitate the handling and marketing of Colorado Area No. 2 potatoes.

DATES: Effective December 28, 2006; comments received by February 26, 2007 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or E-mail: *Teresa.Hutchinson@usda.gov* or *GaryD.Olson@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request

a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the minimum grade requirement for certain potatoes handled under the order and also changes the minimum maturity requirement implementation date. Specifically, this rule changes the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for all varieties of Area No. 2 potatoes, other than round, red-skinned potatoes, measuring from 1 ½-inch minimum diameter to 2 ¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1 ¾-inch maximum diameter. Furthermore, this rule changes the implementation date for the minimum maturity requirement from August 25 to August 1 of each year. These changes were recommended by the Committee at a meeting held on August 10, 2006.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope and consisting of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata Counties, and all counties west thereof; Area 2, commonly known as San Luis Valley, consists of Sanguache, Huerfano, Las Animas, Mineral, Archuleta Counties, and all counties south thereof; and, Area 3, which consists of the remaining counties in the State of Colorado not included in Area 1 or 2. The order currently regulates production in Areas 2 and 3 only; regulation for Area 1 is currently not active. Grade, size, and maturity regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order. For many years, consumer demand for small fresh market potatoes was relatively soft in comparison to demand for larger size potatoes. Size B and smaller potatoes were often discarded or fed to livestock. Grade and size regulations were developed to keep lower quality small potatoes out of the fresh market. At that time, the Committee believed that small potatoes, sold at a great discount, eroded the price for large potatoes. By requiring small potatoes to grade U.S. No. 1 or better, the Committee believed that high quality small potatoes would not have an adverse affect on the market for larger potatoes.

Recently, however, demand has increased for small potatoes, which often command premium prices compared to larger size A potatoes (1 ⅞-inch and larger). With the growing demand for small potatoes, producers and handlers are concerned that they will not be able to supply this market if only U.S. No. 1 or better grade can be shipped under the order. The Colorado Area No. 2 potato industry has received requests from customers for additional small potatoes that grade U.S. Commercial or better. This action would better assist Area No. 2 handlers in meeting their buyers' needs.

Committee statistics show that approximately 62 percent of the entire potato crop in Area No. 2 grades U.S. No. 1 or better. However, the percentage of Size B and smaller potatoes meeting U.S. No. 1 grade is only about 50 percent. The reason for the lower percentage of smaller potatoes is that potato defects are scored based on the percentage of surface area affected on the individual potato. Because Size B and smaller potatoes have less surface, any defect inspected comprises a larger part of the total surface being scored relative to larger sized potatoes. For example, a cut on a large potato may not affect a large enough surface area to be a scorable defect, but the same size cut would be scorable on a smaller potato. Under such circumstances, it would be much harder for a small potato to meet the U.S. No. 1 grade than it would for a large potato. The U.S. Commercial grade allows a slightly higher percentage of total defects than the U.S. No. 1 grade.

By changing the grade requirement to allow size B potatoes and potatoes measuring from 1-inch minimum diameter to 1 ¾-inch maximum diameter (commonly referred to as ''creamers'' by the potato industry) to meet U.S. Commercial grade or better, the Committee believes more small potatoes would be available to meet increasing demand, and thus help increase returns to producers. Not only would more small potatoes enter the market, small potatoes typically sell for a premium price in today's marketplace. This change would not affect round, red-skinned potato varieties in the size B and 1-inch minimum diameter to 1 ¾-inch maximum diameter size, which would continue to meet U.S. No. 1 grade or better. The majority of round, red-skinned potato varieties produced in Area No. 2 supply the food service or restaurant market. This market demands high quality (U.S. No. 1 or better) round, red-skinned potatoes. Therefore, the Committee recommends that the grade requirement for varieties of round, red-skinned potatoes in these size categories remain U.S. No. 1 grade or better.

The Committee believes that by allowing small potatoes to meet the more relaxed U.S. Commercial grade instead of U.S. No. 1 grade, available volume for sale into the fresh market could increase by about 23 percent.

Although facing an increasing demand, the market for small potatoes is a minor segment of the market served by the Area No. 2 production area. As a consequence, the Committee believes that the smaller potatoes do not compete directly with the predominant large potatoes produced in this area, and that the relaxation of the grade requirement would not adversely effect the overall Area No. 2 potato market.

This rule also changes the minimum maturity requirement implementation date from August 25 to August 1. The specified ending date of October 31 for the minimum maturity requirement remains unchanged, as do the actual minimum maturity requirements that U.S. No. 2 grade potatoes are not more than ''moderately skinned'' and that all other grades are not more than ''slightly skinned'' (as defined in the U.S. Standards for Potatoes).

The Committee recommended that the implementation date be moved to August 1 due to the increased use of early maturing potato varieties in this area of Colorado and earlier harvest requirements. Since the skin on most potato varieties has not substantially ''set'', or toughened, early in the season, potato skins have a tendency to more easily scrape off during harvest and the subsequent handling and packing process. By having the maturity requirements in place at the beginning of harvest, there is added assurance that a quality product will reach the consumer.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 200 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2005–2006 marketing year, 17,213,202 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $11.45 per hundredweight, the Committee estimates that 73 Area No. 2 handlers, or about 91 percent, had annual receipts of less than $6,500,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for 2005 was $9.25 per hundredweight. The average annual fresh potato revenue for each of the 200 Colorado Area No. 2 potato producers is therefore calculated to be approximately $796,112. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

Excluding round, red-skinned potato varieties, this rule relaxes the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for Area No. 2 potatoes measuring from 1 ½-inch minimum diameter to 2 ¼-inch maximum diameter (size B), and 1-inch minimum diameter to 1 ¾-inch maximum diameter. This rule also changes from August 25 to August 1 of each year the date minimum maturity requirements are implemented. Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386.

Since the grade relaxation is expected to benefit producers, handlers and consumers, any potential impact from this action would be positive. By allowing these small potatoes to meet U.S. Commercial grade or better, a potentially greater quantity of potatoes will meet the order's handling regulation. This is expected to translate into an increased market for small potatoes and thus greater returns for handlers and producers and more product choice for consumers. Further, small potatoes are a minor segment of the potato market served by the Area No. 2 production area. As such, the Committee believes that small potatoes do not compete directly with most of the potatoes produced in this area and that the grade requirement relaxation will not adversely effect the overall Area No. 2 potato market.

Based on Committee records, roughly half of Area No. 2 handlers ship size B and smaller potatoes. Committee records also indicate that during the 2004–2005 fiscal period approximately 165,000 hundredweight (less than 1 percent of the total shipments) of size B and smaller were inspected and shipped. As a result of this rule, the Committee estimates that the marketable supply of size B and smaller potatoes will increase by 23 percent and add 37,950 hundredweight to the marketable supply of Area No. 2 potatoes.

As previously noted, this relaxation does not affect round, red-skinned potatoes in the same size categories. These potatoes will continue to pack-out as U.S. No. 1 grade or better to satisfy the quality conscious food service and restaurant markets.

The action changing the minimum maturity requirement implementation date to August 1 merely updates the regulations so that they are in-line with current cultural practices. Thus, any impact from this change on the producers, handlers, and consumers of Colorado potatoes is expected to be positive since assurance is being added that quality product—a product without undue skinning—will be packed and shipped into the market. The Committee supports the concept that a quality product promotes consumer confidence, thereby helping to protect producer returns.

After discussing possible alternatives to this rule, the Committee determined that a relaxation in the grade requirement to U.S. Commercial grade or better for certain small potatoes would sufficiently meet the industry's current needs. The relaxation in the grade requirement for the affected small potatoes is expected to provide the greatest benefit to the industry by augmenting the developing market for these potatoes and thereby increasing producer returns. During its deliberations, the Committee also considered relaxing the grade requirement for small, round, red-skinned potato varieties. However, food service and restaurant market segments have a preference for round, red-skinned potatoes and demand high quality potatoes (U.S. No. 1 grade or better). The Committee, therefore, found that there were no other viable alternatives for the grade change except as recommended. Lastly, the maturity requirement implementation date change merely brings the regulations in-line with current cultural practices, and therefore, the Committee did not consider further alternatives to this recommended change.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 10, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a modification of the grade and maturity requirement prescribed under the Colorado potato marketing order. Any comments received will be considered prior to the finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already shipping potatoes from the 2006–2007 crop and want to take advantage of the grade relaxation aspect of this rule as soon as possible; (2) handlers are aware of this rule, which was recommended at a public meeting; and (3) this rule provides a 60-day comment period and any additional comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 948.386, paragraphs (a)(3) and (a)(4), and the introductory text of paragraph (b) are revised to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(3) *1 ½-inch minimum to 2 ¼-inch maximum diameter (Size B).* U.S. Commercial grade or better: *Provided*, That round, red-skinned varieties shall grade U.S. No. 1 or better.

(4) *1-inch minimum diameter to 1 ¾-inch maximum diameter.* U.S. Commercial grade or better: *Provided*, That round, red-skinned varieties shall grade U.S. No. 1 or better.

* * * * *

(b) *Maturity (skinning) requirements.* From August 1 through October 31 shall be:

* * * * *

Dated: December 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9897 Filed 12–21–06; 4:59 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH98

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 3; Withdrawal of Direct Final Rule

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Holtec International HI–STORM 100 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to the direct final rule. These significant adverse comments shall be considered as comments to the companion proposed rule that was published concurrently with the direct final rule.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219 (e-mail: *jmm2@nrc.gov*).

SUPPLEMENTARY INFORMATION: On October 16, 2006 (71 FR 60659), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the Holtec International HI–STORM 100 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to the Certificate of Compliance Number 1014 (CoC No. 1014). Amendment No. 3 modifies the present cask system design by revising: Technical Specification (TS) 3.1.3 to eliminate cooling of the Multi-Purpose Canister (MPC) cavity prior to reflood with water, as part of cask unloading operations; TS 3.3.1 to allow linear interpolation between minimal soluble boron concentrations, for certain fuel enrichments in the MPC–32/32F; Appendix B, Section 1, to make modifications to the definitions of fuel debris, damaged fuel assembly, and non-fuel hardware; and Appendix B, Section 2, to permit the storage of pressurized water reactor fuel assemblies with annular fuel pellets in the top and bottom 12 inches of the active fuel length. Amendment No. 3 also revises CoC No. 1014 to incorporate minor editorial corrections. The direct final rule was to become effective on January 2, 2007. The NRC also concurrently published a companion proposed rule on October 16, 2006 (71 FR 60672).

In the direct final rule, NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the **Federal Register** and the direct final rule would not take effect.

The NRC received significant adverse comments on the direct final rule; therefore, the NRC is withdrawing the direct final rule. These significant adverse comments shall be considered as comments to the companion proposed rule that was published concurrently with the direct final rule. The NRC will not initiate a second comment period on the companion proposed rule.

Dated at Rockville, Maryland, this 14th day of December, 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E6–22109 Filed 12–26–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26675; Directorate Identifier 2006–NM–203–AD; Amendment 39–14864; AD 2006–26–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes Equipped with Rolls-Royce Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200 and –300 series airplanes equipped with Rolls-Royce engines. This AD requires repetitive inspections to detect cracks of the outer V-blades of the thrust reverser, and

corrective action if necessary. This AD also provides for optional terminating action for the repetitive inspections. This AD results from reports of cracked outer V-blades in the thrust reversers. We are issuing this AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in impact damage to other airplane areas. If a thrust reverser separates from the airplane during a refused takeoff, the engine could produce forward thrust, resulting in unexpected thrust asymmetry and a possible runway excursion.

DATES: This AD becomes effective January 11, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 11, 2007.

We must receive comments on this AD by February 26, 2007.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports of cracked outer V-blades in the Rolls-Royce engine thrust reversers on Boeing Model 777–200 and –300 series airplanes. The cracks were found in the top and bottom ends of the V-blade. The outer V-blade engages the aft end of the engine fan case to transmit fore and aft loads from the thrust reversers. Initial analysis of the V-blade did not include bending loads, and consequently the fatigue margins were not sufficient. A thrust reverser that separates from the airplane during normal reverse thrust or refused takeoff can damage other airplane areas. If a thrust reverser separates from the airplane during a refused takeoff, the engine could produce forward thrust, resulting in unexpected thrust asymmetry and a possible runway excursion.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006. The service bulletin describes procedures for doing repetitive detailed inspections to detect cracks in the outer V-blade of the thrust reverser, replacing cracked V-blades with serviceable parts, and sending a report of the inspection results to Boeing. The compliance time for the initial inspection ranges from 250 to 6,000 flight cycles after the effective date of the AD, depending on the number of flight cycles on the V-blade, with repetitive intervals not to exceed 2,000 flight cycles from the last detailed inspection.

We have also reviewed Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006, which describes procedures for doing a special detailed inspection to detect cracks in the outer V-blade of the thrust reverser in addition to a special detailed (eddy current or fluorescent penetrant) inspection to detect cracks in the fay surface area of the lower chord of the torque box where the outer V-blade attaches. If a crack is found in the outer V-blade, a new configuration V-blade is installed. If no crack is found, the V-blade is changed and installed with new support brackets at the top and bottom ends. The service bulletin also specifies contacting Boeing for repair instructions for cracks found in the torque box lower chord.

Accomplishment of the actions specified in Special Attention Service Bulletin 777–78–0061 eliminates the need for the repetitive inspections of Special Attention Service Bulletin 777–78–0064.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in impact damage to other airplane areas. If a thrust reverser separates from the airplane during a refused takeoff, the engine could produce forward thrust, resulting in unexpected thrust asymmetry and a possible runway excursion. This AD requires accomplishing the actions specified in Boeing Special Attention Service Bulletin 777–78–0064 described previously. This AD also provides for an optional terminating action for the repetitive inspections.

Difference Between the AD and Service Information

Boeing Special Attention Service Bulletin 777–78–0061 specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions, if accomplished, in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to approve repair methods.

Interim Action

We consider this AD interim action. We are considering mandating the optional terminating action specified in Boeing Special Attention Service Bulletin 777–78–0061, which terminates the repetitive inspections required by this AD. However, the planned compliance time for this terminating action would allow enough time to provide notice and opportunity for prior public comment on the merits of the actions.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–26675; Directorate Identifier 2006–NM–203–AD'' at the beginning of

your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–26–06 Boeing: Amendment 39–14864. Docket No. FAA–2006–26675; Directorate Identifier 2006–NM–203–AD.

Effective Date

(a) This AD becomes effective January 11, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category, equipped with Rolls-Royce engines; as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006.

Unsafe Condition

(d) This AD results from reports of cracked outer V-blades in the thrust reversers. We are issuing this AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in impact damage to other airplane areas. If a thrust reverser separates from the airplane during a refused takeoff, the engine could produce forward thrust, resulting in unexpected thrust asymmetry and a possible runway excursion.

Compliance

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

Repetitive Inspections

(f) Do the detailed inspections to detect cracks in the outer V-blade of the thrust reversers. Do the inspections in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006. Do the inspections at the applicable times specified in paragraph 1.E. of the service bulletin; except, where the service bulletin specifies an initial compliance time after the date on the service bulletin, this AD requires compliance within the specified time after the effective date of this AD. Do applicable corrective actions before further flight in accordance with the service bulletin or paragraph (h) of this AD.

(g) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 777–78–0064, dated August 7, 2006, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Report

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, send a report of the findings (both positive and negative) of each inspection required by paragraph (f) of this AD to the Manager, Seattle Aircraft Certification Office (ACO), FAA. The report must include the information specified in Appendix A of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For all inspections done after the effective date of this AD: Send the report within 10 days after the inspection.

(2) For any inspection done before the effective date of this AD: Send the report within 10 days after the effective date of this AD.

Optional Terminating Action

(i) Accomplishment of the applicable inspections and related investigative/corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006, terminates the requirements of this AD; except, where the service bulletin specifies to contact the manufacturer for appropriate action, repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Material Incorporated by Reference

(k) You must use Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. If the optional terminating action is accomplished, you must use Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006, to perform the optional terminating actions specified in this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on December 14, 2006.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22040 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23659; Directorate Identifier 2005–NM–236–AD; Amendment 39–14863; AD 2006–26–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 airplanes. This AD requires revising the Limitations section of the airplane flight manual regarding the use of continuous ignition, fuel filter heating, and resetting circuit breakers during flight in certain conditions such as icing. This AD results from reports of power loss on one or both engines in icing conditions. We are issuing this AD to advise the flightcrew that continuous ignition will not reduce the probability of power loss, and what action they must take to avoid this hazard. Loss of power in one or more engines during flight, if not prevented, could result in loss of control of the airplane.

DATES: This AD becomes effective January 31, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 31, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 airplanes. That NPRM was published in the **Federal Register** on January 24, 2006 (71 FR 3792). That NPRM proposed to require revising the Limitations section of the airplane flight manual regarding the use of continuous ignition, fuel filter heating, and resetting circuit breakers during flight in certain conditions such as icing.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Clarification of Note 1

Note 1 of the NPRM stated that the revision to the Limitations section of the Fokker F27 Airplane Flight Manual (AFM) could be done by inserting a copy of Manual Change Notification—Operational Documentation (MCNO) MCNO–F27–020, dated June 1, 2004, into the Normal Procedures, Abnormal Procedures, and Emergency Procedures sections of the Fokker F27 AFM. We have clarified Note 1 of this AD to state that the revision can be done by inserting a copy of that MCNO into the Limitations section, as specified in paragraph (f) of this AD.

Conclusion

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

Costs of Compliance

This AD affects about 27 airplanes of U.S. registry. The revision takes about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $1,755, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–26–05 Fokker Services B.V.: Amendment 39–14863. Docket No. FAA–2006–23659; Directorate Identifier 2005–NM–236–AD.

Effective Date

(a) This AD becomes effective January 31, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of power loss on one or both engines in icing conditions. We are issuing this AD to advise the flightcrew that continuous ignition will not reduce the probability of power loss, and what action they must take to avoid this hazard. Loss of power in one or more engines during flight, if not prevented, could result in loss of control of the airplane.

Compliance

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

Airplane Flight Manual (AFM) Revision

(f) Within 30 days after the effective date of this AD, revise the Limitations section of the Fokker F27 AFM by incorporating the information specified in Fokker Manual Change Notification—Operational Documentation (MCNO) MCNO–F27–020, dated June 1, 2004, into the Limitations section of the AFM.

Note 1: The actions required by paragraph (f) of this AD may be done by inserting a copy of MCNO MCNO–F27–020 into the Limitations section of the Fokker F27 AFM. When this MCNO, MCNO–F27–020, has been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in MCNO MCNO–F27–020.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Dutch airworthiness directive 2004–122, dated October 28, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Fokker Manual Change Notification—Operational Documentation MCNO–F27–020, dated June 1, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 14, 2006.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22042 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24440; Directorate Identifier 2006–NM–058–AD; Amendment 39–14862; AD 2006–26–04]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145XR Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–145XR airplanes. This AD requires replacement of certain segments of the passenger seat tracks with new, improved seat tracks. This AD results from instances where the shear plungers of the passenger seat legs were not adequately fastened. We are issuing this AD to prevent inadequate fastening of the seat leg shear plungers, which could result in failure of the passenger seat tracks

during emergency landing conditions and consequent injury to passengers.

DATES: This AD becomes effective January 31, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 31, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh, Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB–145XR airplanes. That supplemental NPRM was published in the **Federal Register** on August 8, 2006 (71 FR 44935). That supplemental NPRM proposed to require replacement of certain segments of the passenger seat tracks with new, improved seat tracks.

Comments

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

Request To Publish Service Information

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the supplemental NPRM be incorporated by reference into the regulatory instrument and published in DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Request To Allow Use of Parts Manufacturer Approval (PMA) Parts

MARPA states that the practice of requiring the replacement of a defective part with a certain part conflicts with 14 CFR 21.303. MARPA asserts that requiring installation of a certain part prevents installation of other good parts and prohibits the development of new parts. MARPA also states that the practice of requiring an alternative method of compliance (AMOC) to install a PMA part should be stopped. MARPA concludes that this practice presumes that all PMA parts are inherently defective and require an additional layer of approval.

MARPA further states the NPRM does not comply with FAA Order 8040.2; that order states that replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identicality. That order also states that any parts approved under this regulation and installed should be subject to the actions of the AD and included in the applicability.

MARPA states that if a PMA part is defective, then it must be addressed in an AD and not just simply implied by an AMOC requirement. MARPA suggests that we adopt language used in ADs issued by directorates other than the Transport Airplane Directorate, which specify installing an ''FAA-approved equivalent part number'' or ''airworthy parts.'' MARPA contends that the mandates contained in Section 1, paragraph (b)(1) of Executive Order 12866 are not being met because the directorates differ in their treatment of this issue. MARPA, therefore, requests that we revise the supplemental NPRM to allow use of PMA parts.

We do not agree to revise this AD. The supplemental NPRM does not address PMA parts, as provided in draft FAA

Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the supplemental NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs.

We acknowledge the need to ensure that unsafe PMA parts are identified and addressed in ADs in a standardized way at the national level. We are currently examining all aspects of this issue, including input from industry. Once we have made a final determination, we will consider how our policy regarding PMA parts in ADs needs to be revised. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to this AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

This AD affects about 97 airplanes of U.S. registry. The required actions take about 10 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $82 per airplane. Based on these figures, the estimated cost of this AD on U.S. operators is $85,554, or $882 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–26–04 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14862. Docket No. FAA–2006–24440; Directorate Identifier 2006–NM–058–AD.

Effective Date

(a) This AD becomes effective January 31, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–145XR airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145–53–0059, Revision 01, dated March 9, 2006.

Unsafe Condition

(d) This AD results from instances where the shear plungers of the passenger seat legs were not adequately fastened. We are issuing this AD to prevent inadequate fastening of the seat leg shear plungers, which could result in failure of the passenger seat tracks during emergency landing conditions and consequent injury to passengers.

Compliance

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

Replacement of Passenger Seat Tracks

(f) Within 5,000 flight hours after the effective date of this AD, replace segments of the internal and external passenger seat tracks with new, improved seat tracks, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0059, Revision 01, dated March 9, 2006.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2006–01–01R1, effective May 23, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 145–53–0059, Revision 01, dated March 9, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. EMBRAER Service Bulletin 145–53–0059, Revision 01, dated March 9, 2006, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 16	01	March 9, 2006.
3–15, 17	Original	July 1, 2005.

The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and

Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 11, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22041 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30527 Amdt. No. 3198]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 27, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 2006.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 15, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 18 January 2007

Eagle, CO, Eagle County Regional, LDA/DME RWY 25, Orig–B
Wauchula, FL, Wauchula Muni, RNAV (GPS) RWY 18, Orig
Wauchula, FL, Wauchula Muni, RNAV (GPS) RWY 36, Orig
Wauchula, FL, Wauchula Muni, Takeoff Minimums and Textual DP, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 8L(Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 8R (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 9L (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 9R (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 10 (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 26L (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 26R (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 27L (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 27R (Simultaneous Close Parallel) Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 28 (Simultaneous Close Parallel) Orig
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 14, Amdt 1
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 32, Amdt 1
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 14, Amdt 5A
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 32, Amdt 18
Indianapolis, IN, Indianapolis Intl, Takeoff Minimums & Textual DP's, Orig
Leonardtown, MD, St. Mary's County Regional, Takeoff Minimums and Textual DP, Orig
Monett, MO, Monett Muni, RNAV (GPS) RWY 18, Orig
Monett, MO, Monett Muni, RNAV (GPS) RWY 36, Orig
Monett, MO, Monett Muni, GPS RWY 18, Orig, CANCELLED
Monett, MO, Monett Muni, GPS RWY 36, Amdt 1, CANCELLED
Monett, MO, Monett Muni, Takeoff Minimums and Textual DP, Orig
Ripley, MS, Ripley, VOR/DME–A, Amdt 2
Ripley, MS, Ripley, RNAV (GPS) RWY 3, Amdt 1
Ripley, MS, Ripley, RNAV (GPS) RWY 21, Amdt 1
Ripley, MS, Ripley, Takeoff Minimums and Textual DP, Orig
Elizabeth City, NC, Elizabeth City CG Air Station/Regional, ILS OR LOC RWY 10, Orig
Alliance, NE Alliance Muni, RNAV (GPS) RWY 12, Orig
Alliance, NE Alliance Muni, RNAV (GPS) RWY 30, Orig
Alliance, NE Alliance Muni, GPS RWY 30, Orig–A, CANCELLED
Kimball, NE, Kimball Muni/Robert E. Arraj Field, RNAV (GPS) RWY 10, Orig
Kimball, NE, Kimball Muni/Robert E. Arraj Field, RNAV (GPS) RWY 28, Orig
Kimball, NE, Kimball Muni/Robert E. Arraj Field, NDB RWY 28, Amdt 2
Kimball, NE, Kimball Muni/Robert E. Arraj Field, GPS RWY 28, Orig–A, CANCELLED
Kimball, NE, Kimball Muni/Robert E. Arraj Field, Takeoff Minimums and Textual DP, Orig
Wellsville, NY, Wellsville Muni Arpt, Tarantine Fld, VOR–A, Amdt 6
Wellsville, NY, Wellsville Muni Arpt, Tarantine Fld, LOC/DME RWY 28, Amdt 4
Wellsville, NY, Wellsville Muni Arpt, Tarantine Fld, RNAV (GPS) RWY 10, Orig
Wellsville, NY, Wellsville Muni Arpt, Tarantine Fld, RNAV (GPS) RWY 28, Orig
Myerstown, PA, Deck, Takeoff Minimums and Textual DP, Orig
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 26 (Simultaneous Close Parallel), Amdt 3
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 27L (Simultaneous Close Parallel), Amdt 3

The FAA published an Amendment in Docket No. 30525 Amdt No. 3196 to Part 97 of the Federal Aviation Regulations (Vol 71, FR No. 239, page 74764, dated December 13, 2006) Under Section 97.29 effective 18 January 2007, which is hereby rescinded:

Homer, AK, Homer, RNAV (GPS) Y RWY 21, Orig
Homer, AK, Homer, RNAV (GPS) Y RWY 3, Orig
Homer, AK, Homer, GPS RWY 21, Orig–B, CANCELLED
Homer, AK, Homer, GPS RWY 3, Orig–B, CANCELLED

[FR Doc. E6–21956 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9305]

RIN 1545–AW50

Source of Income From Certain Space and Ocean Activities; Source of Communications Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 863(d) governing the source of income from certain space and ocean activities. It also contains final regulations under section 863(a), (d), and (e) governing the source of income from certain communications activities. In addition, this document contains final regulations under section 863(a) and (b), amending the regulations in § 1.863–3 to conform those regulations to these final regulations. The final regulations primarily affect persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). The final regulations also affect persons who derive income from transmission of communications.

DATES: *Effective Date:* These regulations are effective December 27, 2006.

Applicability Date: For dates of applicability, see § 1.863–8(h) and § 1.863–9(l).

FOR FURTHER INFORMATION CONTACT: H. Michael Huynh, (202) 435–5161 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the

Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1718.

The collections of information in these final regulations are in §§ 1.863–8(g) and 1.863–9(k). This information is required by the IRS to monitor compliance with the Federal tax rules for determining the source of income from space or ocean activities, or from transmission of communications.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent is 5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Congress enacted section 863(d) and (e) as part of the Tax Reform Act of 1986, Pub. L. No. 99–514, 100 Stat. 2085. Section 863(d) governs the source of income derived from space or ocean activities. Section 863(e) governs the source of income derived from international communications activities.

The Treasury Department and the IRS published a notice of proposed rulemaking (REG–106030–98) in the **Federal Register** on January 17, 2001 (66 FR 3903), which provided proposed regulations under section 863(a), (b), (d), and (e) (the 2001 proposed regulations). The Treasury Department and the IRS received numerous written comments on the 2001 proposed regulations and held a public hearing on May 23, 2001. Since that time, the aerospace, telecommunications, and related industries have experienced substantial technological evolution and significant business change and consolidation. In addition, the American Jobs Creation Act of 2004 (AJCA), Pub. L. No. 108–357, 118 Stat. 1418, enacted a number of materially relevant statutory changes that affect the treatment of space and ocean income for purposes of the foreign tax credit and subpart F rules.

In light of the extensive written comments, industry evolution, and AJCA changes, the Treasury Department and the IRS felt that it was appropriate to repropose these regulations to reflect these changes and to provide another opportunity for comment. Consequently, the Treasury Department and the IRS published another notice of proposed rulemaking in the **Federal Register** on September 19, 2005 (70 FR 54859), which withdrew the 2001 proposed regulations and provided new proposed regulations under section 863(a), (b), (d), and (e) (the proposed regulations). The proposed regulations provided two sets of rules: one in § 1.863–8 for determining the source of income from space or ocean activities, the other in § 1.863–9 for determining the source of income from communications activities.

A public hearing on the proposed regulations was scheduled for December 15, 2005, but was ultimately cancelled because no one requested to speak. A few written comments, however, were received. These comments uniformly praised the proposed regulations as an improvement over the 2001 proposed regulations and generally were supportive of much of the proposed regulations. However, commentators suggested a few additional changes. After consideration of these comments, the proposed regulations are adopted as final regulations, as amended by this Treasury decision. The revisions to regulations governing the source of income from space or ocean activities and the source of income from communications activities are discussed in section A and section B, respectively, of this preamble.

Summary of Comments and Explanation of Revisions

A. Space or Ocean Activity Under Section 863(d)

Section 863(d) governs the source of income from certain space or ocean activities. In general, section 863(d)(1) provides that, except as provided in regulations, any income derived from a space or ocean activity (space and ocean income) is income from sources within the United States (U.S. source income) if derived by a United States person and is income from sources without the United States (foreign source income) if derived by a foreign person. Section 863(d)(2)(A)(i) defines space activity to include any activity conducted in space. Section 863(d)(2)(A)(ii) defines ocean activity to include any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States. Section 863(d)(2)(B) excludes three types of activities from the definition of space or ocean activity. Space or ocean activity does not include any activity giving rise to transportation income governed by section 863(c), international communications income governed by section 863(e), or income with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638). See Section 863(d)(2)(B).

Section 1.863–8 of the proposed regulations generally provided rules for determining the source of income derived from space or ocean activity under section 863(d). Section 1.863–8(b)(1) of the proposed regulations reflected the general source rule under section 863(d)(1) that a United States person's space and ocean income is U.S. source income. Pursuant to the grant of regulatory authority under section 863(d)(1), however, the proposed regulations provided an exception to this general rule. Under that exception, a United States person's space and ocean income is foreign source income (and therefore not sourced on the basis of citizenship or residency) to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

For a foreign person, proposed § 1.863–8(b)(2) reflected the general source rule under section 863(d)(1) that a foreign person's space and ocean income is foreign source income. Pursuant to regulatory authority under section 863(d)(1), however, the proposed regulations contained two exceptions to this general rule, one for controlled foreign corporations (CFCs), the other for foreign persons engaged in a U.S. trade or business. The proposed regulations generally sourced space and ocean income derived by a CFC, like that of a United States person, as U.S. source income. However, also like the rule for a United States person, a CFC's space and ocean income is foreign source income to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries. For a foreign person, other than a CFC, engaged in a trade or business within the United

States, space and ocean income is U.S. source income to the extent it is attributable to functions performed, resources employed, or risks assumed within the United States.

In addition to the general source rules for United States and foreign persons, the proposed regulations provided special rules, applicable to both United States and foreign persons, for income from services, certain sales of property, and communications activities (other than international communications activities). These special rules, as well as modifications to the proposed regulations, are discussed below.

1. Activities performed outside space and international water

Section 1.863–8 of the proposed regulations provided source rules only for income from space or ocean activity. Thus, in some cases, income derived from a transaction must be allocated between space and ocean income and other income.

For example, § 1.863–8(b)(3)(ii)(C) of the proposed regulations provided that when property is produced both in space or international water and outside space and international water, gross income allocable to production activity is allocated to production occurring in space or international water and production occurring outside space and international water based on where functions are performed, resources are employed, or risks are assumed. The proposed regulations also provided a similar analysis of functions performed, resources employed, or risks assumed to allocate income in the case of performance of services. See Prop. Treas. Reg. § 1.863–8(d)(2). Under the proposed regulations, only the amount allocated to production or performance of a service occurring in space or international water is treated as space and ocean income (character rule). The source of gross income allocated to production or performance of a service occurring in space or international water is then determined under the rules of proposed § 1.863–8(b)(1) or (2), as applicable (source rule).

Section 1.863–8(b)(1) of the proposed regulations reflected the general source rule that a United States person's space and ocean income is U.S. source income. Proposed § 1.863–8(b)(2) reflected the general source rule that a foreign person's space and ocean income is foreign source income. Both proposed § 1.863–8(b)(1) and (2), however, provided exceptions to their respective general source rules. As discussed above, under the exceptions, a United States person's space and ocean income may be foreign source income and a foreign person's space and ocean income may be U.S. source income based on where functions are performed, resources are employed, or risks are assumed.

One commentator noted that in some situations, the allocation of income derived from a transaction to determine space and ocean income based on functions performed, resources employed, or risks assumed presumably would remove the subsequent need to further analyze functions performed, resources employed, or risks assumed within a country to determine the source of the space and ocean income. In other words, the very act of determining the character of income seems to also determine the source of such income.

The Treasury Department and the IRS agree with the commentator that use of the same standard to classify the transaction as space or ocean activity and to source the space and ocean income may be duplicative in some cases. However, there are other cases where a transaction with some land-based activity may be classified in its entirety as a space or ocean activity (for example, a lease of a satellite), but the income may be partially U.S. source and partially foreign source under the source rules of proposed § 1.863–8(b)(1) and (2) based on functions performed, resources employed, or risks assumed within the United States or a foreign country. Consequently, the character and source rules are not always duplicative.

Thus, the extent to which the character rules overlap with the source rules is particular to the type of transaction involved. The Treasury Department and the IRS recognize that the overlap in the character and source rules may produce equivalent results. But, the overlap is necessary to provide taxpayers and the IRS with workable rules. As a result, the final regulations do not follow this comment as a general matter.

Nonetheless, a conforming amendment has been made to the lease transaction in Example 1 in § 1.863–8(f) of the final regulations to more clearly illustrate how the rules work. That example illustrates that the transaction involved is first classified in its entirety as a space or ocean activity, and then the resulting space and ocean income is subjected to the source rules. The space and ocean income is sourced as foreign source income to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

2. Activities performed by another person

Section 1.863–8(a) of the proposed regulations provided that a taxpayer will not be considered to derive income from space or ocean activity if such activity is performed by another person. The approach under § 1.863–8(a) of the proposed regulations, providing that a taxpayer derives income from a space or ocean activity only if it conducts such activity directly, is consistent with the approach adopted in the § 1.863–3 regulations governing the source of income from certain sales of inventory. See, e.g., Treas. Reg. § 1.863–3(c) (''[T]he only production activities that are taken into account for purposes of §§ 1.863–1, 1.863–2, and this section are those conducted directly by the taxpayer.'').

Accordingly, commentators believed that this provision assured that a content provider that retains a satellite operator to transmit programming abroad would not derive space and ocean income based on attribution of the satellite operator's activity. The Treasury Department and the IRS agree.

One commentator noted, however, that *Examples 2* and *4* in § 1.863–8(f) of the proposed regulations seem to indicate that this is not what was intended. In *Example 2*, the taxpayer, an Internet service provider, transmits information requested by its customer, in part using satellite capacity leased from a third party. *Example 2* concludes that the service performed by the taxpayer is considered space activity to the extent the value of the service is attributable to functions performed, resources employed, and risks assumed in space. In *Example 4*, the taxpayer uses satellite capacity acquired from a third party to deliver programming services directly to its customers' televisions sets. *Example 4* concludes that the taxpayer's delivery of programming and other services is considered space activity to the extent the value of the delivery transaction is attributable to performance in space. In the commentator's view, the results reached in the examples conflict with the provision stating that activities performed by another person are not attributable to the taxpayer.

The Treasury Department and the IRS do not believe that *Examples 2* and *4* of § 1.863–8(f) of the proposed regulations produce the result that the commentator raised. In *Examples 2* and *4*, the taxpayer performed the transmission or delivery activities using satellite capacity leased or acquired from a third party. Both *Examples 2* and *4* correctly conclude that the taxpayers derived space and ocean income from their own

activities rather than from activities of another person. Thus, the examples do not, in fact, conflict with the text of the proposed regulations. Nevertheless, the Treasury Department and the IRS are concerned that *Examples 2* and *4* have been misinterpreted as suggesting that activities performed by another person may be attributable to the taxpayer in certain situations. This was not the intent of these examples. Consequently, *Examples 2* and *4* in § 1.863–8(f) of the final regulations have been modified to make clear that the taxpayers in the examples *directly* engage in a space activity by performing the uplink (transmitting to the satellite) and downlink functions.

These examples differ from cases in which the taxpayer is a mere content provider that derives income either from the creation of content or from the creation and delivery of content, but in either case contracts with another person to deliver the content via satellite. Pursuant to § 1.863–8(a) of the final regulations, content providers of this type would not derive space and ocean income because the delivery of the content via satellite is performed by another person. This would be the result even though the value of the customer contract includes a payment to the content provider for space or ocean activity. To clarify the distinction between these situations and *Examples 2* and *4*, a new *Example 5* has been added to the final regulations. That example involves a content provider that does not derive space and ocean income because the taxpayer does not directly perform any space or ocean activity.

3. Income Characterization Rules for Income from Services and the De Minimis Exception

Under § 1.863–8(b)(4) of the proposed regulations, to the extent a service is characterized as space or ocean activity, the source of gross income derived from such transaction is determined under proposed § 1.863–8(b)(1) or (2), as applicable. Section 1.863–8(d)(2)(ii)(B) of the proposed regulations provided, however, that if the taxpayer can demonstrate, based on all the facts and circumstances, that the value of the service attributable to performance in space or international water is de minimis, such service will not be treated as space or ocean activity. The de minimis rule was adopted to address taxpayers' concerns about potential confusion in qualifying for the ''facilitation exception'' under the 2001 proposed regulations. One commentator stated that the de minimis rule simply replaced one vague standard with another, as neither *Example 3* in § 1.863–8(f) of the proposed regulations nor the text of the proposed regulations provides any guidance as to when activities performed in space or international water would be de minimis under a facts and circumstances approach.

The Treasury Department and the IRS recognize that issues of interpretation may arise in any facts and circumstances approach. Nevertheless, the Treasury Department and the IRS generally have refrained from adopting the alternative approach, to wit, adopting precise definitions and quantitative measures for a de minimis standard. Moreover, the inclusion of a precise definition and quantitative measures for determining de minimis value could raise equal, if not greater, concerns in terms of the quantitative threshold and other issues. Thus, the final regulations retain the de minimis standard for determining whether a taxpayer has space and ocean income. If the value of the service attributable to space or ocean activity is de minimis based on the facts and circumstances, the taxpayer will not derive space and ocean income. Nevertheless, the Treasury Department and the IRS agree that more guidance could be provided as to the application of the retained de minimis rule. Accordingly, *Examples 3* and *8* in § 1.863–8(f) of the final regulations (*Example 7* in the proposed regulations) provide clearer illustrations of when activities performed in space or international water would be considered de minimis for this purpose and when those types of activities would not be considered de minimis.

4. Source Rules for Income From Certain Sales of Property

The proposed regulations provided special rules for income from certain sales of property, either when any production occurs in space or international water, or when the sale occurs in space or international water. In either case, section 863(d) and the proposed regulations applied to determine the source of income from the sales of property, and the rules of sections 861(a)(6), 862(a)(6), 863(a), 863(b), and 865 apply only to the extent provided in the proposed regulations.

a. Sales of Property Produced in the United States and Sold in Space or International Water

Section 1.863–8(b)(3)(ii) of the proposed regulations provided that when the taxpayer both produces property and sells such property, one-half of the taxpayer's gross income will be considered income allocable to production activity and one-half of such gross income will be considered income allocable to sales activity. Taxpayers generally must then apply the rules of section 863(d) and the proposed regulations to determine the source of income allocable to production activity and sales activity.

For production activity, the source of gross income allocable to production occurring in space or international water is generally based on the citizenship or residence of the taxpayer, applying the rules of proposed § 1.863–8(b)(1) or (2), as applicable. The source of gross income allocable to production occurring outside space and international water is determined under section 863(b) rather than section 863(d). See Prop. Treas. Reg. § 1.863–8(b)(3)(ii)(B) (referencing Treas. Reg. § 1.863–3(c)(1)).

As for sales activity, when property is sold in space or international water, the source of gross income allocable to sales activity is generally based on the citizenship or residence of the taxpayer, applying the rules of proposed § 1.863–8(b)(1) or (2), as applicable. An exception to this general rule applied in cases when the property sold is inventory, within the meaning of section 1221(a)(1), and is sold in space or international water for use, consumption, or disposition outside space, international water, and the United States. In that case, the source of gross income allocable to sales activity is determined under Treas. Reg. § 1.861–7(c) and § 1.863–3(c)(2). Treas. Reg. § 1.861–7(c) and § 1.863–3(c)(2) generally provide for foreign source income where the seller's rights, title, and interest in the property are transferred to the buyer (the title passage rule) outside the United States and the property is not sold for use, consumption, or disposition in the United States. Treas. Reg. § 1.861–7(c) and § 1.863–3(c)(2) also applied to property sold outside space and international water. See Prop. Treas. Reg. § 1.863–8(b)(3)(ii)(D).

One commentator believed that because certain U.S. manufacturers, such as U.S. satellite manufacturers, produce property that is sold in space or international water for use, consumption, or disposition in space or international water, they are at a disadvantage relative to U.S. manufacturers of other export property because the former may have U.S. source income with respect to income allocable to sales activity, while the latter may have foreign source income from sales activity.

In response to comments on the 2001 proposed regulations, proposed § 1.863–

8(b)(1) was revised to provide that space and ocean income will be foreign source income to the extent the space and ocean income is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries. The Treasury Department and the IRS believe that this change may in many cases mitigate concerns about U.S. manufacturers potentially deriving 100 percent U.S. source income in these cases. Moreover, the Treasury Department and the IRS believe that the rules under the proposed regulations for determining the source of income allocable to sales activity are consistent with legislative intent to assert primary tax jurisdiction over income earned by United States persons that is not subject to foreign tax. See S. REP. NO. 99–313, 1986–3 C.B. 357–358 (''[T]he committee believes the United States should assert primary tax jurisdiction over income earned by its residents that is not within any foreign country's taxing jurisdiction* * *. Moreover, when a U.S. taxpayer conducts activities in space or international waters, foreign countries generally do not tax the income. Thus, the foreign tax credit limitation is inflated by income that is not within any foreign country's tax jurisdiction.''). Based on the legislative history, the Treasury Department and the IRS believe that sales of property in space or international water—with the exception of sales of inventory property in space or international water for use, consumption, or disposition outside space, international water, and the United States—should be considered space or ocean activity and that the source of income from such sales activity should be determined under section 863(d). As a result, no changes were made in response to this comment.

b. Purchased Versus Produced Property Sold for Use, Consumption, or Disposition in the United States

One commentator questioned the appropriateness of differences in determining the source of sales income depending on whether the taxpayer produced or purchased the property sold. Under the proposed regulations, when property produced by the taxpayer is sold in space or international water, the source of gross income allocable to sales activity is generally based on the citizenship or residence of the taxpayer, applying the rules of proposed § 1.863–8(b)(1) or (2), as applicable (and not the title passage rule)—subject to the foregoing inventory exception for property that will be used, consumed, or disposed of outside space, international water, and the United States. A slightly different rule applied to sales of property that had been purchased by the taxpayer. While the proposed regulations also provided that, for purchased property, the source of gross income allocable to sales activity is generally based on the citizenship or residence of the taxpayer, the inventory exception for purchased property only required that the property be used, consumed, or disposed of outside space and international water.

The inventory exceptions for produced and purchased property were intended to produce different results when inventory property is used, consumed, or disposed of in the United States. In such case, the source of produced inventory property sales income is generally based on the citizenship or residence of the taxpayer, applying the rules of proposed § 1.863–8(b)(1) or (2), because the inventory exception did not extend to produced property sold for use, consumption, or disposition in the United States. In contrast, the source of purchased inventory property sales income is generally based on title passage under Treas. Reg. § 1.861–7(c) because the inventory exception did extend to purchased property even if it was sold for use, consumption, or disposition in the United States. The Treasury Department and the IRS believe that this difference between the produced and purchased property rules in the space and ocean context is consistent with the difference in the rules for sales of produced and purchased property outside the space and ocean context. In particular, under section 863(a) and (b) and the regulations thereunder, if property is produced in the United States and sold for use, consumption, or disposition in the United States, the place of sale will be presumed to be the United States, and income attributable to the sales activity will be U.S. source income. See § 1.863–3(c)(2). There is, however, no comparable rule for purchased property under section 862(a)(6) or the regulations thereunder. Thus, the final regulations simply continue in the space and ocean context the varying treatment elsewhere for sales of purchased property and sales of produced property.

In response to comments, however, the produced and purchased property rules have been modified to be similar in structure and style, to better reflect and highlight the differences between these two rules.

5. Allocations

Taxpayers must allocate gross income under paragraphs (b)(1) and (b)(2) of proposed § 1.863–8 among U.S., foreign, and space or ocean activities. Under proposed § 1.863–8(b)(3)(ii)(C), allocations are also made between production activity occurring in space or international water and that occurring outside space and international water. Finally, allocations are also made under proposed § 1.863–8(b)(4) between services performed in space or international water and services performed outside space and international water. In performing these allocations, the proposed regulations generally provided that taxpayers should consider the relative value of functions performed, resources employed, or risks assumed in different locations. Moreover, the preamble to the proposed regulations provided that allocations should be based generally on section 482 principles. Commentators noted that little guidance is given as to the mechanics of allocation other than the statement that the principles of section 482 should be used. Commentators stated that allocation of gross income based on section 482 principles will result in added expense, uncertainty, and extra burden on multinational taxpayers who are already required to undertake and update functional analyses and satisfy substantial documentation requirements.

While the final regulations were not changed in response to these comments, the Treasury Department and the IRS believe that some clarification is warranted. In suggesting the use of section 482 principles as a guide, the Treasury Department and the IRS intend for taxpayers to adopt a reasonable approach to the allocations required in this area. Taxpayers know their businesses and will generally be in the best position to fashion a reasonable method that most reliably reflects the relative value of functions performed, resources employed, and risks assumed in different locations. In the preamble to the proposed regulations, the Treasury Department and the IRS solicited comments on alternative methods of allocation for particular industries and criteria that could be used to evaluate the reasonableness of such methods. No such comments were received. One commentator noted, however, that the proposed regulations perhaps reflected what taxpayers in these industries have already been doing in order to determine the character and source of their space and ocean income. Consequently, the Treasury Department and the IRS believe that allocations of gross income based on functions performed, resources employed, and

risks assumed are appropriate in these circumstances.

6. Separation of a Single Transaction and Aggregation of Multiple Transactions

Paragraphs (d)(1)(i) and (d)(1)(ii) of § 1.863–8 of the proposed regulations provided that for purposes of determining space or ocean activity, the Commissioner may separate parts of a single transaction or combine separate transactions into a single transaction. One commentator stated that this is a ''one-way'' street, as only the Commissioner has the authority to separate or combine transactions for purposes of the proposed regulations.

The final regulations do not change this rule. The Treasury Department and the IRS believe taxpayers are not inappropriately disadvantaged by this rule because taxpayers generally have the ability to structure their transactions in line with the economic prospects of their businesses. In addition, the Commissioner's ability to separate or combine transactions is not unfettered. Rather, the Commissioner may only separate or combine transactions to better reflect the value of functions performed, resources employed, or risks assumed. A taxpayer can always protect itself against recharacterization by adopting an arrangement that appropriately reflects the economic realities of a transaction or series of transactions. The taxpayer is clearly in the best position at the outset to structure its arrangements in this manner. In addition, taxpayers traditionally are not permitted to restructure retroactively the form of their completed transactions. Thus, the Treasury Department and the IRS believe that the limited ''one-way'' rule is appropriate in this case.

7. Income Derived From the Leasing of Shipping Cargo Containers

One commentator requested that the Treasury Department and the IRS make clear that the final regulations under section 863(d) do not apply to income derived from the leasing of shipping cargo containers and that such income should be treated as rental income, sourced under sections 861 and 862. This commentator noted that valid arguments also exist for treating income derived from the leasing of shipping cargo containers as transportation income; however, in the commentator's view, the most appropriate treatment is rental income treatment, sourced under sections 861 and 862.

The treatment of income derived from the leasing of shipping cargo containers is not covered by these final regulations. Instead, the Treasury Department and the IRS intend to address the treatment of such income explicitly in separate guidance. That guidance may apply section 863(c), section 863(d), or other provisions to source income derived from the leasing of shipping cargo containers. Any such guidance will be prospective in nature. Until such time, the treatment of such income will be determined under existing law.

B. Communications Activity Under Section 863(a), (d), and (e)

Section 863(e) governs the source of income from international communications activities (international communications income). International communications income is defined in section 863(e)(2) as income derived from the transmission of communications or data between the United States and a foreign country (or possession of the United States). Section 863(e)(1)(A) provides that any international communications income of a United States person is sourced 50 percent in the United States and 50 percent outside the United States (50/50 source rule). Section 863(e)(1)(A) does not provide for any statutory or regulatory exceptions to this 50/50 source rule. In contrast, section 863(e)(1)(B)(i) provides that any international communications income of a foreign person is sourced outside the United States, except as provided in regulations or in section 863(e)(1)(B)(ii). The exception under section 863(e)(1)(B)(ii) provides that if a foreign person maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business is U.S. source income.

Section 1.863–9 of the proposed regulations generally provided rules for determining the source of international communications income under section 863(e) and other communications income under section 863(a) and (d). Proposed § 1.863–9(b)(1) reflected the rule under section 863(e)(1)(A) that a United States person's international communications income is 50 percent U.S. source income and 50 percent foreign source income. Proposed § 1.863–9(b)(2) reflected the general rule under section 863(e)(1)(B) that a foreign person's international communications income is foreign source income.

Consistent with the statutory exception under section 863(e)(1)(B)(ii), proposed § 1.863–9(b)(2)(iii) provided that any international communications income derived by a foreign person, other than a CFC, that is attributable to an office or other fixed place of business of the foreign person in the United States is U.S. source income. International communications income is attributable to an office or other fixed place of business to the extent of functions performed, resources employed, or risks assumed by the office or other fixed place of business. In addition to the statutory exception under section 863(e)(1)(B)(ii), section 863(e)(1)(B) provides general regulatory authority to depart from the general 100 percent foreign source rule for foreign persons. Thus, pursuant to this regulatory authority, the proposed regulations contained additional exceptions to the general rule applicable to foreign persons. In particular, the proposed regulations provided that international communications income derived by a CFC is 50 percent U.S. source income and 50 percent foreign source income (the same as for United States persons). The proposed regulations also provided that international communications income derived by a foreign person, other than a CFC, engaged in a trade or business within the United States is income from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

In addition to the general source rules for international communications income of United States and foreign persons, the proposed regulations also provided rules, applicable to both United States and foreign persons, for income from U.S. communications, foreign communications, space/ocean communications, and communications where endpoints are indeterminate. These rules, as well as modifications to the proposed regulations, are discussed below.

1. Income Characterization Rules for Communications Income

Section 1.863–9(h)(3) of the proposed regulations provided that the type of communications activity (and thus the applicable source rule) is determined by identifying the two points between which the taxpayer is paid to transmit the communication. For United States and foreign persons, U.S. communications income is entirely U.S. source income. A taxpayer derives U.S. communications income when the taxpayer is paid to transmit between two points in the United States or between the United States and a point in space or international water. In contrast, foreign communications income is entirely foreign source income for United States and foreign

persons. A taxpayer derives foreign communications income when the taxpayer is paid to transmit between two points in a foreign country or countries (or a possession or possessions of the United States), between a foreign country and a possession of the United States, or between a foreign country (or a possession of the United States) and a point in space or international water. Finally, the proposed regulations provided different source rules for international communications income of United States and foreign persons. See section B.3 of this preamble for further discussion. A taxpayer derives international communications income when the taxpayer is paid to transmit between a point in the United States and a point in a foreign country (or a possession of the United States). When a taxpayer cannot establish the two points between which the taxpayer is paid to transmit the communication, § 1.863–9(f) of the proposed regulation provided a default source rule under which all the income derived by the taxpayer from such communications activity is U.S. source income.

Commentators stated that the treatment of communications income as U.S. source income when the endpoints are indeterminate is overbroad and harsh, particularly as it relates to foreign taxpayers. Commentators also stated that taxpayers would have to commit significant resources to develop the technology necessary to identify the endpoints of communications. One commentator stated that it is unclear that a reliable system can be created at any expense to establish the endpoints of the transmission under all circumstances. Commentators suggested instead the use of any reasonable method to establish the endpoints between which a taxpayer is paid to transmit the communications. One commentator suggested that the Treasury Department and the IRS consider employing the Industry Issue Resolution Program or Prefiling Agreement Program as aids in the administration of a reasonable method rule.

The Treasury Department and the IRS solicited comments on the challenges to identifying the endpoints of communications in specific industries or situations, as well as suggestions for rules that are responsive to these particular challenges. The Treasury Department and the IRS also solicited comments on methods to establish the endpoints of a communication that may be reasonable for particular industries, as well as criteria that may be appropriate to evaluate the reasonableness of such methods. In response, one commentator submitted examples of reasonable methods to establish the endpoints between which a taxpayer is paid to transmit the communications. The examples relied on statistical reports of data such as minutes used, areas of transmission, port locations, and transport charges. This commentator noted that current federal regulations already require telecommunications companies to submit some of these reports to certain governmental agencies, for example, the Federal Communications Commission.

In light of the potential complexity in identifying the type of communications activity and in response to comments, the final regulations provide that a taxpayer may satisfy the requirement that the taxpayer establish the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication by using any consistently applied reasonable method to establish one or both endpoints. In doing so, the taxpayer carries the burden of proof and must establish that the method used is reasonable (taking into account all of the facts and circumstances) and is consistently applied. In satisfying its burden of proof, a taxpayer will need to maintain reasonable records of communications activities. Depending on the facts and circumstances, methods based on, for example, records of port or transport charges, customer billing records, a satellite footprint, or records of termination fees made pursuant to an international settlement agreement may be reasonable. In addition, practices used by taxpayers to classify or categorize certain communications activity in connection with preparation of statements and analyses for the use of management, creditors, minority shareholders, joint ventures, or other parties or governmental agencies in interest may be reliable indicators of the reasonableness of the method chosen, but need not be accorded conclusive weight by the Commissioner. Furthermore, in evaluating the reasonableness of the method chosen, consideration will be given to all the facts and circumstances, including whether the endpoints would otherwise be identifiable absent this reasonable method provision.

Along with resultant changes made to the text of the final regulations, several examples have been added to § 1.863–9(j) of the final regulations that illustrate instances where the taxpayer may be able to use reasonable methods to determine the endpoints between which the taxpayer is paid to transmit the communications.

2. The Paid-to-do Rule With Respect to Foreign-Originating Communications

Under the proposed regulations, a taxpayer derives income from a certain type of communications activity (for example, foreign communications or international communications) only if the taxpayer is paid to transmit, and bears the risk of transmitting (the paid-to-do rule), the communications of such type. See Prop. Treas. Reg. § 1.863–9(h)(2) and (3). This is the case even if the taxpayer contracts out the transmission function.

Commentators stated that application of the paid-to-do rule in all instances would give rise to results that are inconsistent with Congressional intent and may result in excessive amounts of U.S. source income. One commentator noted that in some cases, while it is clear that a communication originated in a foreign country and that a U.S. telecommunications company is paid to terminate the foreign-originating traffic in the United States, it is unclear exactly where the U.S. telecommunications company picked up the communication. This lack of clarity often may be due to legal restrictions in certain foreign countries on ownership of capacity and carriage of transmissions by non-nationals. It can also be due to the fact that the international settlement agreements under which major international telecommunications carriers operate often do not specify where the traffic is picked up or handed off, and in some cases the hand-off point is specified by reference to a mid-point convention, even though the transmission signal, from a technical standpoint, travels from end-to-end with no real points in-between. The commentator further stated that at the time section 863(e) was enacted, U.S. carriers were generally not allowed to own and operate facilities in foreign countries; specifically, no U.S. carrier could carry a foreign-to-U.S. or U.S.-to-foreign transmission end-to-end. Thus, concluded the commentator, Congress focused on the endpoints of the communications rather than where the activities constituting the transmission of communications take place. The commentator suggested a rule that would provide that when a taxpayer is paid to transmit foreign-originating communications from a point outside the United States to a point in the United States, the taxpayer should be deemed to have been paid to transmit the communications from a point in the foreign country in which the communication originated.

Upon further consideration, the Treasury Department and the IRS

believe that the paid-to-do rule may be over-inclusive in certain cases. Accordingly, the final regulations provide that international communications income also includes income derived from communications activity when the taxpayer is paid to transmit foreign-originating communications (communications with a beginning point in a foreign country or a possession of the United States) from a point in space or international water to a point in the United States. Also, a new example has been added to § 1.863–9(j) of the final regulations to illustrate the changes made in the final regulations with respect to foreign-originating communications.

The changes made in the final regulations only affect communications that originate in a foreign country (or a possession of the United States) and does not affect communications that originate in space, international water, or the United States. The Treasury Department and the IRS continue to believe that communications activity is most appropriately characterized based on the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication.

3. Determining the Source of Communications Income Based on Functions Performed, Resources Employed, or Risks Assumed in a Foreign Country or Countries

As discussed above, the proposed regulations provided that the source of communications income is largely dependant on the type of communications activity and the citizenship or residence of the taxpayer. However, the proposed regulations provided for two instances where (in addition to the type of communications activity and the citizenship or residence of the taxpayer) the source of communications income may depend on functions performed, resources employed, or risks assumed. First, the proposed regulations provided that international communications income derived by a foreign person, other than a CFC, that is attributable to an office or other fixed place of business of the foreign person in the United States is U.S. source income. The proposed regulations provided that international communications income is attributable to an office or other fixed place of business to the extent of functions performed, resources employed, or risks assumed by the office or other fixed place of business. Second, the proposed regulations provided that international communications income derived by a foreign person, other than a CFC, engaged in a trade or business within the United States is income from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

Commentators suggested that the final regulations also provide for similar rules that would source communications income as foreign source income based on functions performed, resources employed, or risks assumed in a foreign country or countries. For example, one commentator suggested that the source of international and U.S. communications income derived by any United States or foreign person (including branches, partnerships, and disregarded entities) engaged in a trade or business in a foreign country or countries is income from sources without the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in such foreign country or countries.

While the Treasury Department and the IRS recognize that commentators' suggestion to provide for a source rule based on functions performed, resources employed, or risks assumed in a foreign country or countries is reasonable, as explained below, the Treasury Department and the IRS believe that the statute and legislative history preclude such an option.

a. International Communications Income

Consistent with section 863(e)(1)(A), proposed § 1.863–9(b)(1) provided that international communications income of a United States person is 50 percent U.S. source income and 50 percent foreign source income. One commentator suggested that it may be appropriate, in certain situations, to depart from the 50/50 source rule to provide special rules for foreign activities. According to the commentator, as a result of local regulatory requirements, U.S.-based international telecommunications providers often need to conduct portions of their international business through locally formed entities, and such entities are fully subject to foreign tax on their income. The commentator therefore concluded that a source rule for international communications income based on functions performed, resources employed, or risks assumed in a foreign country or countries is not only equitable but also consistent with treatment accorded to foreign persons having a U.S. fixed placed of business or engaged in a U.S. trade or business.

The Treasury Department and the IRS recognize that a source rule based on functions performed, resources employed, or risks assumed may be a reasonable alternative to the 50/50 source rule. Nonetheless, they continue to believe that the 50/50 source rule is the method that must be used to determine the source of a United States person's international communications income. This is because section 863(e)(1)(A) provides for an explicit 50/50 source rule for those persons without exception. In contrast, section 863(e)(1)(B) provides that a foreign person's international communications income is generally sourced outside the United States, except as provided in regulations. The Treasury Department and the IRS believe that the express grant of regulatory authority in the case of foreign persons and the omission of any such authority in the case of United States persons indicate that Congress intended the 50/50 sourcing rule be applied to United States persons without regulatory modification. There is nothing in the statute or legislative history that clearly demonstrates a different intention. In contrast, section 863(e)(1)(B)(ii) provides for a special source rule with respect to foreign persons with an office or other fixed place of business in the United States. A similar rule is not provided with respect to a United States person's foreign activities. Thus, Congress chose a rule that sourced international communications income of foreign persons in certain instances based on the place of their activities, but expressly chose the 50/50 method to source international communications income of United States persons, regardless of the place of their activities.

The Treasury Department and the IRS recognize that the statute does not require strict application of the 50/50 source rule for CFCs. Section 863(e)(1)(B) only provides that the international communications income of a foreign person is foreign source income, except as provided in regulations. Consistent with and in light of this regulatory authority, however, the Treasury Department and the IRS believe that the 50/50 source rule is the most appropriate method to determine the source of a CFC's international communications income. This approach addresses the concern of the Treasury Department and the IRS that United States persons may use CFCs to obtain benefits that are inconsistent with the purposes of section 863(e). Consequently, the rules for determining the source of international

communications income derived by a CFC should be the same as the rules for determining the source of such income if it is derived by a United States person. In addition, the Treasury Department and the IRS believe that the 50/50 source rule for CFCs, as opposed to the 100 percent U.S. source rule that was originally proposed as part of the 2001 proposed regulations, should limit the potential for multiple levels of taxation that commentators raised with respect to those prior proposed regulations.

b. U.S. Communications Income

Section 1.863–9(c) of the proposed regulations provided that income derived by a United States or foreign person from U.S. communications activity is entirely from sources within the United States. One commentator noted that a foreign person deriving income from the transmission of communications between a point in the United States and another point in the United States or between a point in the United States and a point in space or international water has 100 percent U.S. source income, even if much or all of the activity involved is outside the United States. In contrast, under the space and ocean rules, a foreign person has U.S. source income only to the extent the income is attributable to functions performed, resources employed, or risks assumed within the United States. Commentators therefore suggested modification of the 100 percent U.S. source rule for U.S. communications income derived by United States and foreign persons to take into account foreign activities.

The Treasury Department and the IRS recognize that a source rule based on functions performed, resources employed, or risks assumed may be a reasonable alternative to the 100 percent U.S. source rule for U.S. communications. Nonetheless, the Treasury Department and the IRS believe that Congress did not intend such an option. The legislative history indicates that if a communication is between two points within the United States, the ''income attributable thereto is to be sourced *entirely* as U.S. source income.'' S. Rep. No. 99–313, 1986–3 C.B. 359 (emphasis added). Congress intended such a result ''even if the communication is routed through a satellite located in space, regardless of the satellite's location.'' Id. Thus, the legislative history clearly provides that Congress intended that U.S. communications income be sourced entirely as U.S. source income.

4. International Communications Income Derived by a Foreign Person (Other Than a CFC)

Proposed § 1.863–9(b)(2) reflected the general rule under section 863(e)(1)(B) that a foreign person's international communications income is foreign source income. Consistent with the statutory exception under section 863(e)(1)(B)(ii), proposed § 1.863–9(b)(2)(iii) provided that any international communications income derived by a foreign person, other than a CFC, that is attributable to an office or other fixed place of business of the foreign person in the United States is U.S. source income. International communications income is attributable to an office or other fixed place of business to the extent of functions performed, resources employed, or risks assumed by the office or other fixed place of business. Pursuant to the grant of regulatory authority under section 863(e)(1)(B), the proposed regulations provided other exceptions to the general rule for foreign persons. The first exception is the 50/50 source rule for CFCs under § 1.863–9(b)(2)(ii) of the proposed regulations, as discussed above. The second exception was provided in § 1.863–9(b)(2)(iv) of the proposed regulations and applied to foreign persons other than CFCs. Section 1.863–9(b)(2)(iv) of the proposed regulations provided that international communications income derived by a foreign person, other than a CFC, engaged in a trade or business within the United States, that is attributable to functions performed, resources employed, or risks assumed within the United States is U.S. source income. One commentator noted that it is unclear why a separate rule is needed for a fixed place of business in the United States and a U.S. trade or business because international communications income attributable to a fixed place of business in the United States should also be attributable to functions performed, resources employed and risks assumed within the United States.

As indicated, the office or other fixed place of business rule under § 1.863–9(b)(2)(iii) of the proposed regulations was derived from the statutory language of section 863(e), while the trade or business rule under § 1.863–9(b)(2)(iv) of the proposed regulations was derived from the express grant of regulatory authority to source international communications income of foreign persons as other than foreign source. The Treasury Department and the IRS recognize that in most situations, the latter trade or business rule would indeed subsume the former fixed place of business rule, but still believe that the later rule serves an important function. The trade or business rule addresses the concern of the Treasury Department and the IRS that a foreign person could avoid a U.S. fixed place of business under section 863(e)(1)(B)(ii), yet engage in significant communications activity in the United States. The Treasury Department and the IRS believe that Congress intended that a foreign person engaged in substantial business in the United States be subject to U.S. tax on that communications activity.

5. Allocations

Section 1.863–9(h)(1)(ii) of the proposed regulations provided that to the extent that a taxpayer's transaction consists in part of non-de minimis communications activity and in part of non-de minimis non-communications activity, each part of the transaction must be treated as a separate transaction. Gross income is then allocated to each communications activity transaction and each non-communications activity transaction to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in each such activity. Moreover, the Treasury Department and the IRS suggested in the preamble to the proposed regulations that allocations of gross income should be based generally on section 482 principles. One commentator stated that the complexities inherent in allocating income, based on section 482 principles, between the separated transactions are significant.

While the final regulations were not changed in response to this comment, as in the case of allocations for space and ocean income, the Treasury Department and the IRS believe that some clarification is warranted. In suggesting the use of section 482 principles as a guide, the Treasury Department and the IRS intend for taxpayers to adopt a reasonable approach to the allocations required in this area. Taxpayers know their businesses and will generally be in the best position to fashion a reasonable method that most reliably reflects the relative value of functions performed, resources employed, and risks assumed in different locations. In the preamble to the proposed regulations, the Treasury Department and the IRS solicited comments on alternative methods of allocation for particular industries and criteria that could be used to evaluate the reasonableness of such methods. No such comments were received. One commentator noted, however, that the proposed regulations perhaps reflected

what taxpayers in these industries have already been doing in order to determine the character and source of their communications income. Consequently, as in the case of space and ocean income, the Treasury Department and the IRS believe that allocations of gross income based on functions performed, resources employed, and risks assumed are appropriate in these circumstances.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment pursuant to that Order is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules provided in these regulations principally affect large multinational corporations that pay foreign taxes on income derived from substantial foreign operations and that use these and any other applicable source rules in determining their foreign tax credit. Accordingly, a Regulatory Flexibility Act assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is H. Michael Huynh of the Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.863–8 also issued under 26 U.S.C. 863(a), (b) and (d). * * *

Section 1.863–9 also issued under 26 U.S.C. 863(a), (d) and (e). * * *

■ **Par. 2.** Section 1.863–3 is amended by:

■ 1. Adding a sentence after the first sentence in paragraph (a)(1).

■ 2. Adding a sentence at the end of paragraph (c)(1)(i)(A).

■ 3. Adding a sentence after the first sentence in paragraph (c)(2).

The additions read as follows:

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

(a) * * *

(1) * * * To determine the source of income from sales of property produced by the taxpayer, when the property is either produced in whole or in part in space or on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States (in international water), or is sold in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8. * * *

(c) * * *

(1) * * *

(i) * * *

(A) * * * For rules regarding the source of income when production takes place, in whole or in part, in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8.

* * * * *

(2) * * * Notwithstanding any other provision, for rules regarding the source of income when a sale takes place in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8. * * *

* * * * *

■ **Par. 3.** Sections 1.863–8 and 1.863–9 are added to read as follows:

§ 1.863–8 Source of income derived from space and ocean activity under section 863(d).

(a) *In general.* Income of a United States or a foreign person derived from space and ocean activity (space and ocean income) is sourced under the rules of this section, notwithstanding any other provision, including sections 861, 862, 863, and 865. A taxpayer will not be considered to derive income from space or ocean activity, as defined in paragraph (d) of this section, if such activity is performed by another person, subject to the rules for the treatment of consolidated groups in § 1.1502–13.

(b) *Source of gross income from space and ocean activity*—(1) *Space and ocean income derived by a United States person.* Space and ocean income derived by a United States person is income from sources within the United States. However, space and ocean income derived by a United States person is income from sources without the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

(2) *Space and ocean income derived by a foreign person*—(i) *In general.* Space and ocean income derived by a person other than a United States person is income from sources without the United States, except as otherwise provided in this paragraph (b)(2).

(ii) *Space and ocean income derived by a controlled foreign corporation.* Space and ocean income derived by a controlled foreign corporation within the meaning of section 957 (CFC) is income from sources within the United States. However, space and ocean income derived by a CFC is income from sources without the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

(iii) *Space and ocean income derived by foreign persons engaged in a trade or business within the United States.* Space and ocean income derived by a foreign person (other than a CFC) engaged in a trade or business within the United States is income from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

(3) *Source rules for income from certain sales of property*—(i) *Sales of purchased property.* When a taxpayer sells purchased property in space or international water, the source of gross income from the sale generally will be determined under paragraph (b)(1) or (2) of this section, as applicable. However, if such property is inventory property within the meaning of section 1221(a)(1) (inventory property) and is sold for use, consumption, or disposition outside space and international water, the

source of income from the sale will be determined under § 1.861–7(c).

(ii) *Sales of property produced by the taxpayer*—(A) *General.* If the taxpayer both produces property and sells such property, the taxpayer must allocate gross income from such sales between production activity and sales activity under the 50/50 method. Under the 50/50 method, one-half of the taxpayer's gross income will be considered income allocable to production activity, and the source of that income will be determined under paragraph (b)(3)(ii)(B) or (C) of this section. The remaining one-half of such gross income will be considered income allocable to sales activity, and the source of that income will be determined under paragraph (b)(3)(ii)(D) of this section.

(B) *Production only in space or international water, or only outside space and international water.* When production occurs only in space or international water, income allocable to production activity is sourced under paragraph (b)(1) or (2) of this section, as applicable. When production occurs only outside space and international water, income allocable to production activity is sourced under § 1.863–3(c)(1).

(C) *Production both in space or international water and outside space and international water.* When property is produced both in space or international water and outside space and international water, gross income allocable to production activity must be allocated to production occurring in space or international water and production occurring outside space and international water. Such gross income is allocated to production activity occurring in space or international water to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in space or international water. The balance of such gross income is allocated to production activity occurring outside space and international water. The source of gross income allocable to production activity in space or international water is determined under paragraph (b)(1) or (2) of this section, as applicable. The source of gross income allocated to production activity occurring outside space and international water is determined under § 1.863–3(c)(1).

(D) *Source of income allocable to sales activity.* When property produced by the taxpayer is sold outside space and international water, the source of gross income allocable to sales activity will be determined under §§ 1.861–7(c) and 1.863–3(c)(2). When property produced by the taxpayer is sold in space or international water, the source of gross income allocable to sales activity generally will be determined under paragraph (b)(1) or (2) of this section, as applicable. However, if such property is inventory property within the meaning of section 1221(a)(1) and is sold in space or international water for use, consumption, or disposition outside space, international water, and the United States, the source of gross income allocable to sales activity will be determined under §§ 1.861–7(c) and 1.863–3(c)(2).

(4) *Special rule for determining the source of gross income from services.* To the extent a transaction characterized as the performance of a service constitutes a space or ocean activity, as determined under paragraph (d)(2)(ii) of this section, the source of gross income derived from such transaction is determined under paragraph (b)(1) or (2) of this section.

(5) *Special rule for determining source of income from communications activity (other than income from international communications activity).* Space and ocean activity, as defined in paragraph (d) of this section, includes activity that occurs in space or international water that is characterized as a communications activity as defined in § 1.863–9(h)(1) (other than international communications activity). The source of space and ocean income that is also communications income as defined in § 1.863–9(h)(2) (but not space/ocean communications income as defined in § 1.863–9(h)(3)(v)) is determined under the rules of § 1.863–9(c), (d), and (f), as applicable, rather than under paragraph (b) of this section. The source of space and ocean income that is also space/ocean communications income as defined in § 1.863–9(h)(3)(v) is determined under the rules of paragraph (b) of this section. See § 1.863–9(e).

(c) *Taxable income.* When a taxpayer allocates gross income under paragraph (b)(1), (b)(2), (b)(3)(ii)(C), or (b)(4) of this section, the taxpayer must allocate expenses, losses, and other deductions as prescribed in §§ 1.861–8 through 1.861–14T to the class or classes of gross income that include the income so allocated in each case. A taxpayer must then apply the rules of §§ 1.861–8 through 1.861–14T to apportion properly amounts of expenses, losses, and other deductions so allocated to such gross income between gross income from sources within the United States and gross income from sources without the United States.

(d) *Space and ocean activity*—(1) *Definition*—(i) *Space activity.* In general, space activity is any activity conducted in space. For purposes of this section, space means any area not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, and not in international water. For purposes of determining space activity, the Commissioner may separate parts of a single transaction into separate transactions or combine separate transactions as part of a single transaction. Paragraph (d)(3) of this section lists specific exceptions to the general definition of space activity. Activities that constitute space activity include but are not limited to—

(A) Performance and provision of services in space, as defined in paragraph (d)(2)(ii) of this section;

(B) Leasing of equipment located in space, including spacecraft (for example, satellites) or transponders located in space;

(C) Licensing of technology or other intangibles for use in space;

(D) Production, processing, or creation of property in space, as defined in paragraph (d)(2)(i) of this section;

(E) Activity occurring in space that is characterized as communications activity (other than international communications activity) under § 1.863–9(h)(1);

(F) Underwriting income from the insurance of risks on activities that produce space income; and

(G) Sales of property in space (see § 1.861–7(c)).

(ii) *Ocean activity.* In general, ocean activity is any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States (collectively, in international water). For purposes of determining ocean activity, the Commissioner may separate parts of a single transaction into separate transactions or combine separate transactions as part of a single transaction. Paragraph (d)(3) of this section lists specific exceptions to the general definition of ocean activity. Activities that constitute ocean activity include but are not limited to—

(A) Performance and provision of services in international water, as defined in paragraph (d)(2)(ii) of this section;

(B) Leasing of equipment located in international water, including underwater cables;

(C) Licensing of technology or other intangibles for use in international water;

(D) Production, processing, or creation of property in international water, as defined in paragraph (d)(2)(i) of this section;

(E) Activity occurring in international water that is characterized as communications activity (other than international communications activity) under § 1.863–9(h)(1);

(F) Underwriting income from the insurance of risks on activities that produce ocean income;

(G) Sales of property in international water (see § 1.861–7(c));

(H) Any activity performed in Antarctica;

(I) The leasing of a vessel that does not transport cargo or persons for hire between ports-of-call (for example, the leasing of a vessel to engage in research activities in international water); and

(J) The leasing of drilling rigs, extraction of minerals, and performance and provision of services related thereto, except as provided in paragraph (d)(3)(ii) of this section.

(2) *Determining a space or ocean activity*—(i) *Production of property in space or international water.* For purposes of this section, production activity means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages property within the meaning of section 864(a) and § 1.864–1.

(ii) *Special rule for performance of services*—(A) *General.* Except as provided in paragraph (d)(2)(ii)(B) of this section, if a transaction is characterized as the performance of a service, then such service will be treated as a space or ocean activity in its entirety when any part of the service is performed in space or international water. Services are performed in space or international water if functions are performed, resources are employed, or risks are assumed in space or international water, regardless of whether performed by personnel, equipment, or otherwise.

(B) *Exception to the general rule.* If the taxpayer can demonstrate the value of the service attributable to performance occurring in space or international water, and the value of the service attributable to performance occurring outside space and international water, then such service will be treated as space or ocean activity only to the extent of the activity performed in space or international water. The value of the service is attributable to performance occurring in space or international water to the extent the performance of the service, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in space or international water. In addition, if the taxpayer can demonstrate, based on all the facts and circumstances, that the value of the service attributable to performance in space and international water is de minimis, such service will not be treated as space or ocean activity.

(3) *Exceptions to space or ocean activity.* Space or ocean activity does not include the following types of activities:

(i) Any activity giving rise to transportation income as defined in section 863(c).

(ii) Any activity with respect to mines, oil and gas wells, or other natural deposits, to the extent the mines, wells, or natural deposits are located within the jurisdiction (as recognized by the United States) of any country, including the United States and its possessions.

(iii) Any activity giving rise to international communications income as defined in § 1.863–9(h)(3)(ii).

(e) *Treatment of partnerships.* This section is applied at the partner level.

(f) *Examples.* The following examples illustrate the rules of this section:

Example 1. Space activity—activity occurring on land and in space—(i) Facts. S, a United States person, owns satellites in orbit. S leases one of its satellites to A. S, as lessor, will not operate the satellite. Part of S's performance as lessor in this transaction occurs on land. Assume that the combination of S's activities is characterized as the lease of equipment.

(ii) *Analysis.* Because the leased equipment is located in space, the transaction is defined in its entirety as space activity under paragraph (d)(1)(i) of this section. Income derived from the lease will be sourced under paragraph (b)(1) of this section. Under paragraph (b)(1) of this section, S's space income is sourced outside the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

Example 2. Space activity—(i) *Facts.* X is an Internet service provider. X offers a service that permits a customer (C) to connect to the Internet via a telephone call, initiated by the modem of C's personal computer, to a control center. X transmits information requested by C to C's personal computer, in part using satellite capacity leased by X from S. X performs the uplink and downlink functions. X charges its customers a flat monthly fee. Assume that neither X nor S derive international communications income within the meaning of § 1.863–9(h)(3)(ii). In addition, assume that X is able to demonstrate, pursuant to paragraph (d)(2)(ii)(B) of this section, the extent to which the value of the service is attributable to functions performed, resources employed, and risks assumed in space.

(ii) *Analysis.* Under paragraph (d)(2)(ii) of this section, the service performed by X constitutes space activity to the extent the value of the service is attributable to functions performed, resources employed, and risks assumed in space. To the extent the service performed by X constitutes space activity, the source of X's income from the service transaction is determined under paragraph (b) of this section. To the extent the service performed by X does not constitute space or ocean activity, the source of X's income from the service is determined under sections 861, 862, and 863, as applicable. To the extent that X derives space and ocean income that is also communications income within the meaning of § 1.863–9(h)(2), the source of X's income is determined under paragraph (b) of this section and § 1.863–9(c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section. S derives space and ocean income that is also communications income within the meaning of § 1.863–9(h)(2), and the source of S's income is therefore determined under paragraph (b) of this section and § 1.863–9(c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section.

Example 3. Services as space activity—de minimis value attributable to performance occurring in space—(i) *Facts.* R owns a retail outlet in the United States. R engages S to provide a security system for R's premises. S operates its security system by transmitting images from R's premises directly to a satellite, and from the satellite to a group of S employees located in Country B, who monitor the premises by viewing the transmitted images. The satellite is used as a medium of delivery and not as a method of surveillance. O provides S with transponder capacity on O's satellite, which S uses to transmit those images. Assume that S's transaction with R is characterized as the performance of a service. Assume that O's provision of transponder capacity is also viewed as the provision of a service. Assume also that S is able to demonstrate, pursuant to § 1.863–9(h)(1), that the value of the transaction with R attributable to communications activities is de minimis.

(ii) *Analysis.* S derives income from providing monitoring services. S can demonstrate, pursuant to paragraph (d)(2)(ii) of this section, that based on all the facts and circumstances, the value of S's service transaction attributable to performance in space is de minimis. Thus, S is not treated as engaged in a space activity, and none of S's income from the service transaction is space income. In addition, because S demonstrates that the value of the transaction with R attributable to communications activities is de minimis, S is not required under § 1.863–9(h)(1)(ii) to treat the transaction as separate communications and non-communications transactions, and none of S's gross income from the transaction is treated as communications income within the meaning of § 1.863–9(h)(2). O's provision of transponder capacity is viewed as the provision of a service. Based on all the facts and circumstances, the value of O's service transaction attributable to performance

in space is not de minimis. Thus, O's activity will be considered space activity, pursuant to paragraph (d)(2)(ii) of this section, to the extent the value of the services transaction is attributable to performance in space (unless O's activity in space is international communications activity). To the extent that O derives communications income, the source of such income is determined under paragraph (b) of this section and § 1.863–9(b), (c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section. R does not derive any income from space activity.

Example 4. Space activity—(i) *Facts.* L, a domestic corporation, offers programming and certain other services to customers located both in the United States and in foreign countries. Assume that L's provision of programming and other services in this *Example* 4 is characterized as the provision of a service, and that no part of the service transaction occurs in space or international water. Assume that the delivery of the programming constitutes a separate transaction also characterized as the performance of a service. L uses satellite capacity acquired from S to deliver the programming service directly to customers' television sets. L performs the uplink and downlink functions, so that part of the value of the delivery transaction derives from functions performed and resources employed in space. Assume that these contributions to the value of the delivery transaction occurring in space are not considered de minimis under paragraph (d)(2)(ii)(B) of this section. Customer C pays L to provide and deliver programming to C's residence in the United States. Assume S's provision of satellite capacity in this *Example 4* is viewed as the provision of a service, and also that S does not derive international communications income within the meaning of § 1.863–9(h)(3)(ii).

(ii) *Analysis.* S's activity will be considered space activity. To the extent that S derives space and ocean income that is also communications income under § 1.863–9(h)(2), the source of S's income is determined under paragraph (b) of this section and § 1.863–9(c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section. On these facts, L's activities are treated as two separate service transactions: the provision of programming (and other services), and the delivery of programming. L's income derived from provision of programming and other services is not income derived from space activity. L's delivery of programming and other services is considered space activity, pursuant to paragraph (d)(2)(ii) of this section, to the extent the value of the delivery transaction is attributable to performance in space. To the extent that the delivery of programming is treated as a space activity, the source of L's income derived from the delivery transaction is determined under paragraph (b)(1) of this section, as provided in paragraph (b)(4) of this section. To the extent that L derives space and ocean income that is also communications income within the meaning of § 1.863–9(h)(2), the source of such income is determined under paragraph (b) of this section and § 1.863–9(b), (c), (d), (e), and (f), as applicable, as provided in paragraph (b)(5) of this section.

Example 5. Space activity—(i) *Facts.* The facts are the same as in Example 4, except that L does not deliver the programming service directly but instead engages R, a domestic corporation specializing in content delivery, to deliver by transmission its programming. For all portions of a transmission which require satellite capacity, R, in turn, contracts out such functions to S. S performs the uplink and downlink functions, so that part of the value of the delivery transaction derives from functions performed and resources employed in space.

(ii) *Analysis.* L's activity will not be considered space activity because none of L's activity occurs in space. Thus, L does not derive any space and ocean income. L does, however, derive communications income within the meaning of § 1.863–9(h)(2). This is the case even though L does not perform the transmission function because L is paid by Customer C to transmit, and bears the risk of transmitting, the communications or data. To the extent that L's activity consists in part of non-de minimis communications and non-de minimis non-communications activity, each part of the transaction must be treated as a separate transaction and gross income is allocated accordingly under § 1.863–9(h)(1)(ii). In addition, L must also allocate expenses, losses, and other deductions, for example, payments to R, to the class or classes of gross income that include the income so allocated. R's activity will not be considered space activity. Since R contracts out all of the functions involving satellite capacity to S, no part of R's activity occurs in space. Thus, R does not derive any space and ocean income. R does, however, derive communications income within the meaning of § 1.863–9(h)(2). This is the case even though R does not perform the transmission function because R is paid by L to transmit, and bears the risk of transmitting, the communications or data. S's activity will be considered space activity. To the extent that S derives space and ocean income that is also communications income within the meaning of § 1.863–9(h)(2), the source of such income is determined under paragraph (b) of this section and § 1.863–9(b), (c), (d), (e), and (f), as applicable, as provided in paragraph (b)(5) of this section.

Example 6. Space activity—treatment of land activity—(i) *Facts.* S, a United States person, offers remote imaging products and services to its customers. In year 1, S uses its satellite's remote sensors to gather data on certain geographical terrain. In year 3, C, a construction development company, contracts with S to obtain a satellite image of an area for site development work. S pulls data from its archives and transfers to C the images gathered in year 1, in a transaction that is characterized as a sale of the data. S's rights, title, and interest in the data pass to C in the United States. Before transferring the images to C, S uses computer software in its land-based office to enhance the images so that the images can be used.

(ii) *Analysis.* The collection of data and creation of images in space is characterized as the creation of property in space. Because S both produces and sells the data, S must allocate gross income from the sale of the data between production activity and sales activity under the 50/50 method of paragraph (b)(3)(ii)(A). The source of S's income allocable to production activity is determined under paragraph (b)(3)(ii)(C) of this section because production activities occur both in space and on land. The source of S's income attributable to sales activity is determined under paragraph (b)(3)(ii)(D) of this section (by reference to § 1.863–3(c)(2)) as U.S. source income because S's rights, title, and interest in the data pass to C in the United States.

Example 7. Use of intangible property in space—(i) *Facts.* X acquires a license to use a particular satellite slot or orbit, which X sublicenses to C. C pays X a royalty.

(ii) *Analysis.* Because the royalty is paid for the right to use intangible property in space, the source of the royalty paid by C to X is determined under paragraph (b) of this section.

Example 8. Performance of services—(i) *Facts.* E, a domestic corporation, operates satellites with sensing equipment that can determine how much heat and light particular plants emit and reflect. Based on the data, E will provide F, a U.S. farmer, a report analyzing the data, which F will use in growing crops. E analyzes the data from offices located in the United States. Assume that E's combined activities are characterized as the performance of services.

(ii) *Analysis.* Based on all the facts and circumstances, the value of E's service transaction attributable to performance in space is not de minimis. Thus, E's activities will be considered space activities, pursuant to paragraph (d)(2)(ii) of this section, to the extent the value of E's service transaction is attributable to performance in space. To the extent E's service transaction constitutes a space activity, the source of E's income derived from the service transaction will be determined under paragraph (b)(4) of this section, by reference to paragraph (b)(1) of this section. To the extent that E's service transaction does not constitute a space or ocean activity, the source of E's income derived from the service transaction is determined under sections 861, 862, and 863, as applicable.

Example 9. Separate transactions—(i) Facts. The same facts as Example 8, except that E provides the raw data to F in a transaction characterized as a sale of a copyrighted article. In addition, E provides an analysis in the form of a report to F. The price F pays E for the raw data is separately stated.

(ii) *Analysis.* To the extent that the provision of raw data and the analysis of the data are each treated as separate transactions, the source of income from the production and sale of data is determined under paragraph (b)(3)(ii) of this section. The provision of services would be analyzed in the same manner as in *Example 8.*

Example 10. Sale of property in international water—(i) *Facts.* T purchased and owns transatlantic cable that lies in international water. T sells the cable to B, with T's rights, title, and interest in the cable

passing to B in international water. Assume that the transatlantic cable is not inventory property within the meaning of section 1221(a)(1).

(ii) *Analysis.* Because T's rights, title, and interest in the property pass to B in international water, the sale takes place in international water under § 1.861–7(c), and the sale transaction is ocean activity under paragraph (d)(1)(ii) of this section. The source of T's sales income is determined under paragraph (b)(3)(i) of this section, by reference to paragraph (b)(1) or (2) of this section.

Example 11. Sale of property in space—(i) *Facts.* S, a United States person, manufactures a satellite in the United States and sells it to a customer who is not a United States person. S's rights, title, and interest in the satellite pass to the customer in space.

(ii) *Analysis.* Because S's rights, title, and interest in the satellite pass to the customer in space, the sale takes place in space under § 1.861–7(c), and the sale transaction is space activity under paragraph (d)(1)(i) of this section. The source of income derived from the sale of the satellite in space is determined under paragraph (b)(3)(ii) of this section, with the source of income allocable to production activity determined under paragraphs (b)(3)(ii)(A) and (B) of this section, and the source of income allocable to sales activity determined under paragraphs (b)(3)(ii)(A) and (D) of this section. Under paragraph (b)(1) of this section, S's space income is sourced outside the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

Example 12. Sale of property in space—(i) *Facts.* S has a right to operate from a particular position (satellite slot or orbit) in space. S sells the right to operate from that position to P. Assume that the sale of the satellite slot is characterized as a sale of property and that S's rights, title, and interest in the satellite slot pass to P in space.

(ii) *Analysis.* The sale of the satellite slot takes place in space under § 1.861–7(c) because S's rights, title, and interest in the satellite slot pass to P in space. The sale of the satellite slot is space activity under paragraph (d)(1)(i) of this section, and income or gain from the sale is sourced under paragraph (b)(3)(i) of this section, by reference to paragraph (b)(1) or (2) of this section.

Example 13. Source of income of a foreign person—(i) *Facts.* FP, a foreign corporation that is not a CFC, derives income from the operation of satellites. FP operates ground stations in the United States and in foreign Country FC. Assume that FP is considered engaged in a trade or business within the United States based on FP's operation of the ground station in the United States.

(ii) *Analysis.* Under paragraph (b)(2)(iii) of this section, FP's space income is sourced in the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

Example 14. Source of income of a foreign person—(i) *Facts.* FP, a foreign corporation that is not a CFC, operates remote sensing satellites in space to collect data and images for its customers. FP uses an independent agent, A, in the United States who provides marketing, order-taking, and other customer service functions. Assume that FP is considered engaged in a trade or business within the United States based on A's activities on FP's behalf in the United States.

(ii) *Analysis.* Under paragraph (b)(2)(iii) of this section, FP's space income is sourced in the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

(g) *Reporting and documentation requirements*—(1) *In general.* A taxpayer making an allocation of gross income under paragraph (b)(1), (b)(2), (b)(3)(ii)(C), or (b)(4) of this section must satisfy the requirements in paragraphs (g)(2), (3), and (4) of this section.

(2) *Required documentation.* In all cases, a taxpayer must prepare and maintain documentation in existence when its return is filed regarding the allocation of gross income and allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must make available such documentation within 30 days upon request.

(3) *Access to software.* If the taxpayer or any third party used any computer software, within the meaning of section 7612(d), to allocate gross income, or to allocate or apportion expenses, losses, and other deductions, the taxpayer must make available upon request—

(i) Any computer software executable code, within the meaning of section 7612(d), used for such purposes, including an executable copy of the version of the software used in the preparation of the taxpayer's return (including any plug-ins, supplements, etc.) and a copy of all related electronic data files. Thus, if software subsequently is upgraded or supplemented, a separate executable copy of the version used in preparing the taxpayer's return must be retained;

(ii) Any related computer software source code, within the meaning of section 7612(d), acquired or developed by the taxpayer or a related person, or primarily for internal use by the taxpayer or such person rather than for commercial distribution; and

(iii) In the case of any spreadsheet software or similar software, any formulae or links to supporting worksheets.

(4) *Use of allocation methodology.* In general, when a taxpayer allocates gross income under paragraph (b)(1), (b)(2), (b)(3)(ii)(C), or (b)(4) of this section, it does so by making the allocation on a timely filed original return (including extensions). However, a taxpayer will be permitted to make changes to such allocations made on its original return with respect to any taxable year for which the statute of limitations has not closed as follows:

(i) In the case of a taxpayer that has made a change to such allocations prior to the opening conference for the audit of the taxable year to which the allocation relates or who makes such a change within 90 days of such opening conference, if the IRS issues a written information document request asking the taxpayer to provide the documents and such other information described in paragraphs (g)(2) and (3) of this section with respect to the changed allocations and the taxpayer complies with such request within 30 days of the request, then the IRS will complete its examination, if any, with respect to the allocations for that year as part of the current examination cycle. If the taxpayer does not provide the documents and information described in paragraphs (g)(2) and (3) of this section within 30 days of the request, then the procedures described in paragraph (g)(4)(ii) of this section shall apply.

(ii) If the taxpayer changes such allocations more than 90 days after the opening conference for the audit of the taxable year to which the allocations relate or the taxpayer does not provide the documents and information with respect to the changed allocations as requested in accordance with paragraphs (g)(2) and (3) of this section, then the IRS will, in a separate cycle, determine whether an examination of the taxpayer's allocations is warranted and complete any such examination. The separate cycle will be worked as resources are available and may not have the same estimated completion date as the other issues under examination for the taxable year. The IRS may ask the taxpayer to extend the statute of limitations on assessment and collection for the taxable year to permit examination of the taxpayer's method of allocation, including an extension limited, where appropriate, to the taxpayer's method of allocation.

(h) *Effective date.* This section applies to taxable years beginning on or after December 27, 2006.

§ 1.863–9 Source of income derived from communications activity under section 863(a), (d), and (e).

(a) *In general.* Income of a United States or a foreign person derived from each type of communications activity, as defined in paragraph (h)(3) of this

section, is sourced under the rules of this section, notwithstanding any other provision including sections 861, 862, 863, and 865. Notwithstanding that a communications activity would qualify as space or ocean activity under section 863(d) and the regulations thereunder, the source of income derived from such communications activity is determined under this section, and not under section 863(d) and the regulations thereunder, except to the extent provided in § 1.863–8(b)(5).

(b) *Source of international communications income—(1) International communications income derived by a United States person.* Income derived from international communications activity (international communications income) by a United States person is one-half from sources within the United States and one-half from sources without the United States.

(2) *International communications income derived by foreign persons*—(i) *In general.* International communications income derived by a person other than a United States person is, except as otherwise provided in this paragraph (b)(2), wholly from sources without the United States.

(ii) *International communications income derived by a controlled foreign corporation.* International communications income derived by a controlled foreign corporation within the meaning of section 957 (CFC) is one-half from sources within the United States and one-half from sources without the United States.

(iii) *International communications income derived by foreign persons with a fixed place of business in the United States.* International communications income derived by a foreign person, other than a CFC, that is attributable to an office or other fixed place of business of the foreign person in the United States is from sources within the United States. The principles of section 864(c)(5) apply in determining whether a foreign person has an office or fixed place of business in the United States. See § 1.864–7. International communications income is attributable to an office or other fixed place of business to the extent of functions performed, resources employed, or risks assumed by the office or other fixed place of business.

(iv) *International communications income derived by foreign persons engaged in a trade or business within the United States.* International communications income derived by a foreign person (other than a CFC) engaged in a trade or business within the United States is income from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

(c) *Source of U.S. communications income.* Income derived by a United States or foreign person from U.S. communications activity is from sources within the United States.

(d) *Source of foreign communications income.* Income derived by a United States or foreign person from foreign communications activity is from sources without the United States.

(e) *Source of space/ocean communications income.* The source of income derived by a United States or foreign person from space/ocean communications activity is determined under section 863(d) and the regulations thereunder.

(f) *Source of communications income when taxpayer cannot establish the two points between which the taxpayer is paid to transmit the communication.* Income derived by a United States or foreign person from communications activity, when the taxpayer cannot establish the two points between which the taxpayer is paid to transmit the communication as required in paragraph (h)(3)(i) of this section, is from sources within the United States.

(g) *Taxable income.* When a taxpayer allocates gross income under paragraph (b)(2)(iii), (b)(2)(iv), or (h)(1)(ii) of this section, the taxpayer must allocate expenses, losses, and other deductions as prescribed in §§ 1.861–8 through 1.861–14T to the class or classes of gross income that include the income so allocated in each case. A taxpayer must then apply the rules of §§ 1.861–8 through 1.861–14T properly to apportion amounts of expenses, losses, and other deductions so allocated to such gross income between gross income from sources within the United States and gross income from sources without the United States. For amounts of expenses, losses, and other deductions allocated to gross income derived from international communications activity, when the source of income is determined under the 50/50 method of paragraph (b)(1) or (b)(2)(ii) of this section, taxpayers generally must apportion expenses, losses, and other deductions between sources within the United States and sources without the United States pro rata based on the relative amounts of gross income from sources within the United States and gross income from sources without the United States. However, the preceding sentence shall not apply to research and experimental expenditures qualifying under § 1.861–17, which are to be allocated and apportioned under the rules of that section.

(h) *Communications activity and income derived from communications activity*—(1) *Communications activity*—(i) *General rule.* For purposes of this part, *communications activity* consists solely of the delivery by transmission of communications or data (communications). Delivery of communications other than by transmission (for example, by delivery of physical packages and letters) is not communications activity within the meaning of this section. Communications activity also includes the provision of capacity to transmit communications. Provision of content or any other additional service provided along with, or in connection with, a non-de minimis communications activity must be treated as a separate non-communications activity unless de minimis. Communications activity or non-communications activity will be treated as de minimis to the extent, based on the facts and circumstances, the value attributable to such activity is *de minimis*.

(ii) *Separate transaction.* To the extent that a taxpayer's transaction consists in part of non-de minimis communications activity and in part of non-de minimis non-communications activity, each such part of the transaction must be treated as a separate transaction. Gross income is allocated to each such communications activity transaction and non-communications activity transaction to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in each such activity.

(2) *Income derived from communications activity. Income derived from communications activity* (communications income) is income derived from the delivery by transmission of communications, including income derived from the provision of capacity to transmit communications. Income may be considered derived from a communications activity even if the taxpayer itself does not perform the transmission function, but in all cases, the taxpayer derives communications income only if the taxpayer is paid to transmit, and bears the risk of transmitting, the communications.

(3) *Determining the type of communications activity*—(i) *In general.* Whether income is derived from international communications activity, U.S. communications activity, foreign communications activity, or space/

ocean communications activity is determined by identifying the two points between which the taxpayer is paid to transmit the communication. The taxpayer must establish the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication. Whether the taxpayer contracts out part or all of the transmission function is not relevant. A taxpayer may satisfy the requirement that the taxpayer establish the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication by using any consistently applied reasonable method to establish one or both endpoints. In evaluating the reasonableness of such method, consideration will be given to all the facts and circumstances, including whether the endpoints would otherwise be identifiable absent this reasonable method provision and the reliability of the data. Depending on the facts and circumstances, methods based on, for example, records of port or transport charges, customer billing records, a satellite footprint, or records of termination fees made pursuant to an international settlement agreement may be reasonable. In addition, practices used by taxpayers to classify or categorize certain communications activity in connection with preparation of statements and analyses for the use of management, creditors, minority shareholders, joint ventures, or other parties or governmental agencies in interest may be reliable indicators of the reasonableness of the method chosen, but need not be accorded conclusive weight by the Commissioner. In all cases, the method chosen to establish the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication must be supported by sufficient documentation to permit verification by the Commissioner.

(ii) *Income derived from international communications activity. Income derived by a taxpayer from international communications activity* (international communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit—

(A) Between a point in the United States and a point in a foreign country (or a possession of the United States); or

(B) Foreign-originating communications (communications with a beginning point in a foreign country or a possession of the United States) from a point in space or international water to a point in the United States.

(iii) *Income derived from U.S. communications activity.* Income derived by a taxpayer from U.S. communications activity (U.S. communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit—

(A) Between two points in the United States; or

(B) Between the United States and a point in space or international water, except as provided in paragraph (h)(3)(ii)(B) of this section.

(iv) *Income derived from foreign communications activity. Income derived by a taxpayer from foreign communications activity* (foreign communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit—

(A) Between two points in a foreign country or countries (or a possession or possessions of the United States);

(B) Between a foreign country and a possession of the United States; or

(C) Between a foreign country (or a possession of the United States) and a point in space or international water.

(v) *Income derived from space/ocean communications activity. Income derived by a taxpayer from space/ocean communications activity* (space/ocean communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit between a point in space or international water and another point in space or international water.

(i) *Treatment of partnerships.* This section is applied at the partner level.

(j) *Examples.* The following examples illustrate the rules of this section:

Example 1. Income derived from non-communications activity—remote data base access—(i) *Facts.* D provides its customers in various foreign countries with access to its data base, which contains information on certain individuals' health care insurance coverage. Customer C obtains access to D's data base by placing a call to D's telephone number. Assume that C's telephone service, used to access D's data base, is provided by a third party, and that D assumes no responsibility for the transmission of the information via telephone.

(ii) *Analysis.* D is not paid to transmit communications and does not derive income from communications activity within the meaning of paragraph (h)(2) of this section. Rather, D derives income from provision of content or provision of services to its customers. Therefore, the rules of this section do not apply to determine the source of D's income.

Example 2. Income derived from U.S. communications activity—U.S. portion of international communication—(i) *Facts.* TC, a local telephone company, receives an access fee from an international carrier for picking up a call from a local telephone customer and delivering the call to a U.S. point of presence (POP) of the international carrier. The international carrier picks up the call from its U.S. POP and delivers the call to a foreign country.

(ii) *Analysis.* TC is not paid to carry the transmission between the United States and a foreign country. TC is paid to transmit a communication between two points in the United States. TC derives U.S. communications income as defined in paragraph (h)(3)(iii) of this section, which is sourced under paragraph (c) of this section as U.S. source income.

Example 3. Income derived from international communications activity—underwater cable—(i) *Facts.* TC, a domestic corporation, owns an underwater fiber optic cable. Pursuant to contracts, TC makes available to its customers capacity to transmit communications via the cable. TC's customers then solicit telephone customers and arrange to transmit the telephone customers' calls. The cable runs in part through U.S. waters, in part through international waters, and in part through foreign country waters.

(ii) Analysis. TC derives international communications income as defined in paragraph (h)(3)(ii) of this section because TC is paid to make available capacity to transmit communications between the United States and a foreign country. Because TC is a United States person, TC's international communications income is sourced under paragraph (b)(1) of this section as one-half from sources within the United States and one-half from sources without the United States.

Example 4. Income derived from international communications activity—satellite—(i) *Facts.* S, a United States person, owns satellites in orbit and uplink facilities in Country X, a foreign country. B, a resident of Country X, pays S to deliver B's programming from S's uplink facility, located in Country X, to a downlink facility in the United States owned by C, a customer of B.

(ii) *Analysis.* S derives international communications income under paragraph (h)(3)(ii) of this section because S is paid to transmit the communications between a beginning point in a foreign country and an endpoint in the United States. Because S is a United States person, the source of S's international communications income is determined under paragraph (b)(1) of this section as one-half from sources within the United States and one-half from sources without the United States.

Example 5. The paid-to-do rule—foreign communications via domestic route—(i)

Facts. TC is paid to transmit communications from Toronto, Canada, to Paris, France. TC transmits the communications from Toronto to New York. TC pays another communications company, IC, to transmit the communications from New York to Paris.

(ii) *Analysis.* Under the *paid-to-do* rule of paragraph (h)(3)(i) of this section, TC derives foreign communications income under paragraph (h)(3)(iv) of this section because TC is paid to transmit communications between two points in foreign countries, Toronto and Paris. Under paragraph (h)(3)(i) of this section, the character of TC's communications activity is determined without regard to the fact that TC pays IC to transmit the communications for some portion of the delivery path. IC has international communications income under paragraph (h)(3)(ii) of this section because IC is paid to transmit the communications between a point in the United States and a point in a foreign country.

Example 6. The paid-to-do rule—domestic communication via foreign route—(i) *Facts.* TC is paid to transmit a call between two points in the United States, but routes the call through Canada.

(ii) *Analysis.* Under paragraph (h)(3)(i) of this section, the character of income derived from communications activity is determined by the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communications, without regard to the path of the transmission between those two points. Thus, under paragraph (h)(3)(iii) of this section, TC derives income from U.S. communications activity because it is paid to transmit the communications between two U.S. points.

Example 7. The paid-to-do rule—foreign-originating communications—(i) *Facts.* Under an international settlement agreement, G, a Country X international carrier, pays T to receive all calls originating in Country X that are bound for the United States and to terminate such calls in the United States. Due to Country X legal restrictions, the international settlement agreement specifies that G carries the transmission to a point outside the territory of Country X and that T carries the foreign-originating transmission from such point to the destined point in the United States. T, in turn, contracts out with another communications company, S, to transmit the U.S. portion of the communications. Tracing and identifying the endpoints of each transmission is not possible or practical. T does, however, keep records of termination fees received from G for terminating the foreign-originating calls.

(ii) *Analysis.* T derives communications income as defined in paragraph (h)(2) of this section. Based on all the facts and circumstances, T can establish that T is paid to transmit, and bears the risk of transmitting, foreign-originating calls from a point in space or international water to a point in the United States using a reasonable method to establish the endpoints, assuming that this method is consistently applied. In this case, T can reasonably establish that T is paid to receive foreign-originating calls and terminate such calls in the United States based on the records of termination fees pursuant to an international settlement agreement. Under paragraph (h)(3)(ii)(B) of this section, a taxpayer derives income from international communications activity when the taxpayer is paid to transmit foreign-originating communications from space or international water to the United States. Thus, under paragraph (h)(3)(ii)(B) of this section, T derives income from international communications. If, based on all the facts and circumstances, T could reasonably trace and identify the endpoints, then T would have to directly establish that each call originated in a foreign country. Assuming T is able to do so, the rest of the analysis in this Example 7 remains the same. Under paragraph (h)(3)(iii) of this section, S derives income from U.S. communications activity because S is paid to transmit the communications between two U.S. points.

Example 8. Indeterminate endpoints—prepaid telephone calling cards—(i) *Facts.* S purchases capacity from TC to transmit telephone calls. S sells prepaid telephone calling cards that give customers access to TC's telephone lines for a certain number of minutes. Assume that S cannot establish the endpoints of its customers' telephone calls, even under the reasonable method rule of paragraph (h)(3) of this section.

(ii) *Analysis.* S derives communications income as defined in paragraph (h)(2) of this section because S makes capacity to transmit communications available to its customers. In this case, S cannot establish the two points between which the communications are transmitted. Therefore, S's communications income is U.S. source income, as provided by paragraph (f) of this section.

Example 9. Reasonable methods—minutes of use data on long distance calling plans—(i)*Facts.* B provides both domestic and international long distance services in a calling plan for a limited number of minutes for a set amount each month. Tracing and identifying the endpoints of each transmission is not possible or practical. B is, however, able to establish that the calling plan generated $10,000 of revenue for 25,000 minutes based on reports derived from customer billing records. Based on minutes of use data in these reports, B is able to establish that of the total 25,000 minutes, 60 percent or 15,000 minutes were for U.S. long distance calls and 40 percent or 10,000 minutes were for international calls.

(ii) *Analysis.* B derives communications income as defined in paragraph (h)(2) of this section. Based on all the facts and circumstances, B can establish the two points between which B is paid to transmit, and bears the risk of transmitting, the communications using a reasonable method to establish the endpoints, assuming that this method is consistently applied. In this case, B can reasonably establish that 60 percent of the income derived from the long distance calling plan is U.S. communications income and 40 percent is international communications income based on the minutes of use data derived from customer billing records to establish the endpoints of the communications. If, based on all the facts and circumstances, B could reasonably trace and identify the endpoints, then B would have to directly identify the endpoints between which B is paid to transmit the communications.

Example 10. Reasonable methods—system design—(i) *Facts.* D operates satellites which are designed to transmit signals through two separate ranges of signal frequencies (bands). Due to technological limitations, requirements, and practicalities, one band is designed to only transmit signals within the United States. The other band is designed to transmit signals between foreign countries and the United States. D cannot trace and identify the endpoints of each individual transmission. D does, however, track the total transmission through each band and the total income derived from transmitting signals through each band.

(ii) *Analysis.* D derives communications income as defined in paragraph (h)(2) of this section. Based on all the facts and circumstances, D can establish the two points between which D is paid to transmit, and bears the risk of transmitting, the communications using a reasonable method to establish endpoints, assuming that this method is consistently applied. In this case, D can reasonably establish that income derived from transmissions through the first band is U.S. communications income and income derived from transmissions through the second band is international communications income based on the design of the bands to establish the endpoints of the communications.

Example 11. Reasonable methods—port locations—(i) *Facts.* X provides its customer, C, with a virtual private network (VPN) so that C's U.S. headquarter office canconnect and communicate with offices in the United States, Country X, Country Y, and Country Z. Assume that the VPN is only for communications with the U.S. headquarter office. X cannot trace and identify the endpoints of each transmission. C pays X a set amount each month for the entire service, regardless of the magnitude of the usage or the geographic points between which C uses the service.

(ii) *Analysis.* X derives communications income as defined in paragraph (h)(2) of this section. Based on the facts and circumstances, X can establish the two points between which X is paid to transmit, and bears the risk of transmitting, the communications using a reasonable method to establish endpoints, assuming that this method is consistently applied. In this case, X can reasonably establish that one-fourth of the income derived from the VPN service is U.S. communications income and three-fourths is international communications income based on the location of the VPN ports to establish the endpoints of the communications.

Example 12. Indeterminate endpoints—Internet access—(i) *Facts.* B, a domestic corporation, is an Internet service provider. B charges its customer, C, a monthly lump sum for Internet access. C accesses the Internet via a telephone call, initiated by the modem of C's personal computer, to one of B's control centers, which serves as C's portal to the Internet. B transmits data sent by C from B's control center in France to a recipient in England, over the Internet. B does not maintain records as to the beginning and endpoints of the transmission.

(ii) *Analysis.* B derives communications income as defined in paragraph (h)(2) of this section. The source of B's communications income is determined under paragraph (f) of this section as income from sources within the United States because B cannot establish the two points between which it is paid to transmit the communications.

Example 13. De minimis non-communications activity—(i) Facts. The same facts as in Example 12. Assume in addition that B replicates frequently requested sites on B's own servers, solely to speed up response time. Assume that B's replication of frequently requested sites would be considered a de minimis non-communications activity under this section.

(ii) *Analysis.* On these facts, because B's replication of frequently requested sites would be considered a *de minimis* non-communications activity, B is not required to treat the replication activity as a separate non-communications activity transaction under paragraph (h)(1) of this section. B derives communications income under paragraph (h)(2) of this section. The character and source of B's communications income are determined by demonstrating the points between which B is paid to transmit the communications, under paragraph (h)(3)(i) of this section.

Example 14. Income derived from communications and non-communications activity—bundled services—(i) *Facts.* A, a domestic corporation, offers customers local and long distance phone service, video, and Internet services. Customers pay a flat monthly fee plus 10 cents a minute for all long-distance calls, including international calls.

(ii) *Analysis.* Under paragraph (h)(1)(ii) of this section, to the extent that A's transaction with its customer consists in part of non-*de minimis* communications activity and in part of non-*de minimis* non-communications activity, each such part of the transaction must be treated as a separate transaction. A's gross income from the transaction is allocated to each such communications activity transaction and non-communications activity transaction in accordance with paragraph (h)(1)(ii) of this section. To the extent A can establish that it derives international communications income as defined in paragraph (h)(3)(ii) of this section, A would determine the source of such income under paragraph (b)(1) of this section. If A cannot establish the points between which it is paid to transmit communications, as required by paragraph (h)(3)(i) of this section, A's communications income is from sources within the United States, as provided by paragraph (f) of this section.

Example 15. Income derived from communications and non-communications activity—(i) Facts. B, a domestic corporation, is paid by D, a cable system operator in Foreign Country, to provide television programs and to transmit the television programs to Foreign Country. Using its own satellite transponder, B transmits the television programs from the United States to downlink facilities owned by D in Foreign Country. D receives the transmission, unscrambles the signals, and distributes the broadcast to D's customers in Foreign Country. Assume that B's provision of television programs is a non-de minimis non-communications activity, and that B's transmission of television programs is a non-de minimis communications activity.

(ii) *Analysis.* Under paragraph (h)(1)(ii) of this section, B must treat its communications and non-communications activities as separate transactions. B's gross income is allocated to each such separate communications and non-communications activity transaction in accordance with paragraph (h)(1)(ii) of this section. Income derived by B from the transmission of television programs to D's Foreign Country downlink facility is international communications income as defined in paragraph (h)(3)(ii) of this section because B is paid to transmit communications from the United States to a foreign country.

Example 16. Income derived from foreign communications activity—(i) *Facts.* STS provides satellite capacity to B, a broadcaster located in Australia. B beams programming from Australia to the satellite. S's satellite picks the communications up in space and beams the programming over a footprint covering Southeast Asia.

(ii) *Analysis.* S derives communications income as defined in paragraph (h)(2) of this section. S's income is characterized as foreign communications income under paragraph (h)(3)(iv) of this section because S picks up the communication in space, and beams it to a footprint entirely covering a foreign area. Under paragraph (d) of this section, S's foreign communications income is from sources without the United States. If S were beaming the programming over a satellite footprint that covered area both in the United States and outside the United States, S would be required to allocate the income derived from the different types of communications activity.

(k) *Reporting and documentation requirements*—(1) *In general.* A taxpayer making an allocation of gross income under paragraph (b)(2)(iii), (b)(2)(iv), or (h)(1)(ii) of this section must satisfy the requirements in paragraphs (k)(2), (3), and (4) of this section.

(2) *Required documentation.* In all cases, a taxpayer must prepare and maintain documentation in existence when its return is filed regarding the allocation of gross income, and allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must make available such documentation within 30 days upon request.

(3) *Access to software.* If the taxpayer or any third party used any computer software, within the meaning of section 7612(d), to allocate gross income, or to allocate or apportion expenses, losses, and other deductions, the taxpayer must make available upon request—

(i) Any computer software executable code, within the meaning of section 7612(d), used for such purposes, including an executable copy of the version of the software used in the preparation of the taxpayer's return (including any plug-ins, supplements, etc.) and a copy of all related electronic data files. Thus, if software subsequently is upgraded or supplemented, a separate executable copy of the version used in preparing the taxpayer's return must be retained;

(ii) Any related computer software source code, within the meaning of section 7612(d), acquired or developed by the taxpayer or a related person, or primarily for internal use by the taxpayer or such person rather than for commercial distribution; and

(iii) In the case of any spreadsheet software or similar software, any formulae or links to supporting worksheets.

(4) *Use of allocation methodology.* In general, when a taxpayer allocates gross income under paragraph (b)(2)(iii), (b)(2)(iv), or (h)(1)(ii) of this section, it does so by making the allocation on a timely filed original return (including extensions). However, a taxpayer will be permitted to make changes to such allocations made on its original return with respect to any taxable year for which the statute of limitations has not closed as follows:

(i) In the case of a taxpayer that has made a change to such allocations prior to the opening conference for the audit of the taxable year to which the allocation relates or who makes such a change within 90 days of such opening conference, if the IRS issues a written information document request asking the taxpayer to provide the documents and such other information described in paragraphs (k)(2) and (3) of this section with respect to the changed allocations and the taxpayer complies with such request within 30 days of the request, then the IRS will complete its examination, if any, with respect to the allocations for that year as part of the current examination cycle. If the taxpayer does not provide the documents and information described in paragraphs (k)(2) and (3) of this section within 30 days of the request, then the procedures described in paragraph (k)(4)(ii) of this section shall apply.

(ii) If the taxpayer changes such allocations more than 90 days after the opening conference for the audit of the taxable year to which the allocations relate or the taxpayer does not provide the documents and information with respect to the changed allocations as requested in accordance with paragraphs (k)(2) and (3) of this section, then the IRS will, in a separate cycle, determine whether an examination of

the taxpayer's allocations is warranted and complete any such examination. The separate cycle will be worked as resources are available and may not have the same estimated completion date as the other issues under examination for the taxable year. The IRS may ask the taxpayer to extend the statute of limitations on assessment and collection for the taxable year to permit examination of the taxpayer's method of allocation, including an extension limited, where appropriate, to the taxpayer's method of allocation.

(l) *Effective date.* This section applies to taxable years beginning on or after December 27, 2006.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101 paragraph (b) is amended by adding an entry to the table in numerical order, §§ 1.863–8 and 1.863–9, to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
1.863–8	1545–1718.
1.863–9	1545–1718.

Kevin M. Brown,

Acting Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2006.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–22174 Filed 12–26–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9276]

RIN 1545–BD96

Flat Rate Supplemental Wage Withholding; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9276) that were published in the **Federal Register** on Tuesday, July 25, 2006 (71 FR 42049), amending the regulations that provide for determining the amount of income tax withholding on supplemental wages. These regulations apply to all employers and others making supplemental wage payments to employees.

DATES: The correction will be effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT: A.G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 3401 and 3402 of the Internal Revenue Code.

Need for Corrections

As published, final regulations (TD 9276) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Correction of Publication

■ Accordingly, 26 CFR part 31 is corrected by making the following correcting amendments:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 31.3402(g)-1(a)(8) is amended by revising the fifth sentence of *Example 1* paragraph (iii), the fifth sentence of *Example 3* paragraph (i), the last sentence of *Example 3* paragraph (iv) and the third sentence of *Example 3* paragraph (vi).

The revisions read as follows:

§ 31.3402(g)–1 Supplemental wage payments.

(a) * * *

(8) * * *

Example 1. * * *

(iii) * * * If Y elected to withhold income tax using paragraph (a)(7) of this section, Y would withhold on the $400,000 component at 25 percent (pursuant to paragraph (a)(7)(iii)(F) of this section), which would result in $100,000 tax withheld. * * *

* * * * *

Example 3. (i) * * * Unrelated company U pays D sick pay as an agent of the employer R and such sick pay is supplemental wages pursuant to § 31.3401(a)-1(b)(8)(i)(*b*)(*2*). * * *

* * * * *

(iv) * * * If R elects to use optional flat rate withholding provided under paragraph (a)(7)(iii)(f) of this section, withholding would be calculated at 25 percent of the $1,000,000 portion of the payment and would be $250,000.

* * * * *

(vi) * * * If U elects to withhold income tax at the flat rate provided under paragraph (a)(7)(iii)(F) of this section, withholding on the $50,000 of sick pay would be calculated at 25 percent of the $50,000 payment and would be $12,500. * * *

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–22022 Filed 12–26–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–119]

RIN 1625–AA–09

Drawbridge Operation Regulations; Potomac River, Alexandria, VA and Oxon Hill, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the new Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This deviation allows the new drawbridge to remain closed to navigation each day from 10 a.m. to 2 p.m. beginning on December 25, 2006 until and including February 22, 2007, to facilitate completion of the Outer Loop portion for the new Woodrow Wilson Bridge construction project.

DATES: This deviation is effective from 10 a.m. on December 25, 2006, until 2 p.m. on February 22, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street,

Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: In June 2006, the southernmost portion of the bascule spans for the new Woodrow Wilson Memorial Bridge, at mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland was publicly placed into service, switching I–95 Northbound traffic onto the new Outer Loop portion of the bridge. The newly-constructed portion of bridge will be required to open for vessels in accordance with the current drawbridge operating regulations set out in 33 CFR 117.255(c).

While the drawbridge is operational, coordinators for the construction of the new Woodrow Wilson Bridge Project indicated that the bascule span is not yet fully commissioned and the work continues through the rigorous testing phase. Opening the new bascule span for a vessel at this time would take approximately 45 minutes in a best case scenario. This has the potential to have a significant impact upon I–95 traffic, especially during the 10 a.m. to 2 p.m. bridge-opening time frame currently available for commercial vessels, in accordance with 33 CFR 117.255(c).

Coordinators requested a temporary deviation from the current operating regulation for the new Woodrow Wilson Memorial (I–95) Bridge set out in 33 CFR 117.255(c).

Though good progress has been made regarding commissioning of the north and south drawbridges (both now carrying I–95 vehicle traffic), the coordinators are requesting an additional two months of the 10 a.m. to 2 p.m. restriction of bridge operation to proceed with commissioning activities through February 22, 2007. From a river-user standpoint, the coordinators have received no requests from boaters or mariners to open during the 10 a.m. to 2 p.m. timeframe since the restriction was issued in late June 2006. In fact, the coordinators have received no complaints on the 10 a.m. to 2 p.m. restriction.

The coordinators requested that the new Outer Loop portion of the new drawbridge not be available for openings for vessels each day between the hours of 10 a.m. to 2 p.m. from Monday, December 25, 2006 through February 22, 2007 or until the bridge is properly commissioned, whichever comes first. The temporary deviation will only affect vessels with mast heights of 75 feet or greater since demolition of the existing drawbridge continues in addition to the lift spans removed. Management of the Federal and auxiliary channels will continue to be closely coordinated between the coordinators for the construction of the new Woodrow Wilson Bridge Project, the Coast Guard and vessels requesting transit through the construction zone. Furthermore, all affected vessels with mast heights greater than 75 feet will be able to receive an opening of the new drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(c). Maintaining the new drawbridge in the closed-to-navigation position each day from 10 a.m. to 2 p.m. on December 25, 2006 through February 22, 2007 will help reduce the impact to vehicular traffic during this phase of new bridge construction.

The Coast Guard has informed the known users of the waterway of the closure period for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 11, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E6–22148 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–118]

RIN 1625–AA–09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Scotts Hill, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Figure Eight Swing Bridge across the AICW mile 278.1, at Scotts Hill, North Carolina to perform needed mechanical and structural repairs.

DATES: This deviation is effective from 7 a.m. on January 3, 2007, to 7 a.m. on January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION: The contractor, on behalf of the bridge owner, the Figure Eight Beach Homeowners Association, Inc., has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.821(a)(4) which requires the drawbridge to open on signal for commercial vessels at all times and on signal for pleasure vessels on the hour and half hour. The contractor has requested the temporary deviation to close the Figure Eight Swing Bridge to navigation to perform needed repairs to the center-bearing mechanism of the swing span.

The concrete beneath 50% of the balance wheel track at the Figure Eight Swing Bridge has deteriorated and is in need of replacement. In order to replace the concrete, the balance wheels and track will be removed and the bad concrete hand-chipped out. Once the hand-chipping is complete, the rail will be reset and grouted. To facilitate this work, the Figure Eight Swing Bridge will be locked in the closed-to-navigation position from 7 a.m. on January 3, 2007 until and including 7 a.m. on January 5, 2007.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 11, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E6–22152 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–086]

RIN 1625–AA09

Drawbridge Operation Regulations; Darby Creek, Essington, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulation that governs the Consolidated Rail Corporation (CONRAIL) Railroad Bridge, at mile 0.3, across Darby Creek in Essington, Pennsylvania. This change will allow the bridge to be left in the open-to-navigation position from April 1 through October 31 of every year. The bridge will only close for the passage of trains and to perform periodic maintenance. From November 1 to March 31, the bridge will open on signal, if at least 24 hours notice is given by calling (856) 231–7088 or (856) 662–8201.

DATES: This rule is effective January 26, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–06–086 and are available for inspection or copying at Commander (dpb), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 11, 2006, we published a notice of proposed rule (NPRM) entitled ''Drawbridge Operation Regulations; Darby Creek, PA'' in the **Federal Register** (71 FR 53352). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

CONRAIL owns and remotely operates the railroad drawbridge across Darby Creek, at mile 0.3, located in Essington, Pennsylvania. The current operating regulation set out in 33 CFR 117.903 requires that from May 15 through October 15, the draw be left in the open position at all times and be lowered only for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part. From October 16 through May 14, the draw shall open on signal if at least 24 hours notice is given by telephone at (856) 231–7088 or (856) 662–8201. Operational information will be provided 24 hours a day at the same telephone numbers.

The CONRAIL Railroad Bridge, a bascule-type drawbridge, has a vertical clearance in the closed position to vessels of approximately three feet above mean high water; and unlimited vertical clearance in the open-to-navigation position.

The Ridley Township Municipal Marina Authority requested a change to the operating regulations for the Railroad Bridge, due to increased marine traffic under the bridge from April 1 to October 31. CONRAIL agreed to modify the operating regulations of the drawbridge to accommodate additional vessel traffic.

Discussion of Comments and Changes

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

Discussion of Rule

The Coast Guard is revising 33 CFR 117.903(a), which governs the CONRAIL railroad drawbridge across Darby Creek, at mile 0.3 in Essington, Pennsylvania, by amending paragraphs (a)(3) and (a)(13). From April 1 through October 31, the bridge will be left in the open position and will only close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part. From November 1 to March 31, the draw of the CONRAIL Railroad Bridge need only open on signal if at least 24 hours notice is given by calling (856) 231–7088 or (856) 662–8201. Operational information will be provided 24 hours a day by telephone at (856) 231–7088 or (856) 662–8201, respectively.

Regulatory Evaluation

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

This conclusion is based on the fact CONRAIL, the only known land user of the bridge, has agreed to the change in the operating regulations.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact the rule would not have a significant economic impact on a substantial number of small entities because CONRAIL, the only known land user of the bridge, has agreed to the change in the operating regulations.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32) (e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Section 117.903 is amended by revising paragraphs (a)(3) and (a)(13) to read as follows:

§117.903 Darby Creek.

(a) * * *

(3) From April 1 through October 31, the draw shall be left in the open position at all times and will only be lowered for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

* * * * *

(13) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given by telephone at (856) 231–7088 or (856) 662–8201. Operational information will be provided 24 hours a day by telephone at (856) 231–7088 or (856) 662–8201.

* * * * *

Dated: December 14, 2006.

L.L. Hereth,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–22149 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2006–0841; FRL–8261–9]

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the East St. Louis, Illinois Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, the Administrator of EPA shall require the sale of reformulated gasoline (RFG) in an ozone nonattainment area classified as marginal, moderate, serious or severe upon the application of the Governor of the state in which the nonattainment area is located. In this direct final action, EPA is today extending the Act's prohibition against the sale of conventional gasoline (i.e., gasoline that is not RFG) to the Illinois portion of the St. Louis, Missouri-Illinois 8-hour ozone nonattainment area hereafter referred to as the East St. Louis nonattainment area. The RFG requirements will apply to refiners and all other persons in the fuel distribution system other than retailers and wholesale purchaser-consumers on May 1, 2007. For retailers and wholesale purchaser-consumers, the requirements of today's rule will apply on June 1, 2007. As of the June 1, 2007 implementation date, this area will be treated as a covered area for all purposes of the federal RFG program.

DATES: This final rule is effective on May 1, 2007 without further notice, unless EPA receives adverse comments by January 26, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

OAR–2006–0841, by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0841. Comments may also be e-mailed to *a-and-r-docket@epamail.epa.gov.* 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.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0841. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Kurt Gustafson, Transportation and Regional Programs Division (Mail Code 6406J), Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; *telephone number*: 202–343–9219; *fax number*: 202–343–2800; e-mail address: *gustafson.kurt@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Does This Action Apply to Me?

This action may affect you if you produce, distribute, or sell gasoline for use in the East St. Louis ozone nonattainment area.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Regulated entities: Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in Section 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Additional Information

Under section 211(k)(6) of the Clean Air Act, as amended (the Act), the Administrator of EPA shall require the sale of reformulated gasoline in an ozone nonattainment area classified as marginal, moderate, serious, or severe upon the application of the Governor of the state in which the nonattainment area is located. This final action extends the prohibition set forth in section 211(k)(5) against the sale of conventional (i.e., non-reformulated) gasoline to the East St. Louis, Illinois moderate ozone nonattainment area

(Jersey, Madison, Monroe, and St. Clair Counties).

The Agency is adopting May 1, 2007, as the implementation date of the prohibition described herein for all persons other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA is adopting June 1, 2007 as the implementation of the prohibition described. As of the implementation date for retailers and wholesale purchaser-consumers, the East St. Louis ozone nonattainment area will be a covered area for all purposes in the federal RFG program.

Outline of This Preamble

I. Background
Opt-in Provision/Process
II. The Governor's Request
III. Final Action
IV. Environmental Impact
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Effect Energy Supply
I. National Technology Transfer Advancement Act
J. Statutory Authority
K. Congressional Review Act

I. Background

Opt-in Provision/Process

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Act. Subsection (k) prohibits the sale of conventional gasoline (i.e., gasoline that EPA has not certified as reformulated) in certain ozone nonattainment areas beginning January 1, 1995. Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline (RFG) program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989.[1] In addition, under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also included in the RFG program. EPA first published final regulations for the RFG program on February 16, 1994. See 59 FR 7716.

Certain other ozone nonattainment areas may be included in the program at the request of the Governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a Governor, EPA shall apply the prohibition against selling conventional gasoline in ''any area in the State classified under subpart 2 of Part D of Title I as a marginal, moderate, serious or severe'' ozone nonattainment area. Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date the Administrator ''deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later.'' In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is ''insufficient domestic capacity to produce'' RFG. EPA is to publish a Governor's application in the **Federal Register**.

II. The Governor's Request

EPA received an application July 10, 2006 from the Honorable Rod R. Blagojevich, Governor of the State of Illinois, for the East St. Louis ozone nonattainment area to be included in the reformulated gasoline program. The Governor's letter is set out in full below.

July 10, 2006.

Mr. Stephen L. Johnson,
U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dear Administrator Johnson: Pursuant to Section 211(k)(6) of the Clean Air Act (CAA), I hereby formally request the U.S. Environmental Protection Agency (EPA) to extend the requirement for the sale of Reformulated Gasoline (RFG) to the Illinois portion of the St. Louis ozone non-attainment area. The pertinent Illinois counties include Jersey, Madison, Monroe, and St. Clair. I request that the RFG program be implemented beginning January 1, 2007.

Implementation of the RFG program in the Metro-East St. Louis RFG area will provide additional volatile organic compound emission reductions, which will assist the region in attaining the 8-hour ozone standard by 2010. The required use of RFG, which is currently in use in St. Louis Missouri, will also replace the summertime low volatility gasoline requirement in the Metro-East area, removing the need for a ''boutique'' fuel and simplifying gasoline supply in the region.

Thank you for your attention to this matter. I look forward to the successful implementation of the RFG program in the Metro-East area and to the attainment of the national air quality standards in the St. Louis region. If you have any questions regarding this request, please contact Mr. Douglas P. Scott, Director of the Illinois Environmental Protection Agency at 217 782–3397.

Sincerely,
Rod R. Blagojevich,
Governor.
cc: USEPA, Region V.

III. Final Action

The RFG program includes seasonal requirements. Summertime RFG must meet certain VOC control requirements to reduce emissions of volatile organic compounds (VOCs), an ozone precursor. Under the RFG program, there are two compliance dates for VOC-controlled RFG. At the refinery level, and all other points in the distribution system other than the retail level, compliance with RFG VOC-control requirements is required from May 1 to September 15. At the retail level (service stations and wholesale purchaser-consumers), compliance is required from June 1 to September 15. See 40 CFR 80.78 (a)(1)(v). Pipeline requirements and demands for RFG from the supply industry drive refineries to establish their own internal compliance date earlier than May so that they can then assure that terminals are capable of meeting the RFG VOC-control requirements by May 1.

Based on our evaluation of the appropriate lead time and start date(s) and pursuant to the Governor's letter and the provisions of section 211(k)(6), EPA is today adopting regulations that apply the prohibitions of subsection 211(k)(5) to the East St. Louis, Illinois ozone nonattainment area as of May 1, 2007, for all persons other than retailers and wholesale purchaser-consumers. This date applies to the refinery level and all other points in the distribution system other than the retail level. For retailers and wholesale purchaser-consumers, EPA is adopting regulations that apply the prohibitions of subsection 211(k)(5) to the East St. Louis, Illinois ozone nonattainment area on June 1, 2007. As of the June 1, 2007 implementation date, this area will be treated as a covered area for all purposes of the federal RFG program.

The application of the prohibition of section 211(k)(5) to the East St. Louis ozone nonattainment area could take effect no later than July 10, 2007, under section 211(k)(6)(A), which stipulates that the effective program date must be no ''later than January 1, 1995 or 1 year after [the Governor's] application is received, whichever is later.'' The Governor of Illinois asked that EPA establish January 1, 2007, as the RFG implementation date.

EPA believes the implementation dates adopted today achieve a reasonable balance between requiring the earliest possible start dates to achieve air quality benefits in East St.

[1] Applying these criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee.

Louis and providing adequate lead time for industry to prepare for program implementation. These dates are consistent with the State's request that EPA require RFG to be sold in the East St. Louis area in advance of the beginning of the high ozone season, which begins June 1. These dates will provide environmental benefits by allowing East St. Louis to achieve VOC reduction benefits for the 2007 VOC control season.

EPA has concluded, based on its analysis of available information, that the refining and distribution industry's capacity to supply federal RFG to East St. Louis this summer exceeds the estimated demand. EPA has also concluded that the implementation dates adopted today provide adequate lead time to industry to set up storage and sales agreements to ensure supply of RFG to the East St. Louis ozone nonattainment area. If adverse comment is received and this direct final rule is withdrawn, EPA will finalize the companion proposal also published in today's **Federal Register**. That proposal also includes a May 1, 2007, implementation date for parties other than retailers and wholesale purchaser-consumers, and a June 1, 2007 implementation date for retailers and wholesale purchaser-consumers.

Although section 211(k)(6) provides EPA some discretion to establish the effective date for the application of RFG requirements in marginal, moderate, serious or severe ozone nonattainment areas subject to a Governor's petition, and allows EPA to consider whether there is sufficient domestic capacity to produce RFG in establishing the effective date for such requirements, EPA does not have discretion to deny a Governor's request. Therefore, the scope of this action is limited to setting an effective date for East St. Louis' opt-in to the RFG program, and not to decide whether St. Louis should in fact opt in. EPA considers that July 10, 2007 would be the latest possible effective date, since EPA expects there to be sufficient domestic capacity to produce RFG and therefore has no current reason to extend the effective date beyond one year after July 10, 2006 under section 211(k)(6)(B). Selection of the May 1/June 1 effective date coincides with the start of the summer RFG VOC control period and is the only practical date available for consideration. EPA does not have the authority to extend the date beyond July 10, 2007 absent supply issues and there is no justifiable reason to select a date between June 1 and July 10, 2007. For this reason we view this as a noncontroversial amendment, anticipate no adverse comment, and are publishing this action as a direct final rule without prior proposal. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal for a rule amendment should adverse comments be filed. That proposal also includes effective dates of May 1, 2007 and June 1, 2007. This direct final rule will be effective May 1, 2007 without further notice unless the Agency receives adverse comments by January 26, 2007.

If EPA receives adverse comments, we will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

IV. Environmental Impact

The federal RFG program typically results in reductions in ozone-forming emissions and air toxics. Reductions in ozone precursors are environmentally significant because they lead to reductions in ozone formation, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year.

Illinois EPA analyzed the emissions benefits which could be achieved by switching from 7.2 RVP fuel to RFG. Using the U.S. EPA's MOBILE6a model, Illinois projected that year 2010 motor vehicle VOC emissions could be reduced by 5.4 percent and carbon monoxide by 2.2 percent. The use of RFG in the Metro-East area would also decrease benzene emissions by 75 tons per year, which equates to a 44 percent reduction from motor vehicles. On a total toxic emissions basis, the use of RFG would reduce emissions of the five primary motor vehicle related air toxics by 63 tons per year in 2010, a total percentage reduction of 23.5 percent.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. EPA notes that the economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules. See 59 FR 7810–7811 (February 16, 1994). In that analysis the production cost of RFG was estimated to be 4 to 8 cents more per gallon than conventional gasoline. Since conventional gas regulations have evolved since that time to be more like RFG and since the State has a low RVP requirement that also more closely resembles RFG, EPA expects the costs of RFG in the East St. Louis area to be at the low end or lower than this range. Nonetheless, using the 4 to 8 cent per gallon estimate, the cost of the program in East St. Louis would be significantly lower than the trigger for a significant regulatory action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements that apply to the RFG/anti-dumping program (see 59 FR 7716, February 16, 1994), and has assigned OMB control number 2060–0277 (EPA ICR No. 1951.08).

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control

numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In promulgating the RFG and the related anti-dumping regulations for conventional gasoline, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. See 59 FR 7810–7811 (February 16, 1994). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A–92–12.

Today's action will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the East St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations located in East St. Louis, which will become a covered area as a result of today's action, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The Agency did not find the RFG regulations to significantly affect these entities. Based on this, EPA certifies that this direct final rule would not have a significant adverse impact on a substantial number of 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 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Although EPA does not believe that UMRA imposes requirements for this rulemaking, EPA notes that the environmental and economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules.

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 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. The rule would only impose requirements on certain refiners and other entities in the gasoline distribution system, and not on States. The requirements of the rule will be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications.'' This direct final rule does not have tribal implications, as specified in Executive Order 13175. Today's direct final rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the East St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. Thus, Executive Order 13175 does not apply to this rule.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply

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

I. National Technology Transfer Advancement Act

Section 12(d) of Public Law 104–113, the National Technology Transfer and Advancement Act of 1995 (NTTAA), directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This direct final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Statutory Authority

The Statutory authority for the action finalized today is granted to EPA by sections 211(c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k) and 7601.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 1, 2007.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: December 20, 2006.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 80 is amended as follows:

PART 80—[AMENDED]

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, 7542, and 7601(a).

■ 2. Section 80.70 is amended by adding paragraph (k)(2) to read as follows:

§ 80.70 Covered areas.

* * * * *

(k) * * *

(2) The Illinois portion of the St. Louis, MO–IL 8-hour ozone nonattainment area is a covered area beginning June 1, 2007. The prohibitions of section 211(k)(5) of the Clean Air Act apply to all persons other than retailers and wholesale purchaser-consumers in the Illinois portion of the St. Louis, MO–IL 8-hour ozone nonattainment area beginning May 1, 2007. The prohibitions of section 211(k)(5) of the Clean Air Act apply to retailers and wholesale purchaser-consumers in the Illinois portion of the St. Louis, MO–IL 8-hour ozone nonattainment area beginning June 1, 2007.

* * * * *

[FR Doc. E6–22162 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0788; FRL–8108–8]

Fluthiacet-methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of fluthiacet-methyl in or on cotton, gin byproducts and cotton, undelinted seed. K-I Chemical U.S.A. Inc. 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 December 27, 2006. Objections and requests for hearings must be received on or before February 26, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0788. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The 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: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@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?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the 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. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0788 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 February 26, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0788, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of September 20, 2006 (71 FR 54987) (FRL–8094–7), 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 7F4821) by K-I Chemical U.S.A. Inc., 11 Martine Avenue, Suite 970, White Plains, NY 10606. The petition requested that 40 CFR 180.551 be amended by establishing a tolerance for combined residues of the herbicide, fluthiacet-methyl, acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester, and its acid metabolite, acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-, in or on the food/feed commodities: Cotton, gin byproducts at 0.20 part per million (ppm) and cotton, undelinted seed at 0.020 ppm. That notice included a summary of the petition prepared by K-I Chemical U.S.A. Inc., 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*.

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 fluthiacet-methyl in or on cotton, gin byproducts at 0.20 ppm and cotton, undelinted seed at 0.020 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 fluthiacet-methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the **Federal Register** of December 21, 2001 (66 FR 65839) (FRL–6806–7).

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. An UF or 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

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/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for fluthiacet-methyl used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of December 21, 2001 (66 FR 65839) (FRL–6806–7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.551) for the residues of fluthiacet-methyl, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fluthiacet-methyl 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.

No such effects were identified in the toxicological studies for fluthiacet-methyl; 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 were assumed and refined with average values of current and projected percent crop treated (PCT) estimates. Refined current PCT estimates for field corn, sweet corn and soybeans were determined to be on average <1% and at a maximum 1%; and projected PCT estimates for cotton were determined to be on average 30% and at a maximum 34%.

iii. *Cancer*. The Hazard Identification Assessment Review Committee classified fluthiacet-methyl as likely to be a human carcinogen.

Chronic and cancer exposure assessement. Chronic and cancer exposures were determined to be dietary from residues in raw agricultural commodities derived from the use of fluthiacet-methyl for defoliating cotton and from water. HED determined that dietary exposure to residues of fluthiacet-methyl and it acid metabolite (CGA-300402) in or on cotton gin byproducts at 0.20 ppm and in or on cotton undelinted seed at 0.020 were anticipated from the proposed use-pattern. These tolerance level exposures were used in the risk assessment. In addition, Estimated Drinking Water Concentrations (EDWCs) were determined by modeling (PRZM/EXAMS, Tier II) for California, the highest found level of potential residues for chronic (0.19 μg/L) and for cancer (0.14 μg)

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: The assumptions of the dietary exposure analysis were tolerance level residues, modified by default processing factors and percent crop treated (PCT) data. The resulting chronic and cancer dietary assessments were classified as Tier 2 assessments and are considered to be partially refined.

PCT information came from EPA's refined usage analysis. Refined current PCT estimates for field corn, sweet corn and soybeans were determined to be on average <1%, and at a maximum 1%. Projected PCT estimates for cotton were

determined to be on average, 30%, and at a maximum 34%. Because the estimated average PCTs for field corn, sweet corn and soybeans were less than 1%, they were rounded up to 1% for use in the chronic and cancer dietary assessments. The estimated average PCT for cotton was used for both the chronic and cancer assessment. There were no data on pop corn; therefore, 100% crop treated defaults were used. Default DEEM 7.81 processing factors were applied to corn, field, syrup and corn, field, syrup-babyfood. EPA concluded that residues of fluthiacet-methyl and its acid metabolite CGA-300403, were not expected to accumulate in livestock tissues; therefore, livestock commodities were not factored into the dietary risk assessment.

The Agency believes that the three conditions listed in Unit IV.C.1. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations are taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which fluthiacet-methyl may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fluthiacet-methyl 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 fluthiacet-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System and Sreening Concentrations in Groundwater models, the estimated environmental concentrations (EECs) of fluthiacet-methyl for acute exposures are estimated to be between 0.23 and 1.0 parts per billion (ppb) for surface water and 0.08 ppb for ground water. The EECs for chronic and cancer exposures are estimated to be 0.19 and 0.l4, respectively.

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). Fluthiacet-methyl 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 fluthiacet-methyl and any other substances and fluthiacet-methyl 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 fluthiacet-methyl 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*. There is no quantitative or qualitative evidence or increased susceptibility of rat and rabbit fetuses to *in utero* exposure to fluthiacet-methyl in developmental toxicity studies. There is no quantitative or qualitative evidence of increased susceptibility to fluthiacet-methyl following prenatal/postnatal exposure to a 2–generation reproduction study.

3. *Conclusion*. EPA concluded based on reliable data that it would be safe to remove the additional 10X safety factor for the protection of infants and children. This conclusion was based on the following findings:

i. There is no quantitative or qualitative evidence of increased susceptibility to fluthiacet-methyl following prenatal/postnatal exposure;

ii. There is no concern for developmental neurotoxicity resulting from exposure to fluthiacet-methyl. A developmental neurotoxicity study is not required;

iii. The toxicological data base is complete for FQPA assessment;

iv. The chronic dietary food exposure assessment utilizes tolerance level residues and 34% of cotton and 1% corn and soybean crop treated information for all commodities. By using these screening-level residue values and conservative percent crop treated assessment, actual exposures/risks will not be underestimated; and

v. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters that are designed to provide conservative, health protective, high-end estimates of water concentrations that will not likely be exceeded.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. An effect of concern attributable to a single exposure (dose)

was not identified from the oral toxicity studies including the developmental toxicity studies in rat and rabbits. No acute risk is expected from exposure to fluthiacet-methyl.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluthiacet-methyl from food will utilize <1% of the cPAD for the U.S. population, 1.4% of the cPAD for all infant <1 year old. There are no residential uses for fluthiacet-methyl that results in chronic residential exposure to fluthiacet-methyl.

3. *Short-term risk*. Fluthiacet-methyl 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. *Aggregate cancer risk for U.S. population*. The overall cancer dietary risk for the U.S. population is 7.51 x 10^{-7}, based on dietary (food and drinking water exposures).

5. *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 fluthiacet-methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/mass spectrometry method which uses negative ion chemical ionization (GC/NCI-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*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for fluthiacet-methyl on corn, cotton and soybean commodities or on meat and milk commodities.

V. Conclusion

Therefore, the tolerance is established for combined residues of Fluthiacet-methyl, acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester, and its acid metabolite, acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-, in or on cotton, gin byproducts at 0.20 ppm and cotton, undelinted seed at 0.020 ppm.

VI. 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.

VII. 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: December 19, 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 180.551 is amended by redesignating existing paragraph (a) as (a)(1), and adding paragraph (a)(2) to read as follows.

§ 180.551 Fluthiacet-methyl; tolerances for residues.

(a) *General.* (1) * * *

(2) A tolerance is established for the combined residues of the herbicide fluthiacet-methyland its acid metabolite: acetic acid, [[2-chloro-4-fluoro-5-[tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester, and its acid metabolite, acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]- , in or on the following food commodities:

Commodity	Parts per million
Cotton, gin byproducts	0.20
Cotton undelinted seed	0.020

* * * * *

[FR Doc. E6–22126 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 04–295; FCC 06–56]

Communications Assistance for Law Enforcement Act and Broadband Access and Services

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Federal Communications Commission (FCC) received Office of Management and Budget (OMB) approval on December 12, 2006 for new public information collection requirements contained in the FCC's Communications Assistance for Law Enforcement Act and Broadband Access and Services, Second Report and Order and Memorandum Opinion and Order (CALEA Second Report and Order) in 71 FR 38091, July 5, 2006, OMB Control Number 3060–0809, pursuant to the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

DATES: The rules for §§ 1.20004 and 1.20005 published at 71 FR 38091, July 5, 2006, are effective December 12, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Public Safety and Homeland Security Bureau, Policy Division, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0952.

For additional information concerning the Paperwork Reduction Act information collection requirements, contact Judith B. Herman at (202) 418–0124, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: The CALEA Second Report and Order noted that the effective date for the new CALEA information collection requirements was subject to Office of Management and Budget (OMB) approval. OMB granted its approval on December 12, 2006. Accordingly, (1) an attesting letter for pending CALEA section 107(c)(1) petitions currently on file with the FCC must be filed by February 12, 2007; (2) compliance monitoring reports (FCC Form 445) must be filed by February 12, 2007; (3) system security and integrity (SSI) plans for providers of facilities-based broadband internet access and interconnected Voice over Internet Protocol (VoIP) services must be filed by March 12, 2007.[1]

Compliance with new CALEA section 107(c) and 109(b) petition filing requirements[2] became effective upon OMB authorization, i.e., December 12, 2006.

CALEA requires the FCC to create rules that regulate the conduct and recordkeeping of lawful electronic surveillance. On May 12, 2006, the FCC released its CALEA Second Report and Order which became effective August 4, 2006, except for certain information collections which required OMB approval under the Paperwork Reduction Act before the FCC could enforce them. Now that OMB approval has been granted:

(a) Each provider that has a CALEA section 107(c)(1) extension petition currently on file must submit to the FCC an attesting letter documenting that the provider's equipment, facility or service continues to qualify for compliance extension relief, given that CALEA section 107(c)(1) applies only to equipment, facilities, or services installed or deployed prior to October 25, 1998.

(b) Facilities-based broadband Internet access and interconnected VoIP service providers must file system security and integrity (SSI) plans under the Commission's rules. SSI plans are currently approved under the existing OMB 3060–0809 information collection.[3]

(c) All providers of facilities-based broadband Internet access or interconnected VoIP services must file monitoring reports on FCC Form 445, ''CALEA Monitoring Report for Broadband and VoIP Services,'' with the FCC to ensure timely CALEA compliance.

(d) There are new requirements governing petitions filed under section 107(c)(1), which request additional time to comply with CALEA; these provisions apply to all providers subject to CALEA and are voluntary filings.

(e) There are modified requirements governing petitions filed under section 109(b) request for reimbursement of CALEA; these provisions apply to all providers subject to CALEA and are voluntary filings.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–22155 Filed 12–26–06; 8:45 am]

BILLING CODE 6712–01–P

[1] Communications Assistance for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04–295, Public Notice DA O6–2511, Public Notice DA 06–2512, and Public Notice DA 06–2513.

[2] See Communications Assistance for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04–295, Second Report and Order and Memorandum Opinion and Order, 21 FCC Rcd 5360 (2006), Appendices E and F.

[3] See 65 FR 8666 (2000).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041110317–4364–02; I.D. 121906A]

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

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of Maryland is transferring 8,000 lb (3,629 kg) of commercial summer flounder quota to the State of New York from its 2006 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 21, 2006 through December 31, 2006, unless NMFS publishes a superseding document in the **Federal Register**.

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

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

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

Maryland has agreed to transfer 8,000 lb (3,629 kg) of its 2006 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met for each of these transfers. The revised quotas for calendar year 2006 are: New York, 943,943 lb (428,165 kg) and Maryland, 276,262 lb (125,310 kg).

Classification

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

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

Dated: December 20, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9881 Filed 12–21–06; 2:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051104293 5344–02; I.D. 121806B]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of Maryland is transferring 45,000 lb (20,412 kg) of commercial bluefish quota to the State of Rhode Island from its 2006 quota and that the State of Delaware is transferring 15,000 lb (6,804 kg) of commercial bluefish quota to the State of Rhode Island. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 21, 2006 through December 31, 2006, unless NMFS publishes a superseding document in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Maryland has agreed to transfer 45,000 lb (20,412 kg) of its 2006 commercial quota to Rhode Island. Delaware has agreed to transfer 15,000 lb (6,804 kg) of its 2006 commercial quota to Rhode Island. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met for each of these transfers. The revised quotas for calendar year 2006 are: Rhode Island, 602,101 lb (273,108 kg); Maryland, 194,021 lb (88,006 kg); and Delaware, 134,553 (61,032 kg).

Classification

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

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

Dated: December 20, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9878 Filed 12–21–06; 2:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 122006D]

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder and Flathead Sole in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the initial total allowable catch (ITAC) for arrowtooth flounder and flathead sole in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective December 21, 2006 through 2400 hrs, Alaska local time, December 31, 2006. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, January 5, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *reserves@noaa.gov* and include in the subject line of the e-mail comment the document identifier: bsaireserve; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The 2006 ITAC of arrowtooth flounder and flathead sole in the BSAI was established as 11,050 metric tons (mt) and 16,575 mt, respectively, by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006). The Acting Administrator, Alaska Region, NMFS, has determined that the ITAC for arrowtooth flounder and flathead sole in the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 996 mt from the non-specified reserve of groundfish to the arrowtooth flounder ITAC and 970 mt to the flathead sole ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specification of the acceptable biological catch in the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the arrowtooth flounder and flathead sole fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 18, 2006.

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

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until January 5, 2007.

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

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

Dated: December 21, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9882 Filed 12–21–06; 2:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 248
Wednesday, December 27, 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

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC12

Common Crop Insurance Regulations, Millet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Millet Crop Insurance Provisions to remove the reduction in indemnity for any unharvested millet acreage to better meet the needs of insured producers. The changes will apply for the 2008 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business February 26, 2007, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled ''Millet Crop Provisions'', by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- *E-mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Erin Reid, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend 7 CFR part 457 Common Crop Insurance Regulations by amending § 457.165 Millet crop insurance provisions, to be effective for the 2008 and succeeding crop years.

Currently, the Millet Crop Provisions specify if the millet crop is not swathed and not harvested, the amount of the indemnity payable is reduced 30 percent to reflect those costs not incurred by the producer. In addition, if the millet crop is swathed but not harvested the amount of the indemnity payable is reduced by 15 percent to reflect those costs not incurred by the producer. Historically, millet prices have been very volatile throughout the growing season. The reduction in indemnity payment was designed to provide an incentive for producers to harvest the millet crop regardless of the millet price and avoid the potential for producers to shift losses to the crop insurance policy because the value of the crop insurance exceeded the value of the crop.

The indemnity reduction for unharvested millet acreage has resulted in some insured millet producers choosing to harvest the millet crop when little or no potential production to count exists to avoid the reduced indemnity payment. FCIC has reviewed the situation and has determined that the disadvantage to producers who suffer legitimate losses from the reduction of the indemnity outweighs the potential for the shifting of losses to crop insurance. Accurate appraisals should ensure that producers are only paid for legitimate losses and receive the appropriate amount of indemnity.

As a result of this change, premium rates will have to be increased because the amount of indemnity actually paid will increase and the premium is based on these anticipated losses. These premium rate increases were discussed with millet producers, who indicated a willingness to pay the projected 8–10 percent premium rate increase to remove the unharvested acreage indemnity reduction. The projected premium rate increase may be revised depending upon the experience of the proposed change.

The proposed changes are as follows:

Section 7—FCIC proposes to revise the end of the insurance period dates and to use only one date rather than dual dates. Only one date is necessary for the end of the insurance period for each group of states because of the removal of the unharvested acreage indemnity reduction.

Section 8—In section 8(h), FCIC is proposing to clarify failure of the irrigation water supply that occurs during the insurance period is a covered cause of loss if such failure is due to a cause of loss specified in the Crop Provisions. This makes the Millet Crop Provisions consistent with other Crop Provisions and ensures that only named perils are covered under the policy.

Section 10—FCIC proposes to remove section 10(f) to eliminate the reduction in indemnity for unharvested millet acreage and remove any references to that subsection. FCIC is also proposing to amend the example to correct plural terms to singular and singular terms to plural where necessary.

Section 11—FCIC proposes to amend sections 11(a) and (b) to change the references from ''percent'' to ''percent per day''. Previously the provisions could have been interpreted that the guarantee would be reduced one percent total for the first ten days and three percent total for the following ten days. This makes the provisions consistent with other Crop Provisions.

Section 12—FCIC proposes to amend the second sentence to refer to additional levels of coverage to be consistent with other Crop Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Millet, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.165 as follows:

A. Revise the introductory text.

B. Revise section 7.

C. Revise section 8(h).

D. Amend section 10(b)(4) by removing the phrase ''and any adjustment from section 10(f)''.

E. Amend paragraph (2) of the example in section 10(b) by removing the phrase ''1,500 bushels'' and adding the phrase ''1,500 bushel'' in its place.

F. Amend paragraph (3) of the example in section 10(b) by removing the phrase ''700 bushel'' and adding the phrase ''700 bushels'' in its place.

G. Amend section 10(d)(4)(iii) by removing the semicolon at the end of the current text and adding a period in its place.

H. Remove section 10(f).

I. Amend section 11(a) by adding the phrase ''per day'' after the phrase ''One percent''.

J. Amend section 11(b) by adding the phrase ''per day'' after the phrase ''Three percent''.

K. Amend section 12 by removing the phrase ''an additional coverage level'' and adding the phrase ''additional levels of coverage'' in its place.

The revised text reads as follows:

§ 457.165 Millet crop insurance provisions.

The millet crop insurance provisions for the 2008 and succeeding crop years are as follows:

* * * * *

7. Insurance Period

In accordance with section 11 of the Basic Provisions, the calendar date for the end of insurance period is the date immediately following planting (unless otherwise specified in the Special Provisions) as follows:

(a) October 10 for North Dakota, South Dakota, and Wyoming; and

(b) October 31 for all other states.

8. Causes of Loss

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period.

* * * * *

Signed in Washington, DC, on December 14, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–22002 Filed 12–26–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26685; Directorate Identifier 2006–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ airplanes. This proposed AD would require modifying the forward and aft auxiliary fuel tanks. This proposed AD results from a report of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks, between certain harnesses attached to the aircraft structure, or between certain harnesses attached to certain mechanical components. We are proposing this AD to prevent a potential ignition source inside a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion.

DATES: We must receive comments on this proposed AD by January 26, 2007.

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

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26685; Directorate Identifier 2006–NM–200–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–28–0022, dated February 17, 2005. The service bulletin describes procedures for modifying the forward and aft auxiliary fuel tanks. The modification includes, but is not limited to, re-routing the harnesses at the forward and aft fuel tanks; installing bonding jumpers, and electrical bonding of the refueling and vent lines at the forward fuel tanks and the solenoid valves of the aft fuel tanks; and

installing new support assemblies of the harnesses of the aft fuel tanks. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Agência Nacional de Aviçãco Civil (ANAC) mandated the service information and issued Brazilian airworthiness directive 2006–07–03, effective August 23, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is 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. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 27 airplanes of U.S. registry. The proposed modifications would take about 20 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost $2,200 per airplane. Based on these figures, the estimated cost of the proposed modifications for U.S. operators is $102,600, or $3,800 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–26685; Directorate Identifier 2006–NM–200–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 26, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks, between certain harnesses attached to the aircraft structure, or between certain harnesses attached to certain mechanical components. We are issuing this AD to prevent a potential ignition source inside a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion.

Compliance

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

Modifications

(f) Within 5,000 flight hours after the effective date of this AD: Accomplish the modifications specified in paragraphs (f)(1) and (f)(2) of this AD by doing all the applicable actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–28–0022, dated February 17, 2005.

(1) Modify the forward auxiliary fuel tank.

(2) Modify the aft auxiliary fuel tanks on the left and right sides.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2006–07–03, effective August 23, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on December 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22115 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26684; Directorate Identifier 2006–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A330 and A340 airplanes. This proposed AD would require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating new and revised certification maintenance requirements (CMRs). This proposed AD results from the manufacturer's determination that additional and revised CMRs are necessary in order to ensure continued operational safety of the affected airplanes. We are proposing this AD to prevent safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

DATES: We must receive comments on this proposed AD by January 26, 2007.

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

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–26684; Directorate Identifier 2006–NM–193–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, notified us that Part 3, "Certification Maintenance Requirements (CMR)" of the Airworthiness Limitations Section (ALS) for Model A330 and A340 airplanes has been updated. The new CMRs, among other things, introduce certain more restrictive limitations and inspection intervals for airplanes already in service. CMRs are intended to detect safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

Relevant Service Information

Airbus has issued A330 Certification Maintenance Requirements 955.2074/93, Issue 19, dated March 22, 2006, to Part 3 of the A330 ALS. Issue 19 of the A330 CMRs:

- Describes the effect of increasing the design service goal (DSG) for the Weight Variant 50 series;
- Adds new CMR tasks with more restrictive limitations associated with modifications and the new DSG;
- Changes the status of one task from Two Star to One Star, with interval extension; and
- Introduces more restrictive requirements for airplane configurations already in service.

Airbus has also issued A340 Certification Maintenance Requirements, 955.3019/92, Issue 14, dated December 19, 2005, to Part 3 of the A340 ALS. Issue 14 of the A340 CMRs:

- Introduces a new Model A340–643;
- Describes the effect of increasing the DSG for the Weight Variant 50 series;
- Revises the applicability of some tasks;
- Adds new CMR tasks associated with modifications and the new DSG;
- Revises some CMR tasks to have more restrictive intervals;
- Deletes CMR status from some tasks; and
- Introduces more restrictive requirements for airplane configurations already in service.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. EASA mandated the service information and issued airworthiness directive 2006–0224, dated July 27, 2006 (for Model A330 airplanes), and 2006–0225, dated July 21, 2006 (for Model A340 airplanes), to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France 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. As described in FAA Order 8100.14A, "Interim Procedures for

Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating new and revised CMRs.

Clarification of Compliance Time

We have clarified the compliance time for revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to include a 3-month grace period.

Costs of Compliance

This proposed AD would affect about 27 Model A330 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $2,160, or $80 per airplane.

Currently there are no affected A340 airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD is $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2006–26684; Directorate Identifier 2006–NM–193–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 26, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330 and A340 airplanes.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD results from the manufacturer's determination that additional and revised certification maintenance requirements (CMRs) are necessary in order to ensure continued operational safety of the affected airplanes. We are issuing this AD to prevent safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

Compliance

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

Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness

(f) Within 3 months after the effective date of this AD: Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Airbus A330 Certification Maintenance Requirements, 955.2074/93, Issue 19, dated March 22, 2006 (for all Model A330 airplanes); or Airbus A340 Certification Maintenance Requirements, 955.3019/92, Issue 14, dated December 19, 2005 (for all Model A340 airplanes). Accomplish the actions specified in the applicable CMR at the times specified in the applicable CMR and in accordance with the applicable CMR, except as provided by paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD.

(1) The associated interval for any new task is to be counted from the effective date of this AD.

(2) The associated interval for any revised task is to be counted from the previous performance of the task.

(3) For Model A340 airplanes that have exceeded the more restrictive limitations of Airbus A340 Certification Maintenance Requirements, 955.3019/92, Issue 14, Maintenance Significant Item (MSI) 21.28.00 and 21.43.00: Do the task within 2,500 flight hours after the previous accomplishment. Repeat the task thereafter at the applicable interval in the Airbus A340 Certification Maintenance Requirements, Issue 14.

(4) For Model A340 airplanes that have accumulated more than 2,700 flight hours since the last maintenance done in accordance with Airbus A340 Certification Maintenance Requirements, 955.3019/92, Issue 14, MSI 28.24.00: Do the next task within 800 flight hours after the effective date of this AD. Repeat the task thereafter at

the applicable interval in the Airbus A340 Certification Maintenance Requirements, Issue 14.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) EASA airworthiness directives 2006–0224, dated July 27, 2006, and 2006–0225, dated July 21, 2006, also address the subject of this AD.

Issued in Renton, Washington, on December 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22111 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–0098

Telemarketing Sales Rule; Extension Beyond January 2, 2007, of the Previously Announced Forbearance Policy in Enforcement of the Prohibition of Prerecorded Calls in the Telemarketing Sales Rule (''TSR'')

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: In a **Federal Register** document published on October 4, 2006, 71 FR 58716, the FTC denied a request for creation of a new safe harbor in the TSR for prerecorded calls by sellers and their telemarketers to consumers with whom the seller has an ''established business relationship,'' and proposed an amendment to the TSR that would make explicit the prohibition on prerecorded calls that is now implicit in the TSR's call abandonment provisions. The Commission accordingly also announced the revocation of a previously announced policy of forbearing from enforcement of the TSR's call abandonment prohibition effective January 2, 2007. In response to a request for an extension of the forbearance policy, the Commission has determined that the forbearance policy should remain in effect until the conclusion of the prerecorded call amendment proceeding.

DATES: Effective January 2, 2007, the Commission will continue its previously announced policy of forbearing from enforcing the prohibition of prerecorded calls in the TSR's call abandonment provisions, until the conclusion of the prerecorded call amendment proceeding.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, (202) 326–2970, Division of Marketing Practices, Bureau of Consumer Protection, Room H–288, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In a **Federal Register** document published on October 4, 2006, 71 FR 58716, the FTC denied a request for creation of a new safe harbor in the TSR for prerecorded calls by sellers and their telemarketers to consumers with whom the seller has an ''established business relationship,'' and proposed an amendment to the TSR that would make explicit the prohibition on prerecorded calls that is now implicit in the TSR's call abandonment provisions. The Commission accordingly also announced the revocation of a previously announced policy of forbearing from enforcement of the TSR's call abandonment prohibition effective January 2, 2007.

On November 29, 2006, the Direct Marketing Association (''DMA'') filed a petition seeking an extension of the Commission's enforcement forbearance policy on prerecorded calls beyond the announced revocation date of January 2, 2007. A petition filed by medSage Technologies LLC on November 30, and petitions filed by Minutepoll, LLC (''Minutepoll petition'') and jointly by Silverlink Communications Inc. and the Eliza Corporation (''Silverlink petition'') on December 1, also requested extensions of the revocation date. Both the DMA and Silverlink petitions ask for an extension until the conclusion of the rulemaking proceeding, while the medSage and Minutepoll petitions seek an extension until six months after the conclusion of the rulemaking to allow companies sufficient time to comply.[1]

DMA argues that, if the policy were revoked as announced effective January 2, 2007, even prerecorded messages that consumers ''affirmatively requested would need to be discontinued'' because businesses would not have had sufficient time during their busy holiday season ''to obtain the proposed prior written consents.''[2] Moreover, DMA believes that because the TSR's present call abandonment provisions, unlike the proposed amendment, lack any express provision allowing prerecorded calls to established customers who have given their written consent, that failure to extend the forbearance policy would have the effect of ''a flat prohibition on prerecorded messages.''[3]

DMA advances two additional reasons for extending the forbearance policy until completion of the amendment proceeding. The first is that failure to continue the forbearance policy ''effectively prejudges the outcome of the proceeding,'' contrary to the intended statutory purpose ''of the Notice and Comment process.''[4] The second is that an extension will maintain the status quo for consumers who have listed their numbers on the Do Not Call Registrybecause it simply continues the existing forbearance policy.[5]

The Minutepoll petition emphasizes the ''irreparable harm smaller businesses'' engaged in telemarketing would incur unless the forbearance policy is extended.[6] Minutepoll says that it and many other small telemarketers that place prerecorded calls otherwise would be forced to shut down their operations on January 2, 2007, since they cannot be ''cost competitive'' with large call centers in placing live telemarketing calls.[7]

The medSage and Silverlink petitions come from companies under contract with HMO's and other health care providers, pursuant to regulations issued by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996, to place interactive ''reminder'' calls to the providers' medical patients, urging them to get flu shots, childhood immunizations, routine mammograms and colonoscopies, prescription refills, and the like.[8] Both petitions argue that there is insufficient time before January 2 for the providers they serve to obtain written consent from the 10 to 20 million patients the Silverlink petition estimates receive such calls annually.[9]

Thus, the medSage petition contends that the company would be faced with

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[1] The Commission believes that the medSage and Minutepoll requests for additional time after a final rule is promulgated for businesses to bring themselves into compliance is premature, since this issue can be addressed best when the final rule is issued.

[2] DMA petition at 1–2.

[3] *Id.* at 1.

[4] *Id.* at 2.

[5] *Id.* at 3.

[6] Minutepoll petition at 2.

[7] *Id.*

[8] These calls are ''telemarketing'' calls covered by the TSR because they induce the purchase of medical goods or services.

[9] Silverlink petition at 2; medSage petition at 3.

''a Hobson's choice'' of violating the TSR or failing to deliver ''medically necessary prerecorded messages,'' and that ''[n]either choice makes any sense.'' [10] Similarly, the Silverlink petition argues that if an extension is not granted, patients would be deprived of calls that improve healthcare services and patient outcomes.[11]

The Commission rejects DMA's argument that revoking its previously announced non-enforcement policy can reasonably be seen as in any way prejudging the outcome of the amendment proceeding. Nevertheless, in recognition of the reasons presented by the petitions and in order to preserve the *status quo*, the Commission has determined that, pending completion of this proceeding, the Commission will continue ''to forbear from bringing any enforcement action for violation of the TSR's call abandonment prohibition, 16 CFR 310.4(b)(1)(iv), against a seller or telemarketer that places telephone calls to deliver prerecorded telemarketing messages to consumers with whom the seller on whose behalf the telemarketing call is placed has an established business relationship, as defined in the TSR, provided the seller or telemarketer conducts this activity in conformity with the [following] terms:'' [12]

- (i) The seller or telemarketer, for each such telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;
- (ii) Within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a prerecorded message that:
- (A) Presents an opportunity to assert an entity-specific Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at the outset of the message, with only the prompt disclosures required by § 310.4(d) or (e) preceding such opportunity; and
- (B) Complies with all other requirements of this Part [16 CFR Part 310] and other applicable federal and state laws.'' [13]

The Commission has stated its belief that, as the foregoing criteria indicate, ''an interactive feature (pressing a button during the message to connect to a sales representative or an automated system to make a Do Not Call request) would be ideal . . . to protect consumers' Do Not Call rights under the TSR.'' [14] The Commission emphasizes that its forbearance policy applies only to prerecorded telemarketing calls that comply completely with all of the foregoing criteria.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–22144 Filed 12–26–06; 8:45 am]

BILLING CODE 6750–01–P

[10] medSage petition at 4.

[11] Silverlink petition at 6–7 & nn.14–16.

[12] 69 FR 67287, 67290 (Nov. 17, 2004).

[13] 69 FR at 67294 (noting that ''This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.'')

[14] 69 FR 67289.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240 and 241

[Release Nos. 33–8762; 34–54976; File No. S7–24–06]

RIN 3235–AJ58

Management's Report on Internal Control Over Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed interpretation; Proposed rule.

SUMMARY: We are proposing interpretive guidance for management regarding its evaluation of internal control over financial reporting. The interpretive guidance sets forth an approach by which management can conduct a top-down, risk-based evaluation of internal control over financial reporting. The proposed guidance is intended to assist companies of all sizes to complete their annual evaluation in an effective and efficient manner and it provides guidance on a number of areas commonly cited as concerns over the past two years. In addition, we are proposing an amendment to our rules requiring management's annual evaluation of internal control over financial reporting to make it clear that an evaluation that complies with the interpretive guidance is one way to satisfy those rules. Further, we are proposing an amendment to our rules to revise the requirements regarding the auditor's attestation report on the assessment of internal control over financial reporting.

DATES: *Comment Date:* Comments should be received on or before February 26, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–24–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–24–06. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael G. Gaynor, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 551–5300, or N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 551–3430 U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 13a–15(c),[1] and Rule 15d–15(c) [2] under the Securities Exchange Act of 1934 (the ''Exchange Act''); thnsp;[3] and Rules 1–02(a)(2) [4] and 2–02(f) [5] of Regulation S–X.[6]

I. Background

Section 404(a) of the Sarbanes-Oxley Act of 2002 [7] (''Sarbanes-Oxley'') directed the Commission to prescribe rules that require each annual report that a company, other than a registered investment company, files pursuant to Section 13(a) or 15(d) [8] of the Exchange Act to contain an internal control report: (1) Stating management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the

[1] 17 CFR 240.13a–15(c).

[2] 17 CFR 240.15d–15(c).

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 210.1–02.

[5] 17 CFR 210.2–02(f).

[6] 17 CFR 210.1–01 *et seq.*

[7] 15 U.S.C. 7262.

[8] 15 U.S.C. 78m(a) or 78o(d).

end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for financial reporting. On June 5, 2003, the Commission adopted rules implementing Section 404 with regard to management's obligations to report on its internal control structure and procedures and, in so doing, created the term ''internal control over financial reporting'' (''ICFR'').[9]

The establishment and maintenance of internal accounting controls has been required of public companies since the enactment of the Foreign Corrupt Practices Act of 1977 (''FCPA'').[10] The significance of Section 404 of Sarbanes-Oxley is that it re-emphasizes the important relationship between the maintenance of effective ICFR and the preparation of reliable financial statements. Effective ICFR can also help companies deter fraudulent financial accounting practices or detect them earlier and perhaps reduce their adverse effects. While controls are susceptible to manipulation, especially in instances of fraud involving the collusion of two or more people, including senior management, these are known limitations of internal control systems. Therefore, it is possible to design ICFR to reduce, though not eliminate, instances of fraud.

When the Commission adopted rules in June 2003 to implement Section 404 of Sarbanes-Oxley, we emphasized two broad principles: (1) That the evaluation must be based on procedures sufficient both to evaluate the design and to test the operating effectiveness [11] of ICFR; and (2) that the assessment, including testing, must be supported by reasonable evidential matter.[12] Instead of providing specific guidance regarding the evaluation, we expressed our belief that the methods of conducting evaluations of ICFR will, and should, vary from company to company and will depend on the circumstances of the company and the significance of the controls.[13] We continue to believe that it is impractical to prescribe a single methodology that meets the needs of every company.

Since the Commission first adopted the ICFR requirements, companies and third parties have devoted considerable attention to the methods that management may use to evaluate ICFR. Efforts to comply with the Commission's rules have resulted in many public companies internally developing their own evaluation processes, while other companies have retained consultants or purchased commercial software and other products to establish or improve their ICFR evaluation process.[14] Management must bring its own experience and informed judgment to bear in order to design an evaluation process that meets the needs of its company and that provides reasonable assurance for its assessment. This proposed guidance is intended to allow management the flexibility to design such an evaluation process.

In order to facilitate the comparability of the assessment reports among companies, our rules implementing Section 404 require management to base its assessment of a company's internal control on a suitable evaluation framework. While the establishment and maintenance of internal accounting controls have been required since the enactment of the FCPA, as discussed above, the Commission's rules implementing Section 404 required management for the first time to use a framework for evaluating ICFR. It is important to note that our rules do not mandate the use of a particular framework, since multiple viable frameworks exist and others may be developed in the future. However, in the release adopting the Section 404 requirements, the Commission identified the *Internal Control—Integrated Framework* created by the Committee of Sponsoring Organizations of the Treadway Commission (''COSO'') as an example of a suitable framework.[15] [16]

While the COSO framework identifies the components and objectives of an effective system of internal control, it does not set forth an approach for management to follow in evaluating the effectiveness of a company's ICFR.[17] We, therefore, distinguish between the COSO framework as a definition of what constitutes an effective system of internal control and guidance on how to evaluate ICFR for purposes of our rules. The guidance that we are proposing in

[9] *See* Release No. 33–8238 (June 5, 2003) [68 FR 36636] (hereinafter the ''Adopting Release''). *See* Release No. 33–8392 (February 24, 2004) [69 FR 9722] for compliance dates applicable to accelerated filers. See Release No. 33–8760 (December 15, 2006) for compliance dates applicable to non-accelerated filers.

[10] Title I of Pub. L. 95–213 (1977). Under the FCPA, companies that have a class of securities registered under Section 12 of the Exchange Act, or that are required to file reports under Section 15(d) of the Exchange Act, are required to (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and (b) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (2) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

The definition of internal control over financial reporting is consistent with the description of internal accounting controls under the FCPA.

[11] *See* Adopting Release at Section II.B.3.d.

[12] *Id.*

[13] *Id.*

[14] Exchange Act Rules 13a–15 and 15d–15 require management to evaluate the effectiveness of ICFR as of the end of the fiscal year. For purposes of this document, the term ''evaluation'' or ''evaluation process'' refers to the methods and procedures that management implements to comply with these rules. The term ''assessment'' is used in this document to describe the disclosure required by Item 308 of Regulations S–B and S–K [17 CFR 228.308 and 229.308]. This disclosure must include discussion of any material weaknesses which exist as of the end of the most recent fiscal year and management's assessment of the effectiveness of ICFR, including a statement as to whether or not ICFR is effective. Management is not permitted to conclude that ICFR is effective if there are one or more material weaknesses in ICFR.

[15] *See* COSO, *Internal Control-Integrated Framework* (1992). In 1994, COSO published an addendum to the *Reporting to External Parties* volume of the COSO Report. The addendum discusses the issue of, and provides a vehicle for, expanding the scope of a public management report on internal control to address additional controls pertaining to safeguarding of assets. In 1996, COSO issued a supplement to its original framework to address the application of internal control over financial derivative activities.

The COSO framework is the result of an extensive study of internal control to establish a common definition of internal control that would serve the needs of companies, independent public accountants, legislators, and regulatory agencies, and to provide a broad framework of criteria against which companies could evaluate and improve their control systems. The COSO framework divides internal control into three broad objectives: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. Our rules relate only to reliability of financial reporting. Each of the objectives in the COSO framework is further broken down into five interrelated components: control environment, risk assessment, control activities, information and communication, and monitoring.

[16] In that release, we also cited the *Guidance on Assessing Control* published by the Canadian Institute of Chartered Accountants (''CoCo'') and the report published by the Institute of Chartered Accountants in England & Wales *Internal Control: Guidance for Directors on the Combined Code* (known as the Turnbull Report) as examples of other suitable frameworks that issuers could choose in evaluating the effectiveness of their internal control over financial reporting. We encourage companies to examine and select a framework that may be useful in their own circumstances; we also encourage the further development of alternative frameworks.

[17] On July 11, 2006, COSO issued guidance entitled ''Internal Control Over Financial Reporting—Guidance for Smaller Public Companies'' that was designed primarily to help management of smaller public companies with establishing and maintaining effective ICFR. The guidance includes evaluation tools; however, these tools are intended only to be illustrative.

this release is not intended to replace or modify the COSO framework or any other suitable framework.

In determining the need for additional guidance to management on how to conduct its evaluation, it is important to consider the steps that have been taken by the Commission and others to provide guidance to companies and audit firms. The Commission held its first roundtable discussion about implementation of the internal control reporting provisions on April 13, 2005. The 2005 roundtable sought input to consider the impact of the implementation of the Section 404 reporting requirements in view of the fact that Section 404 resulted in a major change for management and auditors. A broad range of interested parties, including representatives of managements and boards of domestic and foreign public companies, auditors, investors, legal counsel, and board members of the Public Company Accounting Oversight Board (''PCAOB''), participated in the discussion. We also invited and received written submissions from the public regarding Section 404 in advance of the roundtable.

Feedback obtained from the 2005 roundtable indicated that the internal control reporting requirements had led to an increased focus by management on ICFR. However, the feedback also identified particular areas which were in need of further clarification to reduce unnecessary costs and burdens while at the same time not jeopardizing the benefits of Section 404. In addition, feedback indicated that a number of the implementation issues arose from an overly conservative application of the Commission rules and PCAOB Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements* (''AS No. 2''), and the requirements of AS No. 2 itself, as well as questions regarding the appropriate role of the auditor in management's evaluation process.

In response to this feedback, the Commission and its staff issued guidance on May 16, 2005,[18] emphasizing that management, not the auditor, is responsible for determining the appropriate nature and form of internal controls for the company as well as their evaluation methods and procedures. The May 2005 Staff Guidance emphasized and clarified existing provisions of the rules and other Commission guidance relating to the exercise of professional judgment, the concept of reasonable assurance, and the permitted communications between management and auditors. Feedback has indicated that the May 2005 Staff Guidance was appropriate, and while we have incorporated certain sections of that guidance into the proposed interpretive guidance set forth in this release, the May 2005 Staff Guidance remains relevant.[19]

In its Final Report to the Commission, issued on April 23, 2006, the Commission's Advisory Committee on Smaller Public Companies (''Advisory Committee'') raised a number of concerns regarding the ability of smaller companies to comply cost-effectively with the requirements of Section 404. The Advisory Committee identified as an overarching concern the difference in how smaller and larger public companies operate. The Advisory Committee focused in particular on three characteristics: (1) The limited number of personnel in smaller companies, which constrains the companies' ability to segregate conflicting duties; (2) top management's wider span of control and more direct channels of communication, which increase the risk of management override; and (3) the dynamic and evolving nature of smaller companies, which limits their ability to have static processes that are well-documented.[20]

The Advisory Committee suggested that these characteristics create unique differences in how smaller companies achieve effective ICFR that may not be adequately accommodated in AS No. 2 or other implementation guidance as currently applied in practice.[21] In addition, the Advisory Committee noted serious ramifications for smaller public companies stemming from the cost of frequent documentation changes and sustained review and testing of controls perceived to be necessary to comply with the Section 404 requirements. Indeed, the Advisory Committee noted that costs in relation to revenue have been disproportionately borne by smaller public companies.[22]

The Advisory Committee Final Report sets forth several recommendations for the Commission to consider regarding the application of the Section 404 requirements to smaller public companies. The Advisory Committee recommended partial or complete exemptions from the internal control reporting requirements for specified types of smaller public companies under certain conditions, unless and until a framework is developed for assessing ICFR that recognizes the characteristics and needs of those companies. The Advisory Committee also recommended, among other things, that the Commission, COSO and the PCAOB provide additional guidance to management to help facilitate the design and evaluation of ICFR and make processes related to internal control more cost-effective.[23] In addition, some commenters on the Advisory Committee's exposure draft of its report suggested that the Commission reexamine the appropriate role of outside auditors in connection with the management assessment required by the rules implementing Section 404.[24]

Further, in April 2006, the U.S. Government Accountability Office issued a Report to the Committee on Small Business and Entrepreneurship, U.S. Senate, entitled *Sarbanes-Oxley Act, Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*, which recommended that in considering the concerns of the Advisory Committee, the Commission should assess the available guidance for management to determine whether it is sufficient or whether additional action is needed. That report stated that management's implementation and evaluation efforts were largely driven by AS No. 2 because guidance was not available for

[18] *Commission Statement on Implementation of Internal Control Reporting Requirements*, Press Release No. 2005–74 (May 16, 2005); Division of Corporation Finance and Office of the Chief Accountant: *Staff Statement on Management's Report on Internal Control Over Financial Reporting* (May 16, 2005) (hereinafter ''May 2005 Staff Guidance'') available at *http://www.sec.gov/spotlight/soxcom/.htm.*

Also on May 16, 2005, the PCAOB and its staff issued guidance to auditors on their audits under AS No. 2. The PCAOB's guidance focused on areas in which the efficiency of the audit could be substantially improved. Topics included the importance of the integrated audit, the role of risk assessment throughout the process, the importance of taking a top-down approach, and auditors' use of the work of others.

[19] The incorporation of our May 16, 2005 guidance into this guidance was generally supported in comments received in response to the *Concept Release Concerning Management's Reports on Internal Control Over Financial Reporting,* Release No. 34–54122 (July 11, 2006) [71 FR 40866] available at *http://www.sec.gov/rules/concept/2006/34–54122.pdf* (hereinafter ''Concept Release'') . See, for example, letters received from the American Electronics Association, Computer Sciences Corporation, American Institute of Certified Public Accountants, Institute of Management Accountants and Schering AG (available at *http://www.sec.gov/comments/s7–11–06/s71106.shtml*).

[20] *Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission* (April 23, 2006) at 35–36, available at *http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf* (hereinafter ''Advisory Committee Final Report'').

[21] *Id.* at 37.

[22] *Id.* at 33.

[23] *Id.* at 52.

[24] *See, e.g.*, letter from BDO Seidman, LLP (April 3, 2006), available at *http://www.sec.gov/rules/other/265–23/bdoseidman9239.pdf.*

management.[25] Further, the GAO Report recommended that the Commission coordinate with the PCAOB to help ensure that the Section 404-related audit standards and guidance are consistent with any additional management guidance issued.[26]

On May 10, 2006, the Commission and PCAOB conducted a second Roundtable on Internal Control Reporting and Auditing Provisions to solicit feedback on accelerated filers' second year of compliance with the Section 404 requirements. Several participants indicated that their evaluation processes had improved from year one, but that additional improvements were needed. Although some expressed concern about being required to change the evaluation processes they have already implemented, a number of the participants expressed, at the roundtable and in their written comments, the view that additional management guidance was needed.[27]

On July 11, 2006, COSO published additional application guidance for its control framework, *Internal Control over Financial Reporting—Guidance for Smaller Public Companies.* This guidance is intended to assist the management of smaller companies in understanding and applying the COSO framework. It outlines principles fundamental to the five components of internal control described in the COSO framework. Further, this guidance defines each of these principles and describes the attributes of each. It also lists a variety of approaches that smaller companies can use to apply the principles and includes examples of how smaller companies have applied the principles. The Commission anticipates that the guidance will help organizations of all sizes that use the COSO framework to better understand and apply it to ICFR.

On July 11, 2006, the Commission issued a Concept Release to seek public feedback on the Commission's planned issuance of guidance regarding management's evaluation and assessment of the effectiveness of ICFR.[28] The Concept Release sought specific feedback in three areas described below, as well as inquired about whether there were other areas where guidance should also be provided.

- Risk and control identification (such as how management considers entity-level controls, financial statement account and disclosure level considerations, as well as fraud risks);[29]
- The methods or approaches available to management to gather evidence to support its assessment, and factors management should consider in determining the nature, timing and extent of its evaluation procedures; and
- Documentation requirements, including overall objectives of the documentation and factors that might influence documentation requirements.

The Commission received 167 comment letters in response to the Concept Release, a majority of which supported additional Commission guidance to management that is applicable to companies of all sizes and complexities.[30] The Commission considered the feedback received in those comment letters in drafting this proposed interpretive guidance.

Further, the Commission has also received feedback that its guidance and ICFR rules have been interpreted as applying to non-profit and non-public organizations. The Commission does not regulate such organizations, and none of the Commission's guidance or rules is intended to apply to such organizations.

II. Introduction

To implement Section 404(a) of the Sarbanes-Oxley Act, the Commission adopted rules requiring that management annually issue a report that contains an assessment of the effectiveness of ICFR.[31] An overall objective of ICFR is to foster the preparation of reliable financial statements. Reliable financial statements must be materially accurate. Therefore, the central purpose of the evaluation is to assess whether there is a reasonable possibility of a material misstatement in the financial statements not being prevented or detected on a timely basis by the company's ICFR.[32]

Management's assessment is based on whether any material weaknesses exist as of the end of the fiscal year. A material weakness is a deficiency, or combination of deficiencies, in ICFR such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis by the company's ICFR.[33]

[25] United States Government Accountability Office Report to the Committee on Small Business and Entrepreneurship, U.S. Senate: *Sarbanes-Oxley Act: Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies* (April 2006) at 52–53, available at *http://www.gao.gov/new.items/d06361.pdf* (hereinafter ''GAO Report'').

[26] *Id.* at 58.

[27] *See* transcript of Roundtable Discussion on Second Year Experiences with Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 1, 2, 3, and 5; letter from The Institute of Internal Auditors (IIA) (May 1, 2006); letter from Institute of Management Accountants (IMA) (May 4, 2006); letter from Canadian Bankers Association (CBA) (April 28, 2006); letter from Deloitte & Touche LLP (May 1, 2006); letter from Ernst & Young LLP (May 1, 2006); letter from KPMG LLP (May 1, 2006); letter from PricewaterhouseCoopers LLP (May 1, 2006) and letter from Pfizer Inc. (May 1, 2006), all available at *http://www.sec.gov/news/press/4–511.shtml.*

[28] *See* footnote 19 above for reference.

[29] The term ''entity-level controls'' as used in this document describes aspects of a system of internal control that have a pervasive effect on the entity's system of internal control such as controls related to the control environment (*e.g.*, management's philosophy and operating style, integrity and ethical values, board or audit committee oversight; and assignment of authority and responsibility); controls over management override; the company's risk assessment process; centralized processing and controls, including shared service environments; controls to monitor results of operations; controls to monitor other controls, including activities of the internal audit function, the audit committee, and self-assessment programs; controls over the period-end financial reporting process; and policies that address significant business control and risk management practices. The term ''company-level'' is also commonly used to describe these controls.

[30] The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F Street, NE., Washington DC 20549 in File No. S7–11–06. They are also available on-line at *http://www.sec.gov/comments/s7–11–06/s71106.shtml.*

[31] Exchange Act Rules 13a–15(f) and 15d–15(f) [17 CFR 240.13a–15(f) and 15d–15(b)] define internal control over financial reporting as:

A process designed by, or under the supervision of, the issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the registrant's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the registrant are being made only in accordance with authorizations of management and directors of the registrant; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the registrant's assets that could have a material effect on the financial statements.

[32] There is a reasonable possibility of an event when the likelihood of the event is either ''reasonably possible'' or ''probable'' as those terms are used in Financial Accounting Standards Board Statement No. 5, *Accounting for Contingencies.*

[33] Existing PCAOB auditing literature describes a material weakness as a control deficiency, or combination of control deficiencies, that result in more than a remote likelihood that a material misstatement of the company's annual or interim financial statements will not be prevented or detected. Our use of the phrase ''reasonable possibility'' rather than ''more than remote'' to describe the likelihood of a material error is intended to more clearly communicate the likelihood element. We note that the PCAOB has indicated that it intends to revise its definitions to use the phrase ''reasonable possibility.'' AS No. 2

Management should implement and conduct an evaluation that is sufficient to provide it with a reasonable basis for its annual assessment. Management should use its own experience and informed judgment in designing an evaluation process that aligns with the operations, financial reporting risks and processes of the company.[34] If the evaluation process identifies material weaknesses that exist as of the end of the fiscal year, such weaknesses must be disclosed in management's annual report with a statement that ICFR is ineffective.[35] If the evaluation identifies no internal control deficiencies that constitute a material weakness, management assesses ICFR as effective.[36]

Management is required to assess as of the end of the fiscal year whether the company's ICFR is effective in providing reasonable assurance regarding the reliability of financial reporting.[37] Management is not required by Section 404 of Sarbanes-Oxley to assess other internal controls, such as controls solely implemented to meet a company's operational objectives. Further, ''reasonable assurance'' does not mean absolute assurance. ICFR cannot prevent or detect all misstatements, whether unintentional errors or fraud. Rather, the ''reasonable assurance'' referred to in the Commission's implementing rules relates to similar language in the FCPA. Exchange Act Section 13(b)(7) defines ''reasonable assurance'' and ''reasonable detail'' as ''such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.''[38] The Commission has long held that ''reasonableness'' is not an ''absolute standard of exactitude for corporate records.''[39] In addition, the Commission recognizes that while ''reasonableness'' is an objective standard, there is a range of judgments that an issuer might make as to what is ''reasonable'' in implementing Section 404 and the Commission's rules. Thus, the terms ''reasonable,'' ''reasonably'' and ''reasonableness'' in the context of Section 404 implementation do not imply a single conclusion or methodology, but encompass the full range of appropriate potential conduct, conclusions or methodologies upon which an issuer may reasonably base its decisions.

This release proposes guidance regarding matters we believe will help management design and conduct its evaluation and assess the effectiveness of ICFR. The guidance assumes management has established and maintains a system of internal accounting controls as required by the FCPA. Further, it does not explain how management should design its ICFR to comply with the control framework it has chosen. To allow appropriate flexibility, the guidance does not provide a checklist of steps management should perform in completing its evaluation. Rather, it describes a top-down, risk-based approach that allows for the exercise of significant judgment so that management can design and conduct an evaluation that is tailored to its company's individual circumstances.[40] [41]

The proposed guidance is organized around two broad principles. The first principle is that management should evaluate the design of the controls that it has implemented to determine whether they adequately address the risk that a material misstatement in the financial statements would not be prevented or detected in a timely manner. The guidance describes a top-down, risk-based approach to this principle, including the role of entity-level controls in assessing financial reporting risks and the adequacy of controls. The proposed guidance promotes efficiency by allowing management to focus on those controls that are needed to adequately address the risk of a material misstatement in its financial statements. There is no requirement in our guidance to identify every control in a process or document the business processes impacting ICFR. Rather, under the approach described herein, management focuses its evaluation process and the documentation supporting the assessment on those controls that it believes adequately address the risk of a material misstatement in the financial statements. For example, if management determines that the risks for a particular financial reporting element are adequately addressed by an entity-level control, no further evaluation of other controls is required.

The second principle is that management's evaluation of evidence about the operation of its controls should be based on its assessment of risk. The proposed guidance provides an approach for making risk-based judgments about the evidence needed for the evaluation. This allows management to align the nature and extent of its evaluation procedures with those areas of financial reporting that pose the greatest risks to reliable financial reporting (*i.e.*, whether the financial statements are materially accurate). As a result, management may be able to use more efficient approaches to gathering evidence, such as self-assessments, in low-risk areas and perform more extensive testing in high-risk areas.

By following these two principles, we believe companies of all sizes and complexities will be able to implement our rules effectively and efficiently.[42] As smaller public companies generally have less complex internal control systems than larger public companies, this top-down, risk-based approach should enable smaller public companies in particular to scale and tailor their

establishes that a control is deficient when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. The definition formulated here is intended to be consistent with its use in existing auditing literature and practice.

[34] This point also is made in one of the publicly available and commonly used assessment tools—the third volume of the report by COSO, *Internal Control—Integrated Framework: Evaluation Tools.* That volume cautioned that ''because facts and circumstances vary between entities and industries, evaluation methodologies and documentation will also vary. Accordingly, entities may use different evaluation tools, or use other methodologies utilizing different evaluative techniques.''

[35] This focus on material weaknesses will lead to a better understanding by investors of internal control over financial reporting, as well as its inherent limitations. Further, the Commission's rules implementing Section 404, by providing for public disclosure of material weaknesses, concentrate attention on the most important internal control issues.

[36] If management's evaluation process identifies material weaknesses, but all material weaknesses are remediated by the end of the fiscal year, management may exclude disclosure of those from its assessment and state that ICFR is effective as of the end of the fiscal year. However, management should consider whether disclosure of the remediated material weaknesses is appropriate or required under Item 307 or Item 308 of Regulations S–K or S–B or other Commission disclosure rules.

[37] *See* Exchange Act Rules 13a–15 and 15d–15.

[38] 15 U.S.C. 78m(b)(7). The conference committee report on amendments to the FCPA also noted that the standard ''does not connote an unrealistic degree of exactitude or precision. The concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance.'' Cong. Rec. H2116 (daily ed. April 20, 1988).

[39] Release No. 34–17500 (January 29, 1981) [46 FR 11544].

[40] Because management is responsible for maintaining effective internal control over financial reporting, this proposed interpretive guidance does not specifically address the role of the board of directors or audit committee in a company's evaluation and assessment of ICFR. However, we would ordinarily expect a board of directors or audit committee, as part of its oversight responsibilities for the company's financial reporting, to be knowledgeable and informed about the evaluation process and management's assessment, as necessary in the circumstances.

[41] *See* footnote 42 below.

[42] Commenters on the Concept Release were supportive of principles-based guidance that applies to all companies. See for example, letters regarding file number S7–11–06 of: Financial Executives International, Metlife, and Siemens AG at *http://www.sec.gov/comments/s7–11–06/s71106.shtml.*

evaluation methods and procedures to fit their own facts and circumstances.[43] We encourage smaller public companies to take advantage of the flexibility and scalability of this approach to conduct an efficient evaluation of internal control over financial reporting.[44] Further, we believe the proposed guidance will assist companies of all sizes in completing the annual evaluation of ICFR in an effective and efficient manner by addressing a number of the common areas of concern that have been identified over the past two years. For example, the proposed guidance:

- Explains how to vary approaches for gathering evidence to support the evaluation based on risk assessments;
- Explains the use of ''daily interaction,'' self-assessment, and other on-going monitoring activities as evidence in the evaluation;
- Explains the purpose of documentation and how management has flexibility in approaches to documenting support for its assessment;
- Provides management significant flexibility in making judgments regarding what constitutes adequate evidence in low-risk areas; and
- Allows for management and the auditor to have different testing approaches.

The information management gathers and analyzes from its evaluation process serves as the basis for its assessment on the effectiveness of its ICFR. The extent of effort required for a reasonable evaluation process will largely depend on the company's existing policies, procedures and practices. For example, in some situations management may determine that its existing activities, which may be undertaken for other reasons, provide information that is relevant to the assessment. In other situations, management may have to implement additional procedures to gather and analyze the information needed to provide a reasonable basis for its annual assessment.

[43] *See* Advisory Committee Final Report at 35–38.

[44] While a company's individual facts and circumstances should be considered in determining whether a company is a smaller public company, a company's market capitalization and annual revenues are useful indicators of its size and complexity. In light of the Advisory Committee Final Report and the SEC's rules defining ''accelerated filers'' and ''large accelerated filers,'' companies with a market capitalization of approximately $700 million or less, with reported annual revenues of approximately $250 million or less, should be presumed to be ''smaller companies,'' with the smallest of these companies, with a market capitalization of approximately $75 million or less, described as ''microcaps.''

III. Proposed Interpretive Guidance

The proposed interpretive guidance addresses the following topics:

A. The Evaluation Process
  1. Identifying Financial Reporting Risks and Controls
  a. Identifying Financial Reporting Risks
  b. Identifying Controls that Adequately Address Financial Reporting Risks
  c. Consideration of Entity-level Controls
  d. Role of General Information Technology Controls
  e. Evidential Matter to Support the Assessment
  2. Evaluating Evidence of the Operating Effectiveness of ICFR
  a. Determining the Evidence Needed to Support the Assessment
  b. Implementing Procedures to Evaluate Evidence of the Operation of ICFR
  c. Evidential Matter to Support the Assessment
  3. Multiple Location Considerations
B. Reporting Considerations
  1. Evaluation of Control Deficiencies
  2. Expression of Assessment of Effectiveness of ICFR by Management and the Registered Public Accounting Firm
  3. Disclosures About Material Weaknesses
  4. Impact of a Restatement of Previously Issued Financial Statements on Management's Report on ICFR
  5. Inability to Assess Certain Aspects of ICFR

A. The Evaluation Process

The objective of the evaluation of ICFR is to provide management with a reasonable basis for its annual assessment as to whether any material weaknesses in ICFR exist as of the end of the fiscal year. To meet this objective, management identifies the risks to reliable financial reporting, evaluates whether the design of the controls which address those risks is such that there is a reasonable possibility that a material misstatement in the financial statements would not be prevented or detected in a timely manner, and evaluates evidence about the operation of the controls included in the evaluation based on its assessment of risk. The evaluation process will vary from company to company; however, the approach we discuss is a top-down, risk-based approach which we believe is typically most efficient and effective.

The evaluation process guidance is presented in two sections. The first section explains an approach to identifying financial reporting risks and evaluating whether the controls management has implemented are designed to address those risks. The second section describes an approach for making judgments about the methods and procedures for evaluating whether the operation of ICFR is effective. Both sections explain how entity-level controls[45] impact the evaluation process as well as how management focuses its evaluation efforts on the greatest risks.

Under the Commission's rules, management's annual assessment must be made in accordance with a suitable control framework's definition of effective internal control.[46] These control frameworks define elements of internal control that are expected to be present and functioning in an effective internal control system. In assessing effectiveness, management evaluates whether its ICFR includes policies, procedures and activities that address all of the elements of internal control that the applicable control framework describes as necessary for an internal control system to be effective. The framework elements describe the characteristics of an internal control system that may be relevant to individual areas of the company's ICFR, pervasive to many areas, or entity-wide. Therefore, management's evaluation process includes not only controls involving particular areas of financial reporting, but also the entity-wide and other pervasive elements of internal control that are defined by the control frameworks. This guidance is not intended to replace the elements of an effective system of internal control as defined within a control framework.

1. Identifying Financial Reporting Risks and Controls

The approach described herein allows management to identify controls and maintain supporting evidential matter for its controls in a manner that is tailored to a company's financial reporting risks (as defined below). Thus, management can avoid identifying and

[45] *See* footnote 29 above.

[46] For example, both the COSO framework and the Turnbull Report state that determining whether a system of internal control is effective is a subjective judgment resulting from an assessment of whether the five components (*i.e.*, control environment, risk assessment, control activities, monitoring, and information and communication) are present and functioning effectively. Although CoCo states that an assessment of effectiveness be made against twenty specific criteria, it acknowledges that the criteria can be regrouped into different structures, and includes a table showing how the criteria can be regrouped into the five-component structure of COSO. Thus, these five components are also criteria for effective internal control.

documenting controls that are not important to achieving the objectives of ICFR. Management should assess whether its controls are designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles (''GAAP'').[47] The evaluation begins with the identification and assessment of the risks to reliable financial reporting (*i.e.*, materially accurate financial statements), including changes in those risks. Management then evaluates whether it has controls placed in operation that are designed to adequately address those risks. Management ordinarily would consider the company's entity-level controls in both its assessment of risk and in identifying which controls adequately address the risk. The controls that management identifies as adequately addressing the financial reporting risks are then subject to procedures to evaluate evidence of the operating effectiveness, as determined pursuant to Section III.A.2.

The effort necessary to conduct an initial evaluation of financial reporting risks (as defined below) and the related controls will vary among companies, partly because this effort will depend on management's existing financial reporting risk assessment and monitoring activities.[48] Even so, in subsequent years for most companies, management's effort should ordinarily be significantly less because subsequent evaluations should be more focused on changes in risks and controls rather than identification of all financial reporting risks and the related controls. Further, in each subsequent year, the evidence necessary to reasonably support the assessment will only need to be updated from the prior year(s), not recreated anew.

a. Identifying Financial Reporting Risks

Ordinarily, the identification of financial reporting risks begins with evaluating how the requirements of GAAP apply to the company's business, operations and transactions. Management must provide investors with financial statements that fairly present the company's financial position, results of operations and cash flows in accordance with GAAP. A lack of fair presentation involves material misstatements (including omissions) in one or more of the financial statement amounts or disclosures (''financial reporting elements'').

Management uses its knowledge and understanding of the business, its organization, operations, and processes to consider the sources and potential likelihood of misstatements in financial reporting elements and identifies those that could result in a material misstatement to the financial statements (''financial reporting risks''). Internal and external risk factors that impact the business, including the nature and extent of any changes in those risks, may give rise to financial reporting risks. Financial reporting risks may also arise from sources such as the initiation, authorization, processing and recording of transactions and other adjustments that are reflected in financial reporting elements. Management's evaluation of financial reporting risks should also consider the vulnerability of the entity to fraudulent activity (*e.g.*, fraudulent financial reporting, misappropriation of assets and corruption) and whether any of those exposures could result in a material misstatement of the financial statements.[49]

The methods and procedures for identifying financial reporting risks will vary based on the characteristics of the company.[50] These characteristics include, among others, the size, complexity, and organizational structure of the company and its processes and financial reporting environment, as well as the control framework used by management. For example, to effectively identify financial reporting risks in larger businesses or in situations involving complex business processes, management's evaluation may need to involve employees with specialized knowledge who collectively have the necessary understanding of the requirements of GAAP, the underlying business transactions, the process activities, including the role of computer technology, that are required to initiate, authorize, record and process transactions, and the points within the process at which a material misstatement, including a misstatement due to fraud, may occur. In contrast, in a small company with less complex business processes that operate on a centralized basis and with little change in the risks or processes, management's daily involvement with the business may provide it with adequate knowledge to appropriately identify financial reporting risks.

b. Identifying Controls That Adequately Address Financial Reporting Risks

Management should evaluate whether it has controls placed in operation (*i.e.*, in use) that are designed to address the company's financial reporting risks.[51] The determination of whether an individual control, or a combination of controls, adequately addresses a financial reporting risk involves judgments about both the likelihood and potential magnitude of misstatements arising from the financial reporting risk. For purposes of the evaluation of ICFR, the controls are not adequate when their design is such that there is a reasonable possibility that a misstatement in the related financial reporting element that could result in a material misstatement of the financial statements will not be prevented or detected on a timely basis.[52] If management determines that

[47] Management of foreign private issuers that file financial statements prepared in accordance with home country generally accepted accounting principles or International Financial Reporting Standards with a reconciliation to U.S. GAAP should plan and conduct their evaluation process based on their primary financial statements (*i.e.*, home country GAAP or IFRS) rather than the reconciliation to U.S. GAAP.

[48] Monitoring activities are those that assess the quality of internal control performance over time. These activities involve assessing the design and operation of controls on a timely basis and taking necessary corrective actions. This process is accomplished through on-going monitoring activities, separate evaluations by internal audit or personnel performing similar functions, or a combination of the two. On-going monitoring activities are often built into the normal recurring activities of an entity and include regular management and supervisory review activities.

[49] *See* ''Management Antifraud Programs and Controls—Guidance to Help Prevent, Deter, and Detect Fraud,'' which was issued jointly by seven professional organizations and is included as an exhibit to AU Sec. 316, *Consideration of Fraud in a Financial Statement Audit* (as adopted on an interim basis by the PCAOB in PCAOB Rule 3200T).

[50] To provide management the flexibility needed to implement an evaluation process that best suits its particular circumstances; the guidance in this proposed interpretative release does not prescribe a particular methodology for the identification of risks and controls. While the May 2005 Staff Guidance used the term ''significant account,'' which is used in AS No. 2, we are not requiring that companies use the guidance in the auditing literature to conduct their evaluation approach. The Commission encourages the development of methodologies and tools that meet the objectives of the ICFR evaluation.

[51] A control consists of a specific set of policies, procedures, and activities designed to meet an objective. A control may exist within a designated function or activity in a process. A control's impact on ICFR may be entity-wide or specific to a class of transactions or application. Controls have unique characteristics—they can be: automated or manual; reconciliations; segregation of duties; review and approval authorizations; safeguarding and accountability of assets, preventing error or fraud detection, or disclosure. Controls within a process may consist of financial reporting controls and operational controls (*i.e.*, those designed to achieve operational objectives).

[52] The use of the phrase ''reasonable possibility that a misstatement in the related financial reporting element that could result in a material misstatement of the financial statements'' is intended solely to assist management in identifying matters for disclosure under Item 308 of Regulation S–K. It is not intended to interpret or describe management's responsibility under FCPA or modify

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its controls are not adequately designed, a deficiency exists that must be evaluated to determine whether it is a material weakness. The guidance in Section III.B.1. is designed to assist management with that evaluation.[53]

Management may identify controls for a financial reporting element that are preventive, detective or a combination of both.[54] It is not necessary to identify all controls that exist. Rather, the objective of this evaluation step is to identify controls that adequately address the risk of misstatement for the financial reporting element that could result in a material misstatement in the financial statements. To illustrate, management may determine for a financial reporting element that a control within the company's period-end financial reporting process (*i.e.*, an entity-level control) is designed in a manner that adequately addresses the risk that a misstatement in interest expense, that could result in a material misstatement in the financial statements, may occur and not be detected. In such a case, management may not need to identify any additional controls related to interest expense.

Management may consider the efficiency with which evidence of the operation of a control can be evaluated when identifying the controls that adequately address the financial reporting risks. For example, when more than one control exists that individually addresses a particular risk (*i.e.*, redundant controls), management may decide to select the control for which evidence of operating effectiveness can be obtained more efficiently. Moreover, when adequate general information technology (''IT'') controls exist, and management has determined the operation of such controls is effective, management may determine that automated controls may be more efficient to evaluate than manual controls. Considering the efficiency with which the operation of a control can be evaluated will often enhance the overall efficiency of the evaluation process.

When identifying the controls that address financial reporting risks, management may learn information about the characteristics of the controls, such as the judgment required to operate them or their complexity, that are considered in its judgments about the risk that the control will fail to operate as designed. Section III.A.2. discusses how these characteristics are considered in determining the nature and extent of evidence of the operation of the control that management evaluates.

At the end of this identification process, management will have identified for testing only those controls that are needed to adequately address the risk of a material misstatement in its financial statements and for which evidence about their operation can be obtained most efficiently.

c. Consideration of Entity-level Controls

Management considers entity-level controls when identifying and assessing financial reporting risks and related controls for a financial reporting element. In doing so, it is important for management to consider the nature of the entity-level controls and how they relate to the financial reporting element.[55] Some entity-level controls are designed to operate at the process, transaction or application level and might adequately prevent or detect on a timely basis misstatements in one or more financial reporting elements that could result in a material misstatement to the financial statements. On the other hand, an entity-level control may be designed to identify possible breakdowns in lower-level controls, but not in a manner that would, by itself, sufficiently address the risk that misstatements to financial reporting elements that could result in a material misstatement to the financial statements will be prevented or detected on a timely basis.

The more indirect the relationship to a financial reporting element, the less effective a control may be in preventing or detecting a misstatement. Some entity-level controls, such as the control environment (*e.g.*, tone at the top and entity-wide programs such as codes of conduct and fraud prevention), are indirectly related to a financial reporting element and may not, by themselves, be effective at preventing or detecting a misstatement in a financial reporting element. Therefore, while management ordinarily would consider entity-level controls of this nature when assessing financial reporting risks and evaluating the adequacy of controls, it is unlikely management will identify only this type of entity-level control as adequately addressing a financial reporting risk identified for a financial reporting element.[56]

d. Role of General Information Technology Controls

Controls that management identifies as addressing financial reporting risks may be automated (*e.g.*, application controls that update accounts in the general ledger for subledger activity) or dependent upon IT functionality (*e.g.*, a control that manually investigates items contained in a computer generated exception report). In these situations, management's evaluation process generally considers the design and operation of the automated or IT dependent controls management identifies and the relevant general IT controls over the applications providing the IT functionality. While general IT controls ordinarily do not directly prevent or detect material misstatements in the financial statements, the proper and consistent operation of automated or IT dependent controls depends upon effective general IT controls.

Aspects of general IT controls that may be relevant to the evaluation of ICFR will vary depending upon a company's facts and circumstances. Ordinarily, management should consider whether, and the extent to which, general IT control objectives related to program development, program changes, computer operations, and access to programs and data apply to its facts and circumstances. For purposes of the evaluation of ICFR, management only needs to evaluate those general IT controls that are necessary to adequately address financial reporting risks.

a control framework's definition of what constitutes an effective system of internal control.

[53] A deficiency in the design of ICFR exists when (a) necessary controls are missing or (b) existing controls are not properly designed so that, even if the control operates as designed, the financial reporting risks would not be addressed. AS No. 2 states that a deficiency in the design of ICFR exists when (a) a control necessary to meet the control objective is missing or (b) an existing control is not properly designed so that, even if the control operates as designed, the control objective is not always met. See AS No. 2 ¶ 8.

[54] Preventive controls have the objective of preventing the occurrence of errors or fraud that could result in a misstatement of the financial statements. Detective controls have the objective of detecting errors or fraud that has already occurred that could result in a misstatement of the financial statements. Preventive and detective controls may be completely manual, involve some degree of computer automation, or be completely automated.

[55] Controls can be either directly or indirectly related to a financial reporting element. Controls that are designed to have a specific effect on a financial reporting element are considered directly related. For example, controls established to ensure that personnel are properly counting and recording the annual physical inventory relate directly to the existence of the inventory.

[56] Many commenters on the Concept Release requested clarification of the role of entity-level controls in management's evaluation. See for example, letters regarding file number S7–11–06 of Aerospace Industries Association, Sprint Nextel Corporation, Unum Provident, Dupont, Deutsche Telekom, Ernst & Young LLP, Deloitte & Touche LLP, and Grant Thornton LLP at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.* See Section III.A.2.a. for additional guidance on entity-level controls.

e. Evidential Matter To Support the Assessment

As part of its evaluation of ICFR, management must maintain reasonable support for its assessment.[57] Documentation of the design of the controls management has placed in operation to adequately address the financial reporting risks is an integral part of the reasonable support. The form and extent of the documentation will vary depending on the size, nature, and complexity of the company. It can take many forms (*e.g.*, paper documents, electronic, or other media) and it can be presented in a number of ways (*e.g.*, policy manuals, process models, flowcharts, job descriptions, documents, internal memorandums, forms, etc). The documentation does not need to include all controls that exist within a process that impacts financial reporting. Rather, and more importantly, the documentation can be focused on those controls that management concludes are adequate to address the financial reporting risks.[58]

In addition to providing support for the assessment of ICFR, documentation of the design of controls also supports other objectives of an effective system of internal control. For example, it serves as evidence that controls within ICFR, including changes to those controls, have been identified, are capable of being communicated to those responsible for their performance, and are capable of being monitored by the company. The documentation also provides the foundation for appropriate communication concerning responsibilities for performing controls and for the company's evaluation and monitoring of the operation of controls.

Management should also consider the need to maintain evidential matter, including documentation, of the entity-wide and other pervasive elements of its ICFR that it believes address the elements of internal control that its chosen control framework prescribes as necessary for an effective system of internal control.[59]

2. Evaluating Evidence of the Operating Effectiveness of ICFR

Management should evaluate evidence of the effective operation of ICFR. A control operates effectively when it is performed in a manner consistent with its design by individuals with the necessary authority and competency. Management ordinarily focuses its evaluation of the operation of controls on those areas of ICFR that pose the highest risk to reliable financial reporting. The evaluation procedures that management uses to gather evidence about the effective operation of ICFR should be tailored to its assessment of the risk characteristics of both the individual financial reporting elements and the related controls (collectively, ICFR risk). Management's assessment of ICFR risk also considers the impact of entity-level controls, such as the relative strengths and weaknesses of the control environment, which may influence management's judgments about the risks of failure for particular controls. Management varies the nature, timing and extent of the evaluation methods it implements in response to its judgments about ICFR risk.

Evidence about the effective operation of controls may be obtained from direct-testing of controls and on-going monitoring activities. The nature, timing and extent of evaluation procedures necessary for management to obtain sufficient evidence of the effective operation of a control depends on the assessed ICFR risk. In determining whether the evidence obtained is sufficient to provide a reasonable basis for its evaluation of the operation of ICFR, management should consider not only the quantity of evidence (*e.g.*, sample size) but also qualitative characteristics of the evidence. The qualitative characteristics of the evidence include the nature of the evaluation procedures performed, the period of time to which the evidence relates, the objectivity of those evaluating the controls, and, in the case of monitoring controls, the extent of validation through direct testing of underlying controls. For any individual control, different combinations of the nature, timing, and extent of evaluation procedures may provide sufficient evidence. The sufficiency of evidence is not determined by any of these attributes individually.

a. Determining the Evidence Needed To Support the Assessment

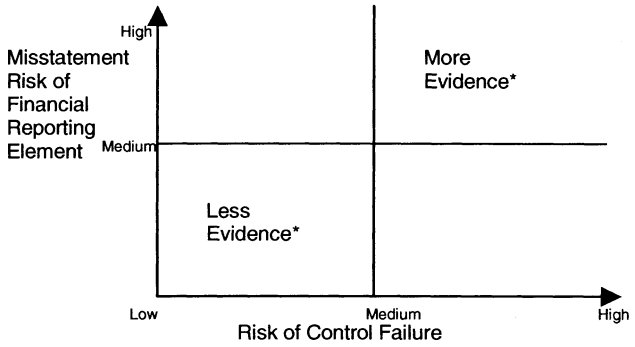
Management should evaluate the ICFR risk of the controls identified in Section III.A.1. to determine the evidence needed to support the assessment. The risk assessment should consider the impact of the characteristics of the financial reporting elements to which the controls relate and the characteristics of the controls themselves. This concept is demonstrated in the following diagram.

[57] *See* instructions to Item 308 of Regulations S–K and S–B.

[58] Commenters on the Concept Release were supportive of guidance regarding the form, nature, and extent of documentation. See for example letters regarding file number S7–11–06 of EDS, Controllers' Leadership Roundtable, Sasol Group, New York State Society of Certified Public Accountants, Grant Thornton LLP, and Financial Executives International at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.* Section III.A.2.c also provides guidance with regard to the documentation required to support management's evaluation of operating effectiveness.

[59] *Id.*

Determining the Sufficiency of Evidence Based on ICFR Risk



* The references to "more" or "less" include both the quantitative and qualitative characteristics of the evidence (i.e., its sufficiency).

Characteristics of the financial reporting element that management considers include both the materiality of the financial reporting element and the susceptibility of the underlying account balances, transactions or other supporting information to material misstatement. As the materiality of the financial reporting element increases in relation to the amount of misstatement that would be considered material to the financial statements, management's assessment of risk generally would correspondingly increase. In addition, financial reporting elements would generally have higher risk when they include transactions, account balances or other supporting information that is prone to misstatement. For example, elements which: (1) Involve judgment in determining the recorded amounts; (2) are susceptible to fraud; (3) have complexity in the underlying accounting requirements; or (4) are subject to environmental factors, such as technological and/or economic developments, would generally be assessed as higher risk.

Management also considers the likelihood that a control might fail to operate effectively. That likelihood may depend on, among other things, the type of control (*i.e.*, manual or automated), the complexity of the control, the risk of management override, the judgment required to operate the control, the nature and materiality of misstatements that the control is intended to prevent or detect, and the degree to which the control relies on the effectiveness of other controls (*e.g.*, general IT controls). For example, management's risk assessment would be higher for a financial reporting element that involves controls whose operation requires significant judgment than for a financial reporting element that involves non-complex controls requiring little judgment on behalf of management.

Certain financial reporting elements, such as those involving significant accounting estimates,[60] related party transactions, or critical accounting policies [61] generally would be assessed as having higher risk for both the risk of material misstatement to the financial reporting element and the risk of control failure. When the controls related to these financial reporting elements are subject to the risk of management override, involve significant judgment, or are complex, they should generally be assessed as having higher ICFR risk.

When a combination of controls is required to adequately address the risks of a financial reporting element, management should analyze the risk characteristics of each control. This is because the controls associated with a given financial reporting element may not necessarily share the same risk characteristics. For example, a financial reporting element involving significant estimation may require a combination of automated controls that accumulate source data and manual controls that require highly judgmental determinations of assumptions. In this case, the automated controls may be subject to a system that is stable (*i.e.*, has not undergone significant change) and is supported by effective general controls and are therefore assessed as lower risk, whereas the manual controls would be assessed as higher risk.

The existence of entity-level controls (*e.g.*, controls within the control environment) may influence management's determination of the evidence needed to sufficiently support its assessment. For example, management's judgment about the likelihood that a control fails to operate effectively may be influenced by a highly effective control environment and thereby impact the evidence evaluated for that control. However, a strong control environment would not eliminate the need for evaluation procedures that consider the effective operation of the control in some manner.[62]

b. Implementing Procedures To Evaluate Evidence of the Operation of ICFR

The methods and procedures management uses to gather evidence about the effective operation of controls are based on its assessment of the ICFR risk. Therefore, the methods and procedures, including the timing of when they are performed, are a function of the evidence that management considers necessary to provide reasonable support for its assessment of ICFR based on the assessment of ICFR risk. These procedures may be integrated with the daily responsibilities

[60] "Significant accounting estimates" referred to here relate to accounting estimates or assumptions where the nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and the impact of the estimates and assumptions on financial condition or operating performance is material. See *Interpretation: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*. Release No. 33–8350 (December 19, 2003).

[61] "Critical accounting policies" are defined as those policies that are most important to the financial statement presentation, and require management's most difficult, subjective, or complex judgments, often as the result of a need to make estimates about the effect of matters that are inherently uncertain. See *Action: Cautionary Advice Regarding Disclosure About Critical Accounting Policies*. Release No. 33–8040 (December 12, 2001).

[62] *See* references at footnote 56 to comments received related to the role of entity-level controls within management's evaluation.

of its employees or implemented specifically for purposes of the ICFR evaluation. Evidence that is relevant to the assessment may come from activities that are performed for other reasons (*e.g.*, day-to-day activities to manage the operations of the business). Further, activities performed to meet the monitoring objectives of the control framework will provide evidence to support the assessment.[63]

The evidence management evaluates may come from a combination of on-going monitoring and direct testing of controls. On-going monitoring includes activities that provide information about the operation of controls and may be obtained, for example, through self-assessment[64] procedures and the analysis of performance measures designed to track the operation of controls.[65] Direct tests of controls are tests performed periodically to provide evidence as of a point in time and may provide information about the reliability of on-going monitoring activities.

The risk assessments discussed in Section III.A.2.a. can assist management in determining the evaluation procedures that provide reasonable support for the assessment. As the assessed risk increases, management will ordinarily adjust the nature of the evidence that is obtained. For example, management can vary the nature of evidence from on-going monitoring by adjusting the extent of validation through periodic direct testing of the underlying controls and/or adjusting the objectivity of those performing the self-assessments. Management can also vary the nature of evidence obtained by adjusting the period of time covered by direct testing. When ICFR risk is assessed as high, management's evaluation would ordinarily include evidence obtained from direct testing. Further, management's evaluation would ordinarily consider evidence from a reasonable period of time during the year, including the fiscal year-end. For lower risk areas, management may conclude that evidence from on-going monitoring is sufficient and that no direct testing is required.[66]

In smaller companies, management's daily interaction with its controls may provide it with sufficient knowledge about their operation to evaluate the operation of ICFR. Knowledge from daily interaction includes information obtained by those responsible for evaluating the effectiveness of ICFR through their on-going direct knowledge and direct supervision of control operation. Management should consider its particular facts and circumstances when determining whether or not its daily interaction with controls provides sufficient evidence for the evaluation. For example, daily interaction may provide sufficient evidence when the operation of controls is centralized and the number of personnel involved in their operation is limited. Conversely, daily interaction in companies with multiple management reporting layers or operating segments would generally not provide sufficient evidence because those responsible for assessing the effectiveness of ICFR would not ordinarily be sufficiently knowledgeable about the operation of the controls. In these situations, management would ordinarily utilize direct testing or on-going monitoring type evaluation procedures to have reasonable support for the assessment.[67]

Management evaluates the evidence it gathers to determine whether the operation of a control is effective. This evaluation considers whether the control operated as designed and includes matters such as how the control was applied, the consistency with which it was applied, and whether the person performing the control possesses the necessary authority and competence to perform the control effectively. If management determines that the operation of the control is not effective, a deficiency exists that must be evaluated to determine whether it is a material weakness.

c. Evidential Matter To Support the Assessment

Management's assessment must be supported by evidential matter that provides reasonable support for its assessment. The nature of the evidential matter may vary based on the assessed level of risk of the underlying controls and other circumstances, but we would expect reasonable support for an assessment to include the basis for management's assessment, including documentation of the methods and procedures it utilizes to gather and evaluate evidence. The evidential matter may take many forms and will vary depending on the assessed level of risk for controls over each of its financial reporting elements. For example, management may document its overall strategy in a comprehensive memorandum that establishes the evaluation approach, the evaluation procedures, and the basis for conclusions for each financial reporting element. Management may determine that it is not necessary to separately maintain copies of the evidence it evaluates; however, the evidential matter within the company's books and records should be sufficient to provide reasonable support for its assessment. For example, in smaller companies, where management's daily interaction with its controls provides the basis for its assessment, management may have limited documentation created specifically for the evaluation of ICFR. However, in these instances, management should consider whether reasonable support for its assessment would include documentation of how its interaction provided it with sufficient evidence. This documentation might include memoranda, e-mails, and

[63] Many commenters on the Concept Release requested guidance clarifying that evidence relevant to supporting the evaluation may come from activities that are integrated into management's daily activities or performed for other reasons. See, for example, letters regarding file number S7–11–06 of EDS, American Electric Power and the Hundred Group of Finance Directors at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.*

[64] Self-assessment is a broad term that refers to different types of procedures performed by various parties. It includes an assessment made by the same personnel who are responsible for performing the control. However, self-assessment may also be used to refer to assessments and tests of controls performed by persons who are members of management but are not the same personnel who are responsible for performing the control. In this manner, an assessment may be carried out with varying degrees of objectivity. The sufficiency of the evidence derived from self-assessment depends on how it is implemented and the objectivity of those performing the assessment. COSO's 1992 framework defines self-assessments as ''evaluations where persons responsible for a particular unit or function will determine the effectiveness of controls for their activities.''

[65] Management's evaluation process may also consider the results of key performance indicators (''KPI's'') in which management reconciles operating and financial information with its knowledge of the business. While these KPI's may indicate a potential misstatement in a financial reporting element and therefore are relevant to meeting the objectives of ICFR, they generally do not monitor the effective operation of other controls. The procedures that management implements pursuant to this section should evaluate the effective operation of these KPI type controls when they are identified pursuant to Section III.A.1.b. as addressing financial reporting risk.

[66] Commenters on the Concept Release were supportive of guidance on factors that should be considered in using a risk-based evaluation. See, for example, letters regarding file number S7–11–06 of Aerospace Industries Association, American Institute of Certified Public Accountants, American Electric Power, Edison Electric Institute, and PricewaterhouseCoopers LLP at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.* Section III.A.2.a. also provides guidance on a risked-based evaluation.

[67] Commenters on the Concept Release were supportive of guidance on how management's daily interaction can support the evaluation. See, for example, letters regarding file number S7–11–06 of U.S. Oncology, Inc., EDS, American Electric Power, MetLife, Texas Society of Certified Public Accountants, and the Controllers' Leadership Roundtable at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.*

instructions or directions from management to company employees.[68]

Further, management should also consider the degree of complexity of the control, the level of judgment required to operate the control, and the risk of misstatement in the financial reporting element that could result in a material misstatement in the financial statements in determining the nature of supporting evidential matter. As these factors increase, management may determine that evidential matter supporting the assessment should be separately maintained.[69] For example, management may decide that separately maintained documentation will assist the audit committee in exercising its oversight of the company's financial reporting.

If management believes that the operation of the entity-wide and other pervasive elements of its ICFR address the elements of internal control that its applicable framework describes as necessary for an effective system, then the evidential matter constituting reasonable support for management's assessment would ordinarily include documentation of how management formed that belief.[70]

3. Multiple Location Considerations [71]

Management's consideration of financial reporting risks generally includes all of its locations or business units.[72] Management may determine that financial reporting risks are adequately addressed by controls which operate centrally, in which case the evaluation approach is similar to that of a business with a single location or business unit. When the controls necessary to address financial reporting risks operate at more than one location or business unit, management would generally evaluate evidence of the operation of the controls at the individual locations or business units.

In situations where management determines that the ICFR risk of the controls (as determined through Section III.A.2.a) that operate at individual locations or business units is low, management may determine that evidence gathered through self-assessment routines or other on-going monitoring activities, when combined with the evidence derived from a centralized control that monitors the results of operations at individual locations, may constitute sufficient evidence for the evaluation. In other situations, management may determine that, because of the complexity or judgment in the operation of the controls at the individual location, the risks of the controls are high, and therefore more evidence is needed about the effective operation of the controls at the location.

When performing its evaluation of the risk characteristics of the controls identified, management should consider whether there are location-specific risks that might impact the risk that a control might fail to operate effectively. Additionally, there may be pervasive factors at a given location that cause all controls, or a majority of controls, at that location to be considered higher risk. Management should generally consider the risk characteristics of the controls for each financial reporting element, rather than making a single judgment for all controls at that location when deciding whether the nature and extent of evidence is sufficient.

B. Reporting Considerations

1. Evaluation of Control Deficiencies

In order to determine whether a control deficiency, or combination of control deficiencies, is a material weakness, management evaluates each control deficiency that comes to its attention.[73] Control deficiencies that are determined to be a material weakness must be disclosed in management's annual report on its assessment of the effectiveness of ICFR.[74] Management may not disclose that it has assessed ICFR as effective if there is one or more control deficiencies determined to be a material weakness in ICFR. As part of the evaluation of ICFR, management considers whether the deficiencies, individually or in combination, are material weaknesses as of the end of the fiscal year. Multiple control deficiencies that affect the same financial statement account balance or disclosure increase the likelihood of misstatement and may, in combination, constitute a material weakness if there is a reasonable possibility [75] that a material misstatement to the financial statements would not be prevented or detected in a timely manner, even though such deficiencies may be individually insignificant. Therefore, management should evaluate individual control deficiencies that affect the same account balance, disclosure, relevant assertion, or component of internal control, to determine whether they collectively result in a material weakness.[76]

The evaluation of a control deficiency should include both quantitative and qualitative factors. Management can evaluate a deficiency in ICFR by considering the likelihood that the company's ICFR will fail to prevent or detect a misstatement of a financial statement element, or component thereof, on a timely basis; and the magnitude of the potential misstatement resulting from the deficiency or deficiencies. This evaluation is based on whether the company's controls will fail to prevent or detect a misstatement on a timely basis, not necessarily on whether a misstatement actually has occurred.

Several factors affect the likelihood that a deficiency, or a combination of deficiencies, will result in a misstatement in a financial reporting element not being prevented or detected on a timely basis. The factors include, but are not limited to, the following:

[68] *See* footnote 58 for references to Concept Release comment letters requesting guidance on documentation.

[69] *Id.*

[70] *Id.*

[71] Guidance in this area was requested in numerous comments received in response to the Concept Release. See, for example, letters regarding file number S7–11–06 of Eli Lilly, Deloitte & Touche LLP, Ernst & Young LLP, Sasol Group, and the Institute of Management Accountants at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.*

[73] Because of the importance to investors of the reconciliation to U.S. GAAP, when management of foreign private issuers that file in home country GAAP or IFRS determine the severity of an identified control deficiency, management should consider the impact of the control deficiency to the U.S. GAAP reconciliation disclosure. Hence, management should take into consideration both the amounts reported in the primary financial statements and the amounts reported in the reconciliation to U.S. GAAP in evaluating the severity of the control deficiency. For example, it would be inappropriate to determine, without further consideration, that a control deficiency associated with an item included in the reconciliation to U.S. GAAP, is not material to the primary financial statements, and therefore cannot be, by definition, a material weakness.

[74] Pursuant to Rules 13a–14 and 15d–14 management discloses to the auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls. The interaction of qualitative considerations that affect ICFR with quantitative considerations ordinarily results in deficiencies in the following areas being at least significant deficiencies in internal control over financial reporting: Controls over the selection and application of accounting policies that are in conformity with generally accepted accounting principles; antifraud programs and controls; controls over non-routine and non-systematic transactions; and controls over the period-end financial reporting process. If management determines that the deficiency would prevent prudent officials in the conduct of their own affairs from concluding that they have reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles, then management should deem the deficiency to be at least a significant deficiency.

[75] *See* footnote 32.

[76] A similar approach to aggregating individually insignificant control deficiencies was used by the AICPA in Statement on Auditing Standard No. 112.

• The nature of the financial statement elements, or components thereof, involved (*e.g.*, suspense accounts and related party transactions involve greater risk);

• The susceptibility of the related asset or liability to loss or fraud (*i.e.*, greater susceptibility increases risk);

• The subjectivity, complexity, or extent of judgment required to determine the amount involved (*i.e.*, greater subjectivity, complexity, or judgment, like that related to an accounting estimate, increases risk);

• The interaction or relationship of the control with other controls (*i.e.*, the interdependence or redundancy of the control);

• The interaction of the deficiencies (*i.e.*, when evaluating a combination of two or more deficiencies, whether the deficiencies could affect the same financial statement accounts and assertions); and

• The possible future consequences of the deficiency.

Management should evaluate how the controls interact with other controls when evaluating the likelihood that the company's controls will fail to prevent or detect on a timely basis a misstatement that is material to the company's financial statements. There are controls, such as general IT controls, on which other controls depend. Some controls function together as a group of controls. Other controls overlap, in the sense that more than one control may individually achieve the same objective.

Several factors affect the magnitude of the misstatement that might result from a deficiency or deficiencies in controls. The factors include, but are not limited to, the following:

• The financial statement amounts or total of transactions exposed to the deficiency; and

• The volume of activity in the account balance or class of transactions exposed to the deficiency that has occurred in the current period or that is expected in future periods.

In evaluating the magnitude of the potential misstatement to the company's financial statements as a whole, management should recognize that the maximum amount that an account balance or total of transactions can be overstated is the recorded amount, while understatements could be larger. Moreover, in many cases, the probability of a small misstatement will be greater than the probability of a large misstatement. For example, if the deficiency is that errors identified during an account reconciliation are not being investigated in a timely manner, management should consider the possibility that larger errors are more likely to be investigated or identified through other controls than smaller ones.

Management should evaluate the effect of compensating controls [77] when determining whether a control deficiency or combination of deficiencies is a material weakness. When evaluating a deficiency in ICFR, management also should determine the level of detail and degree of assurance that would satisfy prudent officials in the conduct of their own affairs that they have reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.

The following circumstances are strong indicators that a material weakness in ICFR exists:

• An ineffective control environment. Circumstances that may indicate that the company's control environment is ineffective include, but are not limited to:

—Identification of fraud of any magnitude on the part of senior management.

—Significant deficiencies that have been identified and remain unaddressed after some reasonable period of time.

—Ineffective oversight of the company's external financial reporting and ICFR by the company's audit committee.[78]

• Restatement of previously issued financial statements to reflect the correction of a material misstatement.

Note: The correction of a material misstatement includes misstatements due to error or fraud; it does not include retrospective application of a change in accounting principle to comply with a new accounting principle or a voluntary change from one generally accepted accounting principle to another generally accepted accounting principle.

• Identification by the auditor of a material misstatement in financial statements in the current period under circumstances that indicate the misstatement would not have been discovered by the company's ICFR.

• For complex entities in highly regulated industries, an ineffective regulatory compliance function. This relates solely to those aspects of the ineffective regulatory compliance function in which associated violations of laws and regulations could have a material effect on the reliability of financial reporting.

2. Expression of Assessment of Effectiveness of ICFR by Management and the Registered Public Accounting Firm

Management should disclose a clear expression of its assessment related to the effectiveness of ICFR and, therefore, should not qualify its assessment by saying that the company's ICFR is effective subject to certain qualifications or exceptions or express similar positions. For example, management should not state that the company's controls and procedures are effective except to the extent that certain material weakness(es) have been identified. In addition, if a material weakness exists, management may not state that the company's ICFR is effective. However, management may state that controls are ineffective due solely to, and only to the extent of, the identified material weakness(es). Prior to making this statement, however, management should consider the nature and pervasiveness of the material weakness. In addition, management may disclose any remediation efforts to the identified material weakness(es) in Item 9A of Form 10–K, Item 15 of Form 20–F, or General Instruction B of Form 40–F.

3. Disclosures About Material Weaknesses

The Commission's rule implementing Section 404 was intended to bring information about material weaknesses in ICFR into public view. Because of the significance of the disclosure requirements surrounding material weaknesses beyond specifically stating that the material weaknesses exist, companies should also consider including the following in their disclosures: [79]

• The nature of any material weakness,

• Its impact on financial reporting and the control environment, and

• Management's current plans, if any, for remediating the weakness.

Disclosure of the existence of a material weakness is important, but there is other information that also may be material and necessary to form an

[77] Compensating controls are controls that serve to accomplish the objective of another control that did not function properly, helping to reduce risk to an acceptable level. To have a mitigating effect, the compensating control should operate at a level of precision that would prevent or detect a misstatement that was material.

[78] If no audit committee exists, all references to the audit committee apply to the entire board of directors of the company. When a company is not required by law or applicable listing standards to have independent directors on its audit committee, the lack of independent directors at these companies is not indicative, by itself, of a control deficiency. In all cases, management should interpret the terms ''board of directors'' and ''audit committee'' as being consistent with provisions for the use of those terms as defined in relevant SEC rules.

[79] Significant deficiencies in ICFR are not required to be disclosed in management's annual report on its evaluation of ICFR required by Item 308(a).

overall picture that is not misleading.[80] There are many different types of material weaknesses and many different factors that may be important to the assessment of the potential effect of any particular material weakness. While management is required to conclude and state in its report that ICFR is ineffective when there is one or more material weaknesses, companies should also consider providing disclosure that allows investors to understand the root cause of the control deficiency and to assess the potential impact of each particular material weakness. This disclosure will be more useful to investors if management differentiates the potential impact and importance to the financial statements of the identified material weaknesses, including distinguishing those material weaknesses that may have a pervasive impact on ICFR from those material weaknesses that do not. The goal underlying all disclosure in this area is to provide an investor with disclosure and analysis beyond the mere existence of a material weakness.

4. Impact of a Restatement of Previously Issued Financial Statements on Management's Report on ICFR

Item 308 of Regulation S–K requires disclosure of management's assessment of the effectiveness of the company's ICFR as of the end of the company's most recent fiscal year. When a material misstatement in previously issued financial statements is discovered, a company is required to restate those financial statements. However, the restatement of financial statements does not, by itself, necessitate that management consider the effect of the restatement on the company's prior conclusion related to the effectiveness of ICFR.

While there is no requirement for management to reassess or revise its conclusion related to the effectiveness of ICFR, management should consider whether its original disclosures are still appropriate and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the restatement. The company should also disclose any material changes to ICFR, as required by Item 308(c) of Regulation S–K.

Similarly, while there is no requirement that management reassess or revise its conclusion related to the effectiveness of its disclosure controls and procedures, management should consider whether its original disclosures regarding effectiveness of disclosure controls and procedures need to be modified or supplemented to include any other material information that is necessary for such disclosures not to be misleading. With respect to the disclosures concerning ICFR and disclosure controls and procedures, the company may need to disclose in this context what impact, if any, the restatement has on its original conclusions regarding effectiveness of ICFR and disclosure controls and procedures.

5. Inability To Assess Certain Aspects of ICFR

In certain circumstances, management may encounter difficulty in assessing certain aspects of its ICFR. For example, management may outsource a significant process to a service organization and determine that evidence of the operating effectiveness of the controls over that process is necessary. However, the service organization may be unwilling to provide either a Type 2 SAS 70 report or to provide management access to the controls in place at the service organization so that management could assess effectiveness.[81] Finally, management may not have compensating controls in place that allow a determination of the effectiveness of the controls over the process in an alternative manner. The Commission's disclosure requirements state that management's annual report on ICFR must include a statement as to whether or not ICFR is effective and do not permit management to issue a report on ICFR with a scope limitation.[82] Therefore, management must determine whether the inability to assess controls over a particular process is significant enough to conclude in its report that ICFR is not effective.

Request for Comment

We request and encourage any interested parties to submit comments on the proposed interpretive guidance. In addition to seeking general feedback on the proposed interpretive guidance, the Commission seeks comments on the following:

- Will the proposed interpretive guidance be helpful to management in completing its annual evaluation process? Does the proposed guidance allow for management to conduct an efficient and effective evaluation? If not, why not?
- Are there particular areas within the proposed interpretive guidance where further clarification is needed? If yes, what clarification is necessary?
- Are there aspects of management's annual evaluation process that have not been addressed by the proposed interpretive guidance that commenters believe should be addressed by the Commission? If so, what are those areas and what type of guidance would be beneficial?
- Do the topics addressed in the existing staff guidance (May 2005 Staff Guidance and Frequently Asked Questions (revised October 6, 2004)) continue to be relevant or should such guidance be retracted? If yes, which topics should be kept or retracted?
- Will the proposed guidance require unnecessary changes to evaluation processes that companies have already established? If yes, please describe.
- Considering the PCAOB's proposed new auditing standards, *An Audit of Internal Control Over Financial Reporting that is Integrated with an Audit of Financial Statements* and *Considering and Using the Work of Others In an Audit*, are there any areas of incompatibility that limit the effectiveness or efficiency of an evaluation conducted in accordance with the proposed guidance? If so, what are those areas and how would you propose to resolve the incompatibility?
- Are there any definitions included in the proposed interpretive guidance that are confusing or inappropriate and how would you change the definitions so identified?
- Will the guidance for disclosures about material weaknesses result in sufficient information to investors and if not, how would you change the guidance?
- Should the guidance be issued as an interpretation or should it, or any part, be codified as a Commission rule?
- Are there any considerations unique to the evaluation of ICFR by a foreign private issuer that should be addressed in the guidance? If yes, what are they?

[80] *See* Exchange Act Rule 12b-20 [17 CFR 240.12b–20].

[81] AU Sec. 324, *Service Organizations* (as adopted on an interim basis by the PCAOB in PCAOB Rule 3200T), defines a report on controls placed in operation and test of operating effectiveness, commonly referred to as a ''Type 2 SAS 70 report.'' This report is a service auditor's report on a service organization's description of the controls that may be relevant to a user organization's internal control as it relates to an audit of financial statements, on whether such controls were suitably designed to achieve specified control objectives, on whether they had been placed in operation as of a specific date, and on whether the controls that were tested were operating with sufficient effectiveness to provide reasonable, but not absolute, assurance that the related control objectives were achieved during the period specified.

[82] *See* Item 308 of Regulations S–K and S–B [17 CFR 229.308(a)(3) and 228.308(a)(3)].

IV. Proposed Rule Amendments

Exchange Act Rules 13a-15(c) and 15d-15(c) require the management of each issuer subject to the Exchange Act reporting requirements, other than a registered investment company, to evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's ICFR.[83] We are proposing to amend these rules to state that, although there are many different ways to conduct an evaluation of the effectiveness of ICFR to meet the requirement in the rule, an evaluation conducted in accordance with the interpretive guidance issued by the Commission, if the Commission adopts the interpretive guidance in final form, would satisfy the annual management evaluation required by those rules.[84] The proposed amendments would not limit the ability of management to use its judgment to determine a method of evaluation that is appropriate for its company. The proposed amendments would be similar to a non-exclusive safe-harbor in that they would not require management to conduct the evaluation in accordance with the interpretive guidance, but would provide certainty to management that chooses to follow the guidance that it has satisfied its obligation to conduct an evaluation for purposes of the requirements in Rules 13a-15(c) and 15d-15(c).

Our rules implementing Section 404(b) of Sarbanes-Oxley require every registered public accounting firm that issues or prepares an audit report on a company's financial statements for inclusion in an annual report that contains an assessment by management of the effectiveness of the registrant's ICFR to attest to, and report on, such assessment. Pursuant to Rule 2–02(f), the accountant's attestation report must clearly state the ''opinion of the accountant as to whether management's assessment of the effectiveness of the registrant's ICFR is fairly stated in all material respects.'' Over the past three years we have received feedback that the current form of the auditor's opinion may not effectively communicate the auditor's responsibility in relation to management's evaluation process. Therefore, we are proposing to revise Rule 2–02(f) to require the auditor to express an opinion directly on the effectiveness of ICFR. In addition, we are proposing revisions to Rule 2–02(f) to clarify the circumstances in which we would expect that the accountant cannot express an opinion.

We are also proposing conforming revisions to the definition of attestation report in Rule 1–02(a)(2) of Regulation S-X. We believe this opinion necessarily conveys whether management's assessment is fairly stated. We understand the PCAOB will be proposing a conforming revision to its auditing standard to reflect this revision as well.

Request for Comment

We request and encourage any interested person to submit comments on the proposed revision to Exchange Act Rules 13a-15(c) and 15d-15(c) and Rules 1–02 and 2–02 of Regulation S-X. In addition to seeking general feedback on the proposed rule revision, the Commission seeks comments on the following:

- Should compliance with the interpretive guidance, if issued in final form, be voluntary, as proposed, or mandatory?
- Is it necessary or useful to amend the rules if the proposed interpretive guidance is issued in final form, or are rule revisions unnecessary?
- Should the rules be amended in a different manner in view of the proposed interpretive guidance?
- Is it appropriate to provide the proposed assurance in Rules 13a–15 and 15d–15 that an evaluation conducted in accordance with the interpretive guidance will satisfy the evaluation requirement in the rules?
- Does the proposed revision offer too much or too little assurance to management that it is conducting a satisfactory evaluation if it complies with the interpretive guidance?
- Are the proposed revisions to Exchange Act Rules 13a–15(c) and 15d–15(c) sufficiently clear that management can conduct its evaluation using methods that differ from our interpretive guidance?
- Do the proposed revisions to Rules 1–02(a)(2) and 2–02(f) of Regulation S–X effectively communicate the auditor's responsibility? Would another formulation better convey the auditor's role with respect to management's assessment and/or the auditor's reporting obligation?
- Should we consider changes to other definitions or rules in light of these proposed revisions?
- The proposed revision to Rule 2–02(f) highlights that disclaimers by the auditor would only be appropriate in the rare circumstance of a scope limitation. Does this adequately convey the narrow circumstances under which an auditor may disclaim an opinion under our proposed rule? Would another formulation provide better guidance to auditors?

V. Paperwork Reduction Act

Certain provisions of our ICFR requirements contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). We submitted these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA and received approval for the collections of information. We do not believe the rule amendments that we are proposing in this release will impose any new recordkeeping or information collection requirements, or other collections of information requiring OMB's approval.

VI. Cost-Benefit Analysis

A. Background

Section 404(a) of Sarbanes-Oxley directed the Commission to prescribe rules to require each annual report that a company, other than a registered investment company, files pursuant to Exchange Act Section 13(a) or 15(d) to contain an internal control report: (1) Stating management's responsibilities for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for financial reporting. On June 5, 2003, the Commission adopted final rules implementing the requirements of Section 404(a).[85]

The final rules did not prescribe any specific method or set of procedures for management to follow in performing its evaluation of ICFR. This gave managers some flexibility, while leaving it to management's judgment about what constitutes ''reasonable support'' for its assessment of internal controls. In the absence of specific guidance, managers of many companies have relied upon AS No. 2. This choice reflected the pressure on managers to meet the expectations of the auditors who were charged with

[83] We recently adopted amendments that, among other things, provide a transition period for newly public companies before they become subject to the ICFR requirements. Under the new amendments, a newly public company will not become subject to the ICFR requirements until it either had been required to file an annual report for the prior fiscal year with the Commission or had filed an annual report with the Commission for the prior fiscal year. *See* Release No. 33–8760 (December 15, 2006) available at *http://www.sec.gov/rules/final.shtml*.

[84] *See* proposed revisions to Rules 13a-15(c) and 15d-15(c).

[85] *See* footnote 9 above for reference.

attesting to the effectiveness of the company's ICFR and management's annual assessment of ICFR. The limited alternative guidance available to management has not given it the information that is necessary to assuage its concerns about the risk of being unable to satisfy the expectations of its auditor under AS No. 2.

The proposed interpretive guidance is intended to enable management to conduct a more effective and efficient evaluation of ICFR. Further, under the proposed rule amendments, the auditor would express only a single opinion on the effectiveness of the company's internal controls in its attestation report rather than expressing separate opinions directly on the effectiveness of the company's ICFR and on management's assessment.

Managers may choose to rely on the interpretive guidance, as an alternative to what is provided in existing auditing standards or elsewhere, for two key reasons. First, we are proposing a rule that would give managers who follow the interpretive guidance comfort that they have conducted a sufficient ICFR evaluation. Second, elimination of the auditor's opinion on management's assessment of ICFR in the auditor's attestation report should significantly lessen, if not eliminate, the pressures that managers have felt to look to auditing standards for guidance in performing those evaluations.

While the focus of the Cost-Benefit Analysis in this release is on the costs and benefits related to the rule amendments that we are proposing in this release, rather than the costs and benefits of the proposed interpretive guidance that we describe in this release,[86] in view of the fact that the effect of the proposed rule amendments will be to endorse the interpretive guidance as one approach to compliance, we also have considered the effect that the proposed guidance may have on evaluation costs.

By encouraging managers to rely on guidance that is less prescriptive and better aligned with the objectives of Section 404, the proposed rule should reduce management's effort relative to current practice under existing auditing standards. The expenditure of effort by audit firms also may decline, in response, relative to what would occur otherwise. We are thus soliciting comments on how the proposed guidance and the proposed new auditing standard will affect the expenditure of effort, and division of labor, between the managers and employees of public companies and their audit firms.

The benefits and costs of the proposed rule amendments will be affected by the number of companies that choose to follow the interpretive guidance. Managers will be free to weigh the benefits and costs to shareholders in choosing whether to follow the guidance or some other approach. This feature does not apply to the proposed revisions to Regulation S–X, however, because compliance with these amendments will be mandatory.

B. Benefits

As explained above, the proposed amendments would state that an evaluation by management of ICFR that is conducted in accordance with the interpretive guidance is one of many ways to satisfy the evaluation requirement in Exchange Act Rules 13a–15(c) and 15d–15(c), and would clarify that the auditor should only express an opinion directly on the effectiveness of a company's ICFR. We expect the primary benefits of the proposed rule amendments to Exchange Act Rules 13a–15(c) and 15d–15(c) to be two-fold. First, there will be a greater likelihood that management choosing to follow the guidance will more effectively detect material weaknesses. Second, there should be a reduction in the costs of excessive testing and documentation that have arisen from management aversion to risk in determining the level and type of effort that is sufficient to conduct an evaluation of ICFR. We believe the proposed revisions to Rule 2–02(f) of Regulation S–X should better communicate to investors the nature of the assurance provided to them through the work performed by the auditor.

The proposed amendments to Rules 13a–15(c) and 15d–15(c) are similar to a non-exclusive safe-harbor in that they would not require management to comply with the evaluation requirement in a particular manner (*i.e.*, by following the interpretive guidance), but would provide certainty to management choosing to follow the guidance that management has satisfied its obligation to conduct an evaluation in an appropriate manner.

The proposed rule amendments are intended to make implementation of the internal control reporting requirements more efficient and cost-effective for all registrants. We believe that benefits to investors will arise from the following potential consequences of the proposed rule amendments:

- Management can choose to follow guidance that is an efficient and effective means of satisfying the evaluation requirement;
- All public companies, especially smaller public companies, that choose to follow the guidance would be afforded considerable flexibility to scale and tailor their evaluation methods and procedures to fit their own facts and circumstances;
- Management would have the comfort that an evaluation that complies with our interpretive guidance is one way to satisfy the evaluation required by Exchange Act Rule 13a–15(c) and Exchange Act Rule 15d–15(c), and reduce any second-guessing as to whether management's process was adequate;
- There may be reduced risk of costly and time-consuming disagreement between the auditor and management regarding the extent of documentation and testing needed to satisfy the ICFR evaluation requirement;
- Companies are likely to save costs and reduce the amount of effort and resources associated with an evaluation by relying on a set of guidelines that clarify the nature, timing and extent of management's procedures and that recognizes the many different types of evidence-gathering methods available to management (such as direct interaction with control components);[87] and
- Management would have greater clarity regarding the Commission's expectations concerning an evaluation of ICFR.

Improved implementation of the ICFR requirements could facilitate a more timely flow of information within the company and, ultimately, to investors and the marketplace. We believe that an effective internal control evaluation would help management to better identify potential weaknesses and inefficiencies that could result in cost-savings in a company's operations.

[86] To reduce the costs of implementation, we developed proposed interpretive guidance to aid management in the planning and performance of an evaluation of ICFR. In connection with this interpretive guidance, we are proposing an amendment to Exchange Act Rules 13a–15(c) and 15d–15(c) that would make it clear that an evaluation that is conducted in accordance with the interpretive guidance is one way to satisfy the annual management evaluation requirement in those rules and forms. In addition, we are proposing revisions to Rule 2–02(f) of Regulation S–X to indicate that an auditor should only express a single opinion directly on the effectiveness of a company's ICFR, rather than an opinion on the effectiveness and a separate opinion on management's assessment. We are also proposing conforming revisions to Rule 1–02(a)(2) of Regulation S–X which defines the term ''attestation report on management's assessment of internal control over financial reporting.''

[87] *See, e.g.*, transcript of Roundtable Discussion on Second Year Experiences with Internal Control Reporting and Auditing Provisions, May 10, 2006, available at *http://www.sec.gov/spotlight/soxcomp.htm.*

C. Costs

Some larger public companies may face a transitory increase in compliance costs if they choose to follow the guidance. This is because many of the larger companies that have already evaluated their internal controls have reported cost reductions, or the anticipation of cost reductions, in the second and subsequent years of compliance with the internal control reporting provisions. For companies that choose to follow the interpretive guidance, the proposed rule amendments may cause some accelerated and large accelerated filers who have completed one or more evaluations of their ICFR to adjust their evaluation procedures in order to take advantage of the proposed rule amendments which could lead to an increase in the compliance costs.[88]

In addition, the benefits of the proposed amendments may be partially offset if the company's auditor obtains more audit evidence directly itself rather than using evidence generated by management's evaluation process, which could lead to an increase in audit costs.[89]

D. Request for Comment

We request comment on the nature of the costs and benefits of the proposed amendments, including the likely responses of public companies and auditors concerning the introduction of new management guidance. We seek evidentiary support for the conclusions on the nature and magnitude of those costs and benefits, including data to quantify the costs and the value of the benefits described above. We seek estimates of these costs and benefits, as well as any costs and benefits not already identified, that may result from the adoption of these proposed amendments and issuance of interpretive guidance. With increased reliance on management judgment, will there be unintended consequences? We also request qualitative feedback and related evidentiary support relating to any benefits and costs we may have overlooked.

[88] Presumably such companies would only adjust their evaluation methods if they perceived the benefit of the proposed amendments would exceed the increased compliance cost.

[89] Any near term increase in audit costs may be mitigated if the PCAOB's proposed new auditing standards, *An Audit of Internal Control Over Financial Reporting that is Integrated with an Audit of Financial Statements* and *Considering and Using the Work of Others In an Audit*, are approved.

VII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [90] we solicit data to determine whether the proposed rule amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Section 3(f) of the Exchange Act [91] requires the Commission, whenever it engages in rulemaking, and is required to consider or determine if an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [92] also requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We believe the proposed amendments, if adopted, would promote competition, efficiency, and capital formation. Under the Sarbanes-Oxley Act, all companies, except registered investment companies, are subject to the requirement to conduct an evaluation of their ICFR. Compliance with the proposed amendments to Exchange Act Rules 13a–15 and 15d–15, however, would be voluntary rather than mandatory and, as such, companies could choose whether or not to follow the interpretive guidance. The rule therefore should not impose any new cost. Accordingly, companies that have already completed one or more evaluations can continue to use their existing procedures to satisfy the evaluation required by our rules, or companies can choose to follow the guidance.

The proposed rule amendments should increase the efficiency with respect to the effort and resources associated with an evaluation of ICFR and facilitate more efficient allocation of resources within a company. The guidance is also designed to be scalable depending on the size of the company. Reducing the potentially disproportionate costs to smaller companies required to comply with the evaluation requirements should also increase efficiency. Finally, the rules may promote competition among companies in developing the most efficient means to satisfy the evaluation requirement.

Capital formation may be promoted in the following ways. To the extent the cost of compliance with the evaluation requirement is lowered to a more economically feasible threshold, smaller private companies may be able to access public capital markets earlier in their growth. They may therefore obtain enhanced sources of capital at lower cost.

The proposed amendments may also introduce new competition from outside professionals and software vendors in the supply of services and products to assist the managers of public companies in their evaluations of ICFR. We seek comment on whether the proposed guidance and accompanying rule would stimulate new entry into any such market.

We request comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment or innovation. We also request comment on whether the proposed amendments would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[93] This IRFA involves proposed amendments to Exchange Act Rules 13a–15(c) and 15d–15(c) and Rules 1–02(a)(2) and 2–02(f) of Regulation S–X. These rules require the management of an Exchange Act reporting company, other than registered investment companies, to prepare an annual evaluation of the company's ICFR, and that the registered public accounting firm that issues an audit report on the company's financial statements to attest to, and report on, management's assessment. The proposed rule amendments would

[90] 5 U.S.C. 603.

[91] 15 U.S.C. 78c(f).

[92] 15 U.S.C. 78w(a)(2).

[93] 5 U.S.C. 601.

clarify that an evaluation that is conducted in accordance with the interpretive guidance would satisfy the annual management evaluation of the company's ICFR.[94]

A. Reasons for the Proposed Action

We are proposing rule amendments that would make it clear that an evaluation conducted in accordance with our interpretive guidance is one of many ways to satisfy the requirements of Exchange Act Rules 13a–15(c) and 15d–15(c), clarify the auditor report required Rule 2–02(f) of Regulation S–X, and revise the definition of the term attestation report in Rule 1–02(a)(2) of Regulation S–X.

B. Objectives

The proposed rule amendments are intended to make implementation of the internal control reporting requirements more efficient and cost-effective by reducing ambiguities that have arisen due to the lack of certainty available to companies on how to conduct an annual evaluation of ICFR.

C. Legal Basis

We are issuing the proposed rule amendments under the authority set forth in Sections 12, 13, 15 and 23 of the Exchange Act, and Sections 3(a) and 404 of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to the Proposed Revisions

The proposed amendments would affect some issuers that are small entities. Exchange Act Rule 0–10(a)[95] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 issuers, other than registered investment companies, that may be considered small entities. The proposed amendments would apply to any small entity that is subject to Exchange Act reporting requirements.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule amendments would not impose any new reporting, recordkeeping or compliance requirements. The amendments provide a voluntary, non-exclusive certainty, in the nature of a safe-harbor.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed amendments do not duplicate, overlap, or conflict with other federal rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed extension, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

The proposed rule amendments should allow a company to conduct an evaluation of internal control with greater certainty that it has satisfied our rule. We believe the proposed rule change would affect both large and small entities equally. The proposed rule amendments set forth primarily performance standards to aid companies in conducting an evaluation of ICFR. The purpose of the proposed amendments is to give comfort that following the clarified, consolidated and simplified guidance will satisfy the evaluation requirement. The proposed rule is designed to afford small entities that choose to rely on the interpretive guidance the flexibility to scale and tailor their evaluation methods to fit their particular circumstances. We are not proposing an exemption for small entities, because we are not persuaded at this time that an exemption would further the primary goal of the Sarbanes-Oxley Act to enhance the quality of reporting and increasing investor confidence in the fairness and integrity of the securities markets.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entity issuers that may be affected by the proposed extension;
- The existence or nature of the potential impact of the proposed amendments on small entity issuers discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Respondents are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Statutory Authority and Text of Proposed Rule Amendments

The amendments described in this release are being proposed under the authority set forth in Sections 12, 13, 15, 23 of the Exchange Act, and Sections 3(a) and 404 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 241

Securities.

Text of Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

2. Amend § 210.1–02 by revising paragraph (a)(2) to read as follows:

§ 210.1–02 Definition of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(a)(1) * * *

(2) *Attestation report on management's assessment of internal*

[94] In connection with the proposed rule amendments, we are also proposing interpretive guidance for management to use in conducting an annual evaluation of the company's internal control over financial reporting. The proposed interpretive guidance itself is not subject to the Regulatory Flexibility Act. Accordingly, for purposes of the IRFA, our analysis is focused on the proposed rule amendments.

[95] 17 CFR 240.0–10(a).

control over financial reporting. The term *attestation report on management's assessment of internal control over financial reporting* means a report in which a registered public accounting firm expresses an opinion, either unqualified or adverse, as to whether the registrant maintained, in all material respects, effective internal control over financial reporting (as defined in § 240.13a–15(f) or 240–15d–15(f)), except in the rare circumstance of a scope limitation that cannot be overcome by the registrant or the registered public accounting firm which would result in the accounting firm disclaiming an opinion.

* * * * *

3. Amend § 210.2–02 by revising paragraph (f) to read as follows:

§ 210.2–02 Accountants' reports and attestation reports.

* * * * *

(f) *Attestation report on management's assessment of internal control over financial reporting.* Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must attest to, and report on, such assessment. The attestation report on management's assessment of internal control over financial reporting shall be dated, signed manually, identify the period covered by the report, indicate that the accountant has audited management's assessment, and clearly state the opinion of the accountant, either unqualified or adverse, as to whether the registrant maintained, in all material respects, effective internal control over financial reporting, except in the rare circumstance of a scope limitation that cannot be overcome by the registrant or the registered public accounting firm which would result in the accounting firm disclaiming an opinion. The attestation report on management's assessment of internal control over financial reporting may be separate from the accountant's report.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

5. Amend § 240.13a–15 by revising paragraph (c) to read as follows:

§ 240.13a–15 Controls and procedures.

* * * * *

(c) The management of each such issuer, that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting. The framework on which management's evaluation of the issuer's internal control over financial reporting is based must be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment. Although there are many different ways to conduct an evaluation of the effectiveness of internal control over financial reporting to meet the requirements of this paragraph, an evaluation that is conducted in accordance with the interpretive guidance issued by the Commission in Release No. 34–XXXXX will satisfy the evaluation required by this paragraph.

* * * * *

6. Amend § 240.15d–15 by revising paragraph (c) to read as follows:

§ 240.15d–15 Controls and procedures.

* * * * *

(c) The management of each such issuer, that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940, must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting. The framework on which management's evaluation of the issuer's internal control over financial reporting is based must be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment. Although there are many different ways to conduct an evaluation of the effectiveness of internal control over financial reporting to meet the requirements of this paragraph, an evaluation that is conducted in accordance with the interpretive guidance issued by the Commission in Release No. 34–XXXXX will satisfy the evaluation required by this paragraph.

* * * * *

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

7. Part 241 is amended by adding Release No. 34–XXXXX and the release date of December XX, 2006 to the list of interpretative releases.

Dated: December 20, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–22099 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141901–05]

RIN 1545–BE92

Exchanges of Property for an Annuity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of location of public hearing.

SUMMARY: On October 18, 2006, on page 61441 of the **Federal Register** (71 FR 61441), a notice of proposed rulemaking and notice of public hearing announced that a public hearing concerning guidance on the taxation of the

exchange of property for an annuity contract will be held February 16, 2007 in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. The location of the public hearing has changed.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Kelly Banks, (202) 622–0392 (not a toll-free number).

LaNita Van Dyke,

Branch Chief, Publications and Regulations, Associate Chief Counsel, Legal Processing Division (Procedure and Administration).

[FR Doc. E6–22020 Filed 12–26–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142270–05]

RIN 1545–BE90

Railroad Track Maintenance Credit; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed regulations by cross-reference to temporary regulations relating to the railroad track maintenance credit determined for qualified railroad track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers during the taxable year.

DATES: The public hearing, originally scheduled for January 9, 2007 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–0392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Friday, September 8, 2006 (71 FR 53053), announced that a public hearing was scheduled for January 9, 2006, at 10 a.m. in the IRS Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. The subject of the public hearing is under section 45G of the Internal Revenue Code.

The public comment period expired on December 7, 2006. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Monday, December 11, 2006, no one has requested to speak. Therefore, the public hearing scheduled for January 9, 2007, is cancelled.

La Nita VanDyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–22018 Filed 12–26–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208270–86]

RIN 1545–AM12

Income and Currency Gain or Loss With Respect to a Section 987 QBU; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on Thursday, September 7, 2006 (71 FR 52876), regarding the determination of the items of income or loss of a taxpayer with respect to a section 987 qualified business unit as well as the timing, amount, character and source of any section 987 gain or loss.

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy, (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–208270–86) that is the subject of these corrections is under section 987 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–208270–86) contains errors that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–208270–86), that was the subject of FR Doc. 06–7250, is corrected as follows:

1. On page 52879, second column, in the preamble under the paragraph heading ''*E. Concerns Regarding the 1991 Proposed Regulations: Notice 2000–20,*'' the sixteenth line following the formula, the language ''DE. The DE conducts mineral'' is corrected to read ''DE. The DE conducts mineral extraction in Country X''.

2. On page 52886, first column, in the preamble under the paragraph heading ''*C. Section 1.987–3 Determination of the Items of Section 987 Taxable Income or Loss of an Owner of a Section 987 QBU,*'' the eighth line, the language ''under other provisions are not taken'' is corrected to read ''under other provisions of the Code or regulations are not taken''.

3. On page 52886, second column, under the paragraph heading ''*C. Section 1.987–3 Determination of the Items of Section 987 Taxable Income or Loss of an Owner of a Section 987 QBU,*'' first full paragraph, ninth line from the bottom of the paragraph, the language ''rates for amount realized and adjusted'' is corrected to read ''rates for the amount realized and adjusted''.

4. On page 52886, second column, under the paragraph heading ''*C. Section 1.987–3 Determination of the Items of Section 987 Taxable Income or Loss of an Owner of a Section 987 QBU,*'' second full paragraph, fifth line, the language ''Generally the amount realized and'' is corrected to read ''Generally, the amount realized and adjusted''.

§ 1.987–1 [Corrected]

5. On page 52895, second column, § 1.987–1(b)(7), paragraph (ii)(B) of Example 1, fifth line from the bottom of the paragraph, the language ''neither the activities of DE1 or DE2 are'' is corrected to read ''the activities of DE1 are not''.

§ 1.987–2 [Corrected]

6. On page 52899, first column, § 1.987–2(c)(9), lines 2 and 3, the language ''illustrate the principles of this paragraph (c). For purposes of these'' is corrected to read ''illustrate the principles of paragraph (b) of this section and this paragraph (c). For purposes of these''.

7. On page 52899, second column, § 1.987–2(c)(9), paragraph (ii)(B) of *Example 1*, last line, the language ''section 988 to X as a result of the loan.'' is corrected to read ''section 988 to X as a result of the disregarded loan.''

8. On page 52899, third column, § 1.987–2(c)(9), paragraph (ii)(A) of *Example 3,* line 3, the language ''Federal tax purposes and therefore is a'' is corrected to read ''Federal income tax purposes and therefore is a''.

9. On page 52900, first column, § 1.987–2(c)(9), paragraph (ii)(C) of *Example 4*, line 3, the language ''regarded for U.S. Federal tax purposes. As a'' is corrected to read ''regarded for U.S. Federal income tax purposes. As a''.

10. On page 52900, second column, § 1.987–2(c)(9), paragraph (ii)(A) of *Example 7*, line 1, the language ''(ii) *Analysis.* (A) For Federal tax purposes'' is corrected to read ''(ii) *Analysis.* (A) For Federal income tax purposes''.

11. On page 52901, third column, § 1.987–2(d)(2), line 3, the language ''described in section 988(c)(1)(i) and (ii)'' is corrected to read ''described in section 988(c)(1)(B)(i) and (ii)''.

§ 1.987–3 [Corrected]

12. On page 52902, third column, § 1.987–3(e)(2), line 5, the language ''described in section 988(c)(1)(A)(i) and'' is corrected to read ''described in section 988(c)(1)(B)(i) and''.

13. On page 52904, first column, § 1.987–3(f) *Example 3.*, the fourth line from the bottom of the paragraph, the language ''section and § 1.987–1(c)(3) €8,000 × $1=''' is corrected to read ''section and § 1.987–1(c)(3) (€8[n1],000 × $1=''.

§ 1.987–6 [Corrected]

14. On page 52911, first column, § 1.987–6(c) *Example,* lines 5 through 10 from the bottom of the column, the language ''of this section, Sf7,500 (Sf750,000/Sf1,000,000 × Sf10,000) of the section 987 gain will be treated as foreign source general limitation income which is not subpart F income and Sf2,500 (Sf250,000/Sf1,000,000 × Sf10,000) will'' is corrected to read ''of this section, Sf7,500 ((Sf750,000/Sf1,000,000) × Sf10,000) of the section 987 gain will be treated as foreign source general limitation income which is not subpart F income and Sf2,500 ((Sf250,000/Sf1,000,000) × Sf10,000) will''.

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–22169 Filed 12–26–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD08–06–023]

RIN 1625-AA11

Regulated Navigation Area; Atchafalaya River, Berwick Bay, Berwick Bay, LA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove both paragraph (f)(4) and the note located at the end of the section from 33 CFR 165.811. Coast Guard Vessel Traffic Service (VTS) Berwick Bay has determined that the Southern Pacific Railroad (SPRR) Bridge visual displays are no longer necessary due to updated VTS technologies and procedures that actively inform towing vessels that the rules of 33 CFR 165.811 are in effect at the time of entry into the VTS. This action will relieve the owner of the SPRR Bridge and the Coast Guard from maintaining antiquated visual displays and related equipment.

DATES: Comments and related material must reach the Coast Guard on or before January 26, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpw), Eighth Coast Guard District, 500 Poydras Street, New Orleans, LA 70130–3310. The Eighth Coast Guard District's Waterways Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–06–023] and are available for inspection or copying at The Hale Boggs Federal Building, 500 Poydras Street (RM 1230), New Orleans, LA 70130–3310, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Brian Hofferber or Chief Warrant Officer Edgardo Estrada, Eighth Coast Guard District's Waterways Branch, at telephone 504–671–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–06–023], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

BNSF Railway Company, the owner of the Southern Pacific Railroad (SPRR) Bridge, has requested to change visual displays requirements for the SPRR Bridge set forth in 33 CFR 165.811. In September 2005, the visual displays atop the SPRR Bridge were destroyed by Hurricane Rita and have not been restored. Prior to their destruction, the visual displays consisted of two vertically arranged red balls by day and two vertically arranged flashing white lights by night. The displays were maintained by the bridge owner and were activated upon direction by the Coast Guard Vessel Traffic Service (VTS) Berwick Bay during high water periods as specified in 33 CFR 165.811. Prior to the current implementation of VTS Berwick Bay, the use of visual displays on the SPRR Bridge served as the primary means of advising towing vessels that the provisions of 33 CFR 165.811 were in effect, or were anticipated to be placed into effect, in order to reduce the risk of mishaps involving towing vessels and the local bridges crossing the waterway. The destruction of the displays by Hurricane

Rita and the subsequent request by BNSF Railway Company for their discontinuance prompted discussion within the Coast Guard as to the necessity of the visual displays. Coast Guard VTS Berwick Bay concluded that the visual displays are antiquated and no longer serve as a primary means to advise towing vessels that the requirements of 33 CFR 165.811 are in effect. VTS Berwick Bay now directly advises mariners as to which navigation rules are in effect at the time of the vessel entry into the VTS regulated navigation area.

Discussion of Proposed Rule

Coast Guard Vessel Traffic Service (VTS) Berwick Bay has determined that the SPRR Bridge visual displays required by 33 CFR 165.811(f)(4) are no longer necessary due to updated VTS technologies and procedures. Towing vessels subject to 33 CFR 165.811 during high water periods are now required to check into VTS Berwick Bay before the SPRR Bridge displays become visible during transit. Upon entry, subject vessels are advised directly by the VTS as to which regulations are in effect. Removal of subpart (f)(4) eliminates antiquated visual display requirements from 33 CFR 165.811 as the primary means of notice and relieves the owner of the SPRR Bridge from continued maintenance costs. Vessels which are not subject to 33 CFR 165.811(f)(4) need not be informed that the requirements of the regulated navigation area are in effect, but may request such information at any time from the Berwick Bay Vessel Traffic Center (VTC) via telephone or VHF-FM 11, 13, or 16; from VHF-FM radio Broadcast Notices to Mariners; or from the current U.S. Army Corps of Engineers' river gauge readings (published on the Internet).

Regulatory Evaluation

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

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

This proposed rule eliminates existing visual display requirements from a list of notice requirements under 33 CFR 165.811(f) which have been superseded by improved procedures for notification. This proposed rule change neither imposes any additional costs to the public nor eliminates significant benefits.

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 is neutral to all business entities as it changes the means by which all vessel operators are provided notice from a visual display to direct advisories from VTS Berwick Bay.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the individuals listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant

energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 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 part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.811 [Amended]

2. In § 165.811, remove paragraph (f)(4) and the note located at the end of the section.

Dated: December 4, 2006.

J.R. Whitehead,

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

[FR Doc. E6–22153 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AD38

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS or Service) is proposing to revise the special regulations for the NPS-administered areas in Alaska to update provisions governing subsistence use of timber, seaweed collection, river management, ORV use, fishing and camping. The revision would also update definitions, prohibit using motorized vehicles to herd wildlife, and establish wildlife viewing distances in several park areas.

DATES: Comments must be received by February 26, 2007.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD38 (RIN), by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail NPS at: *akro_regulations@nps.gov*. Use RIN 1024–AD38 in the subject line.
- Mail: National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.
- Fax: (907) 644–3805.

All submissions received must include the agency name and RIN. For additional information see ''Public Participation'' under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: National Park Service, Victor Knox, Deputy Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3501. E-mail: *akro_regulations@nps.gov*. Fax: (907) 644–3816.

SUPPLEMENTARY INFORMATION:

Background

Each park area in Alaska has a compendium consisting of the compiled designations, closures, openings, permit requirements, and other provisions established by the Superintendent under the discretionary authority granted in 36 CFR 1.5 and elsewhere in regulations. It is the policy of the NPS to review these provisions on a regular basis for possible addition to the general and special park regulations in part 13. The group of provisions proposed here are additions or changes to individual park regulations in part 13, subparts H-W. Where these provisions have applicability to several or all Alaska park areas, they generally are proposed for addition to part 13, subparts A-F.

The following proposed regulations have resulted from the current review of compendium provisions. Additionally, several proposed changes to the part 13 regulations unrelated to the compendium review are included as indicated. We are consolidating all routine proposed changes in a single rulemaking document for administrative efficiency and to encourage broader participation in the rulemaking process. Each proposal is identified in the Section-by-Section Analysis that follows. As used within this document, the terms ''we,'' ''our,'' and ''us'' refer to the National Park Service.

Section-by-Section Analysis

Section 13.1 Definitions

The definition for the term ''adequate and feasible access'' is proposed for deletion. This term, which does not currently appear in part 13, is a remnant of the NPS regulations for access to inholdings which were deleted in 1986 and moved to the Department of Interior's regulations in Title 43. The NPS definition has been superseded by the similar definition now found at 43 CFR 36.10(a)(1). This proposed change is a non-substantive administrative correction without regulatory effect.

The definition of ''National Preserve'' is proposed for modification. The definition of National Preserve incorrectly identifies the ''Alagnak Wild

and Scenic River'' instead of the Alagnak Wild River. See ANILCA § 605(b), 16 U.S.C. 1274(a)(25).

Section 13.440 Subsistence Permits for Persons Whose Primary, Permanent Home Is Outside a Resident zone

§ 13.440(b). We propose to remove this subsection because it no longer has any practical effect. It was originally adopted to provide a transitional authorization for subsistence uses without a permit during the initial application period for subsistence permits. This provision ceased to be applicable on August 1, 1981. Since that date, the authorization of subsistence uses by those living outside of resident zones has been by subsistence permit.

Section 13.485 Subsistence Use of Timber and Plant Material

§ 13.485(a), (a)(1) and (a)(2). We propose to revise these three paragraphs by deleting the word ''live'' in the term ''live standing timber'' with the intent of extending the applicability of these paragraphs to both live and dead standing timber. Due to the extensive amount of beetle killed standing timber in some park areas, the discretionary cutting of portions of this now dead standing timber is a useful resource management option and a benefit to subsistence users. Regulations at § 13.35(d) were revised in December of 2004 allowing park superintendents to authorize the harvest of dead standing timber. This proposed revision would allow subsistence users to harvest dead standing timber for firewood, house logs, and other subsistence uses.

§ 13.485(c)(1). We propose revising this paragraph to expand the allowable reasons for temporary closures to subsistence use of particular plant populations. The intent of this proposal is to provide broader management discretion in designating plant harvest areas with the expanded allowance for timber harvest in § 13.35 and the proposed rule in paragraph (a) above. The existing closure provisions for subsistence uses of plant materials, while closely patterned on the statutory provisions for temporary closures to subsistence use of fish and wildlife, are not similarly mandated by the law. Consequently, there is broader discretion for adjusting these provisions in accordance with traditional resource management guidelines and policies. This is especially appropriate in extreme circumstances such as those presented by the spruce bark beetle infestation now occurring in Alaska.

Section 13.550 Wildlife Distance Conditions, Alagnak Wild River

The park proposes to move a compendium rule to special regulations concerning wildlife distance conditions. This proposed regulation is similar to a regulation in Katmai National Park and Preserve, which was developed with input from the State of Alaska, commercial guides, conservation groups and others. This proposal also contains a provision restricting those fishing or engaging in photography from continuing that activity within 50 yards of a bear. While the regulation would allow a person to maintain a position while a bear transited the area or not to flee an approaching bear, continuing to fish within 50 yards of a bear presents an unacceptable opportunity for a bear to obtain fish from anglers. For photography, the proposal is needed to avoid unnatural behavior and displacement of less tolerant bears from a food source.

Section 13.602 Wildlife Distance Conditions, Aniakchak National Preserve

Like Katmai National Park and Preserve, Aniakchak proposes to move a current compendium rule to special regulation which would restrict fishing or engaging in photography from continuing that activity within 50 yards of a bear. While the regulation would allow a person to maintain a position while a bear transited the area or not to flee an approaching bear, continuing to fish within 50 yards of a bear presents an unacceptable opportunity for a bear to obtain fish from anglers. For photography, the proposal is needed to avoid unnatural behavior and displacement of less tolerant bears from a food source.

Section 13. 918 Sable Pass Wildlife Viewing Area, Denali National Park and Preserve

This section is a proposed re-adoption of the Sable Pass Wildlife Viewing Area, first established in 1956 as special park regulation 36 CFR 7.44(d) to protect wildlife viewing opportunities for all visitors who traveled the park road. This special regulation covered the area within one mile of the park road between miles 37 and 42. Realignment and extension of the park road has since caused road mileages to change slightly, and the mileages in the proposed regulation have been corrected accordingly. While entry into this area was prohibited, observation and photography of wildlife and other features from the road shoulders and designated turnouts were authorized. In 1983, this regulation was deleted without comment when the National Park Service revised parts 1–7 and 12 of the Code of Federal Regulations. Since then, the Sable Pass Closure has been seasonally implemented each year during the period of time when the park road is open, usually from May through September, using other regulatory authorities. The National Park Service believes it is important to provide one limited area along the park road where all visitors have an equal opportunity to view wildlife undisturbed in a natural setting. The majority of visitors along the park road ride on buses. These buses often turn around at Toklat or sooner, and do not traverse the other scenic high alpine passes, thus missing likely alpine bear viewing areas such as Highway Pass and Thorofare Pass. The National Park Service believes this closure should again be a special regulation. The NPS proposes to slightly modify the definition of the area from the original regulation to: (1) exclude the Tattler Creek drainage in order to allow hiking opportunities there; (2) extend from approximately mile 38.2 to 42.8 under the new road mileage system; and (3) follow easily recognizable geographic boundaries where possible.

Section 13.920 Wildlife Distance Conditions, Denali National Park and Preserve

This section is proposed to codify and simplify wildlife viewing conditions that have been in effect in the park for many years. The conditions are intended to mitigate the risks associated with humans in close proximity to wildlife while accommodating the large numbers of visitors to Denali. Interior Alaska bears live at relatively low population densities in Denali and are likely to react to human presence at considerably greater distances than coastal bears. Furthermore, the open habitat, including much of the open tundra along the Denali park road, means that wildlife species may be more sensitive to human presence than the same species would be in forested habitat.

Safe viewing and photography distances defined in Denali are greater than distances defined for other Alaska parks. Denali generally experiences visitor numbers, both on and off the main park road, that are significantly greater than other Alaska parks. High visitation provides more opportunities, over a broader area, for interaction between visitors and wildlife. Viewing in close proximity can alter wildlife behavior and cause hazardous circumstances for park visitors and

wildlife. Chronic disruption of natural wildlife movements can also reduce or eliminate the viewing opportunities that attract visitors to Denali. The relatively high rate of wildlife encounters justifies more closely regulated management of visitors. In particular, the park is concerned about photographers who deliberately set up their equipment ahead of an advancing bear. To discourage this behavior, the rule would specifically prohibit photography within 300 yards of a bear. The minimum distance between people and wildlife protects both wildlife and visitors and maintains wildlife viewing opportunities.

Although visitation tends to be concentrated along the road corridor, visitor use in more remote areas is also high due to the relative ease for visitors to access the backcountry. Denali's unique accessibility to high numbers of backcountry visitors without the level of experience or preparation that normally precedes backcountry visits exacerbates the potential risks. The rule is, therefore, proposed to apply parkwide to provide clarity, consistency and to help protect visitors and resources throughout the park.

These wildlife viewing conditions do not apply to visitors engaged in lawful hunting or trapping activities, people who comply with a written protocol approved by the Superintendent, those who have a permit from the superintendent, or those who are otherwise directed by a park employee. Wildlife viewing distances are also not meant to apply to people inside or within 2 yards of a building entrance or cars, trucks or other highway vehicles. In addition to these regulations, any activity that disturbs the movements or behavior of wildlife is prohibited by 36 CFR 2.2(a)(2), which prohibits the feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or other activities.

Section 13.1008 Solid Waste Disposal, Gates of the Arctic National Park and Preserve

The NPS is proposing exceptions in certain circumstances to the solid waste disposal site requirements in four Alaska park areas, including Gates of the Arctic National Park and Preserve. The National Park Service believes that these provisions should be modified given the small communities residing inside park boundaries. Part 6 regulations require that solid waste disposal sites within park boundaries that were not in operation on September 1, 1984, handle waste ''solely from National Park Service activities * * *.'' This limitation has been problematic in the village of Anaktuvuk Pass. The NPS believes that the existing limitation may pose a threat to park resources. The village of Anaktuvuk Pass is not connected to the road system. Other than disposing of solid waste on private land within the boundaries of Gates of the Arctic National Park and Preserve, the only other option would entail flying out all solid waste, a cost prohibitive alternative. The statute, on which the current regulation is based, does not prohibit non-National Park Service waste. Accordingly, in order to enhance resource protection in the special circumstances affecting Gates of the Artic and three other Alaska park areas, the NPS is proposing to allow solid waste disposal sites to accept waste from activities other than National Park Service activities for waste generated within the boundaries of Gates of the Arctic National Park and Preserve.

The NPS is also proposing to eliminate a site restriction. Section 6.4(a)(9) requires that disposal sites be located more than one mile from a ''visitor center, campground, ranger station, entrance station, or similar public use facility, or residential area.'' Moving existing disposal sites to comply with the one mile requirement would result in unnecessary environmental impact as well as be cost prohibitive. Additionally, in certain areas other lands are literally not available or not environmentally suitable. Therefore, the NPS proposes to eliminate the one mile limit so long as it does not degrade natural or cultural resources of the park area.

For communities wholly within NPS boundaries, not being able to properly dispose of waste may result in unsafe disposal on park lands impairing park resources. The NPS believes that handling solid waste, under State of Alaska and the Environmental Protection Agency regulations, is preferable to each person disposing solid waste on private or leased lands within the park unit. Likewise, requiring that existing solid waste disposal sites be moved would result in unnecessary resource damage. It is also possible that the best location for sites may be within one mile of these facilities, as other lands may be unavailable or environmentally unsuitable. Other than the changes to allow handling non-National Park Service solid waste and to remove the one mile limit, so long as park resources would not be degraded, all other requirements of part 6 would remain in effect, providing protection to park resources while allowing a community on private land located inside the park to responsibly deal with solid waste sanitation.

Section 13.1106 Pets, Glacier Bay National Park and Preserve

The park proposes to move to special regulation the compendium rules regarding pets. The park believes that there are appropriate places for pets within the Bartlett Cove Developed Area, on vessels within the park and within the National Preserve. In these areas, pets must be leashed, crated, or otherwise physically restrained in accordance with 36 CFR 2.15(a)(2). In other areas, restrictions are placed on pets to protect wildlife, nesting areas, critical habitat and other values. Park wildlife is heavily dependent on the narrow strip of land between the bay and the mountains that quickly rise to present dramatic scenery. This narrow strip of land is also shared by campers and by visitors valuing the scenery and wildlife that it contains. In addition, the park has concerns about possible disease transmission from domestic to wild animals.

Section 13.1108 Alsek Corridor, Glacier Bay National Park and Preserve

The park proposes to promulgate as regulation several compendium entries related to the Alsek River, particularly as it relates to overnight use. This includes group size limits in the Alsek Corridor, consistent with the 1989 Alsek River Visitor Use Management Plan's management objectives. Campfires are currently prohibited by Servicewide regulations except in designated areas and under conditions set by the Superintendent. The park proposes to move the current designation allowing fires and a fire pan use condition to special regulation. This requirement helps protect the resource from intensive summer use at a limited number of campsites and provides for visitor enjoyment. Similarly, the repeated use of a small number of campsites created a human waste problem along the river. The park is proposing to move a compendium rule prohibiting disposal of human waste in the Alsek Corridor to special regulations. Standard camping practice on many heavily used rivers (including the Alsek since 1995 when the NPS constructed a rafter septic system at Dry Bay) involves the carry out of solid human waste.

Similarly, the park proposes to move to regulation current compendium rules requiring a permit within the Alsek Corridor above Gateway Knob to manage public use. This is in accordance with the 1989 Plan, which also provides for an average of one party

per day initiating travel in Canada. The permit serves as a tool to provide safety-related information, limit parties and groups in accordance with Plan objectives and ensure visitors receive appropriate orientation information. The permit system, in place since 1994, is coordinated with Canadian agencies. The Plan was developed with public input and in coordination with Canadian land management agencies.

Section 13.1109 Off-Road Vehicle Use in Dry Bay, Glacier Bay National Park and Preserve

Glacier Bay is also proposing to designate trails for Off-Road Vehicle (ORV) use in Dry Bay. While ORV use is generally prohibited under current regulations, it is an authorized mode of transportation if it is directly incident to the exercise of commercial fishing rights or privileges obtained prior to December 2, 1980, in the Dry Bay area of the Preserve. Such use may be restricted if it poses a direct threat to park resources (36 CFR 13.21 (c) (1)). ORV's are the main mode of transportation in and around Dry Bay. Over the years, some ORV routes have relocated and new trails have been created, thus expanding the trail network beyond those in existence in 1979. Limiting ORV access to designated trails is necessary to prevent resource damage and protect the access of commercial fishermen. The NPS is proposing to authorize ORV use on certain designated trails and also limit all ORV use to those designated trails under 36 CFR 4.10(b).

Section 13.1118 Solid Waste Disposal, Glacier Bay National Park and Preserve

Finally, Glacier Bay, like Gates of the Arctic, is proposing exceptions in certain circumstances to the solid waste disposal site requirements. The National Park Service believes that these conditions should be modified given the small communities residing inside the park's boundary. Part 6 regulations require that solid waste disposal sites within park boundaries that were not in operation on September 1, 1984, handle waste ''solely from National Park Service Activities * * *.'' This limitation is problematic in Bartlett Cove and Dry Bay. The NPS believes that this limitation may pose a threat to park resources. For example, in Dry Bay within the boundaries of Glacier Bay National Park and Preserve, residents and business owners have very few options for storing or disposing of solid waste. The NPS is concerned that not allowing local residents and businesses the ability to have a solid waste disposal site closer to Dry Bay may result in garbage being dumped on park lands or other environmentally unsuitable disposal. Other than disposing of solid waste on private land within the boundaries of Glacier Bay National Park and Preserve, the only other option would entail flying or barging out all solid waste, a cost prohibitive alternative. The statute on which the current regulation is based does not prohibit non-National Park Service waste. Accordingly, in order to enhance resource protection in these special circumstances, the NPS is proposing to allow solid waste disposal sites to accept waste from activities other than National Park Service activities for waste generated within the boundaries of Glacier Bay National Park and Preserve.

The NPS is also proposing to eliminate a site restriction. Section 6.4(a)(9) requires that disposal sites be located more than one mile from a ''visitor center, campground, ranger station, entrance station, or similar public use facility, or residential area.'' There is a solid waste disposal site in Bartlett Cove within one mile of park headquarters, the visitor center, the campground, and other park facilities. Moving the existing disposal site to comply with the one mile requirement would result in unnecessary environmental impact and be cost prohibitive. Additionally, in certain areas other lands are literally not available or not environmentally suitable. The NPS proposes to eliminate the one mile limit so long as it does not degrade natural or cultural resources of the park area.

For communities wholly within NPS boundaries, not being able to properly dispose of waste may result in unsafe disposal on park lands impairing park resources. The NPS believes that handling solid waste, under State of Alaska and the Environmental Protection Agency regulations, is preferable to each person disposing solid waste on private or leased lands within the park unit. Likewise, requiring that existing solid waste disposal sites be moved would result in unnecessary resource damage. It is also possible that the best location for new sites may be within one mile of these facilities as other lands may be unavailable or environmentally unsuitable. Other than the changes to allow handling non-National Park Service solid waste and to remove the one mile limit so long as park resources would not be degraded, all other requirements of part 6 would remain in effect, providing protection to park resources while allowing communities on private land located inside the park to responsibly deal with solid waste sanitation.

Section 13.1206 Wildlife Distance Conditions, Katmai National Park and Preserve

The park proposes to move to special regulations a compendium restriction to the wildlife distance conditions. This proposal contains a provision restricting those fishing or engaging in photography from continuing that activity within 50 yards of a bear. While the regulation would allow a person to maintain a position while a bear transited the area or not to flee an approaching bear, continuing to fish within 50 yards of a bear presents an unacceptable opportunity for a bear to obtain fish from anglers. For photography, the proposal is needed to avoid unnatural behavior and displacement of less tolerant bears from a food source.

Section 13.1210 Firearms, Katmai National Park and Preserve

The park proposes to relax restrictions on the carrying of firearms in the former Katmai National Monument. The proposed modification would grant the Superintendent authority to designate areas and routes to allow hunters and residents of local communities to transit the area along the boundary of the former Katmai National Monument to access private inholdings or lands contiguous to the former Monument. For simplicity and ease of understanding, the proposed regulation applies to Katmai National Park rather than just the former Monument. Current regulations allow for the carrying, possession, and use of firearms in the ANILCA additions to Katmai. This regulation does not modify this allowance.

Section 13.1304 Exit Glacier Developed Area, Kenai Fjords National Park

Kenai Fjords National Park proposes to move to special regulations items currently in the compendium and in the Exit Glacier Area Plan. This includes a definition of the Exit Glacier area to clearly define the Exit Glacier Development Area (EGDA) for the proposed regulations. The proposed rule includes—

- Moving current compendium rules restricting food storage in the campground and camping consistent with bear management and the Exit Glacier Area Plan;
- Prohibiting the use of a bicycle in the EGDA, except on the road or parking areas, for visitor safety and the

prevention of resource impacts on the heavily used pedestrian paths;

• Prohibiting snowmachines in part of the EGDA except on the Exit Glacier Road, parking areas, a marked route through the Exit Glacier campground to Exit Creek and within Exit Creek (which generally means the area between the banks and includes snow-covered gravel bars and the frozen surface of the creek) for safety reasons; and

• Relaxing the requirement for a permit for the commercial transport of passengers by motor vehicles in the EGDA, but allowing the Superintendent the discretion to establish a permit requirement to protect public health and safety, park resources, or provide for the equitable use of park facilities.

Section 13.1308 Harding Icefield, Kenai Fjords National Park

The park proposed to close the Harding Icefield Trail to bicycles and similar wheeled devices for public safety concerns and also close the area within 1/8 mile from the trail to camping.

Section 13.1310 Pets, Kenai Fjords National Park

In addition, the park proposes to move to special regulation compendium rules prohibiting pets along the coast from mean high tide to one quarter mile inland after May 30 and before November 1 and in the EGDA except in the parking lot, on the Exit Glacier road, or in other areas designated by the superintendent.

Section 13.1604 Solid Waste Disposal, Lake Clark National Park and Preserve

The NPS is also proposing exceptions in certain circumstances to the solid waste disposal site requirements in Lake Clark National Park and Preserve. The National Park Service believes that these conditions should be modified given the small community of Port Alsworth residing inside the park's boundaries. Part 6 regulations require that solid waste disposal sites within park boundaries that were not in operation on September 1, 1984, handle waste ''solely from National Park Service Activities * * *.'' This limitation has been problematic in Port Alsworth. The NPS believes that this limitation may pose a threat to park resources. The community of Port Alsworth is not connected to the road system. Other than disposing of solid waste on private land within the boundaries of Lake Clark National Park and Preserve, the only current option would entail flying out all solid waste, a cost prohibitive alternative. The statute on which the current regulation is based does not prohibit non-National Park Service waste. The NPS is concerned that not allowing local residents and businesses the ability to have a solid waste disposal site closer to the community may result in garbage being dumped on park lands or other environmentally unsuitable disposal. Accordingly, in order to enhance resource protection in these special circumstances, the NPS is therefore proposing to allow solid waste disposal sites to accept waste from activities other than National Park Service activities for waste generated within the boundaries of Lake Clark National Park and Preserve.

The NPS is also proposing to eliminate a site restriction. Section 6.4(a)(9) requires that disposal sites be located more than one mile from a ''visitor center, campground, ranger station, entrance station, or similar public use facility, or residential area.'' Lake Clark National Park and Preserve incinerates waste within one mile of park headquarters, residences, and other similar facilities. Moving this existing disposal site to comply with the one mile requirement would result in unnecessary environmental impact as well as be cost prohibitive. Additionally, in certain areas other lands are literally not available or not environmentally suitable. Therefore, the NPS proposes to eliminate the one mile limit so long as it does not degrade natural or cultural resources of the park area.

For communities wholly within NPS boundaries, not being able to properly dispose of waste may result in unsafe disposal on park lands impairing park resources. The NPS believes that handling solid waste, under State of Alaska and the Environmental Protection Agency regulations, is preferable to each person disposing solid waste on private or leased lands within the park unit. Likewise, requiring that existing solid waste disposal sites be moved would result in unnecessary resource damage. It is also possible that the best location for new sites may be within one mile of these facilities as other lands may be unavailable or environmentally unsuitable. The NPS believes that these two changes—(1) to allow handling non-National Park Service solid waste and (2) to remove the one mile limit so long as park resources would not be degraded—will provide protection to park resources while allowing communities on private land located inside the park to responsibly deal with solid waste sanitation.

Finally, Lake Clark National Park and Preserve is proposing an exemption to the permit requirement of §§ 6.4(b) and 6.9(a) for a transfer station on nonfederal lands within the park boundary when the Regional Director is able to determine that the operation of a transfer station would not degrade park natural or cultural resources. The NPS believes the temporary nature of transfer stations poses significantly fewer environmental concerns than permanent solid waste disposal sites and that the Regional Director's determination and other applicable State and federal laws will adequately protect park resources from undue impacts. The State of Alaska regulates transfer stations in the State, consistent with EPA requirements. The State of Alaska seeks to ensure transfer stations are appropriately located and managed in an environmentally responsible manner. Operators of other types of solid waste disposal sites within the boundaries of Lake Clark National Park and Preserve would still be required to obtain a permit under § 6.4(b). For transfer stations on private lands within park boundaries, the NPS believes that the Regional Director's determination and State and EPA regulations sufficiently protect park resources.

Section 13.1912 Solid Waste Disposal, Wrangell-St. Elias National Park and Preserve

The NPS is also proposing exceptions in certain circumstances to the solid waste disposal site requirements in Wrangell-St. Elias. The National Park Service believes that these conditions should be modified given the small communities residing inside the park's boundaries. Part 6 regulations require that solid waste disposal sites within park boundaries that were not in operation on September 1, 1984, handle waste ''solely from National Park Service activities * * * .'' This limitation has been problematic in McCarthy. The NPS believes that this limitation may pose a threat to park resources. For example, for the town of McCarthy within the boundaries of Wrangell-St. Elias National Park and Preserve, the closest solid waste disposal site (including transfer stations) is more than 140 miles away. Not including summer visitors, McCarthy has a seasonal population of approximately 100 and year round population of about 50. The NPS is concerned that not allowing local residents and businesses the ability to have a solid waste disposal site closer to the community may result in garbage being dumped on park lands or other environmentally unsuitable disposal. The statute on which the current regulation is based does not prohibit non-National Park Service waste. The

NPS is therefore proposing to allow solid waste disposal sites to accept waste from activities other than National Park Service activities for waste generated within the boundaries of Wrangell-St. Elias.

The NPS is also proposing to eliminate a site restriction. Section 6.4(a)(9) requires that disposal sites be located more than one mile from a ''visitor center, campground, ranger station, entrance station, or similar public use facility, or residential area.'' In certain areas other lands are literally not available or not environmentally suitable. Therefore, the NPS proposes to eliminate the one mile limit so long as it does not degrade natural or cultural resources of the park area.

For communities wholly within NPS boundaries, not being able to properly dispose of waste may result in unsafe disposal on park lands impairing park resources. The NPS believes that handling solid waste, under State of Alaska and the Environmental Protection Agency regulations, is preferable to each person disposing solid waste on private lands within the park unit. Likewise, limiting the locations of solid waste disposal sites may result in unnecessary resource damage. It is possible that the best location for new sites may be within one mile of designated facilities, as other lands may be unavailable or environmentally unsuitable. The NPS believes that these two changes—(1) to allow handling non-National Park Service solid waste and (2) to remove the one mile limit so long as park resources would not be degraded—will provide protection to park resources while allowing communities on private land located inside the park to responsibly deal with solid waste sanitation.

Finally, Wrangell-St. Elias National Park and Preserve is proposing an exemption to the permit requirement of §§ 6.4(b) and 6.9(a) for a transfer station on nonfederal lands within the park boundary when the Regional Director is able to determine that the operation of a transfer station would not degrade park natural or cultural resources. The NPS believes the temporary nature of transfer stations poses significantly fewer environmental concerns than permanent solid waste disposal sites and that the Regional Director's determination and other applicable State and federal laws will adequately protect park resources from undue impacts. The State of Alaska regulates transfer stations in the State, consistent with EPA requirements. The State of Alaska seeks to ensure transfer stations are appropriately located and managed in an environmentally responsible manner. Operators of other types of solid waste disposal sites within the boundaries of Wrangell-St. Elias National Park and Preserve would still be required to obtain a permit under § 6.4(b). For transfer stations on private lands within park boundaries, the NPS believes that the Regional Director's determination and State and EPA regulations sufficiently protect park resources.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. A qualitative cost/benefit analysis was conducted to examine specific costs and benefits associated with this proposed regulation. That analysis concludes that positive net benefits would be generated by each component of the proposed regulatory action, and hence by the regulatory action overall. Further, governmental processes in NPS-administered areas in Alaska would be improved, and market failures would be more effectively addressed. Therefore, it is anticipated that economic efficiency would be improved by this proposed regulatory action.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency-specific rule that will not interfere with other agencies or local government plans, policies, or controls. The proposals included with this rulemaking apply to areas managed by the National Park Service and do not conflict with other federal regulations. Several proposals are specifically intended to improve consistency between state and Federal areas. The review process used to develop the rulemaking proposals included consultation with the State of Alaska Department of Natural Resources to seek views of appropriate officials and to provide maximum conformity with state rules on adjacent lands as well as active participation where NPS is proposing variation from similar state regulations.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule implements existing legislative enactments, judicial interpretations, and regulatory provisions. It is not a completely new proposal, but rather a continuation of the rulemaking process begun in 1980 to implement various provisions required by the Alaska National Interest Lands Conservation Act (ANILCA). In implementing ANILCA, NPS has sought to promulgate only those regulations necessary to interpret the law and to provide for the health and safety of the public and the environment. While the legal and policy issues associated with some parts of ANILCA may have been considered novel when adopted, they have long since lost their novelty. The continuing implementation of ANILCA has become routine and the process begun by this rulemaking is intended to increase participation and cooperation in the evolution of NPS regulations for Alaska.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. The proposals in this rulemaking will either implement rules unrelated to business activity or make permanent various temporary and emergency rules under which area businesses have been operating. The rules included in this proposed rulemaking will have no effect or in some cases a salutary effect by eliminating year to year uncertainty for businesses and park visitors.

A qualitative Regulatory Flexibility threshold analysis was conducted to examine potential impacts to small entities. Based on the cost/benefit analysis referred to above, that threshold analysis concludes that, since no significant costs are anticipated for any component of the proposed action, significant economic impacts would not be imposed on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. Expenses related to compliance with various provisions of this proposed rule are slight. No new user fees or charges are proposed. Any incidental costs of registering, checking-in, or participating in orientation programs would be small and often would not be additional to those already associated with visiting park areas.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. The proposed provisions of this rulemaking will generally continue existing rules and use patterns for the park areas in Alaska.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The various provisions of this proposed rule do not apply differently to U.S.-based enterprises and foreign-based enterprises.

Unfunded Mandates Reform Act

This rulemaking addresses only actions that will be taken by the NPS. It will not require any State, local or tribal government to take any action that is not funded. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. This rule is an agency specific rule and imposes no other requirements on small governments. Several of the proposed regulations are based on State of Alaska statutes. This consistency between the State of Alaska and the National Park Service is a benefit to visitors.

b. This rule will not produce a federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because no taking of personal property will occur as a result of this proposed rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is limited in effect to federal lands and waters managed by the NPS and will not have a substantial direct effect on state and local government in Alaska. This proposed rule was initiated in part at the request of the state and has been drafted in closed consultation with the State of Alaska and, as such, promotes the principles of federalism.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the order. This rule does not impose a new burden on the judicial system.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of concession contracts and special use permits.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The rule has generally been determined to be categorically excluded from further NEPA analysis in accordance with Departmental Guidelines in 516 DM 6 (49 FR 21438), and NPS procedures in Reference Manual-12.3.4.A(8), and, other than as noted below, there are no applicable exceptions to categorical exclusions (516 DM 2, Appendix 2; RM–12.3.5). A categorical exclusion does not apply to the proposed special regulation [13.65(b)(13)] designating off-road vehicle routes at Glacier Bay National Preserve, for which an environmental assessment is being prepared. The categorical exclusion and environmental assessment, when completed, will be available at the Alaska Regional Office, 240 5th Avenue, Anchorage, Alaska, 99501, 907–644–3533.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; part 512 of the Departmental Manual, Chapter 2 ''Departmental Responsibilities for Indian Trust Resources''; and various park consultation agreements with tribal governments, the potential effects on Federally-recognized Indian tribes have been evaluated, and it has been determined at this time that there are no potential effects.

While the consultation agreements noted above have not resulted in findings of potential effects, various proposals are of interest to local residents using these NPS areas and have been facilitated by the relationships established through government-to-government consultation. Finally, the initial determination of effect noted here is dynamic and subject to change throughout this rulemaking process due to the ongoing nature of government-to-government consultation for the NPS areas in Alaska.

Clarity of This Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading. (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

Drafting Information: The principal contributors to this proposed rule are:

Jim Ireland, Kenai Fjords National Park ; Jay Liggett, Jane Hendrick, Andee Hansen and Paul Hunter, Alaska Regional Office, and Jerry Case, Regulations Program Manager, NPS, Washington, DC.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as revised on November 30, 2006 (71 FR 69333) as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et. seq.; Subpart M also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681–259, October 21, 1998; Pub. L. 106–31, 113 Stat. 72, May 21, 1999; Sec. 13.1202 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

§ 13.1 [Amended]

2. Amend § 13.1 as follows:

A. Remove the definition of ''adequate and feasible access''; and

B. In the definition of ''National Preserve,'' remove the term ''Alagnak National Wild and Scenic River'' and add in its place the term ''Alagnak Wild River.''

§ 13.440 [Amended]

3. In § 13.440, remove paragraph (b) and redesignate paragraph (c) as (b).

4. In § 13.485, revise paragraph (a) and remove the first sentence of paragraph (c)(1) and add two new sentences in its place to read as follows:

§ 13.485 Subsistence use of timber and plant material.

(a) Unless otherwise provided for in this section, the non-commercial cutting of standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in park areas where subsistence uses are allowed as follows:

(1) For standing timber of diameter greater than 3 inches at ground height, the Superintendent may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the park area was established; and

(2) For standing timber of diameter less than three inches at ground height, cutting is authorized unless restricted by the Superintendent.

* * * * *

(c) * * *

(1) Unless otherwise provided for in this part, the Superintendent, after notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of a park area to subsistence uses of a particular plant population. The Superintendent may make a closure under this paragraph only if necessary for reasons of public safety, administration, resource protection, protection of historic or scientific values, conservation of endangered or threatened species, or the purposes for which the park area was established, or to ensure the continued viability of the plant population.

* * * * *

5. Add a new Subpart H (consisting of § 13.550) to read as follows:

Subpart H—Special Regulations—Alagnak Wild River

§ 13.550 Wildlife distance conditions.

(a) Approaching a bear or any large mammal within 50 yards is prohibited.

(b) Continuing to occupy a position within 50 yards of a bear that is using a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(c) Continuing to engage in fishing or photography activities within 50 yards of a bear is prohibited.

(d) The prohibitions in this section do not apply to persons—

(1) Engaged in a legal hunt;

(2) On a designated bear viewing structure;

(3) In compliance with a written protocol approved by the Superintendent; or

(4) Who are otherwise directed by a park employee.

6. Amend § 13.604 by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

§ 13.604 Wildlife distance conditions.

* * * * *

(c) Continuing to engage in fishing or photography activities within 50 yards of a bear is prohibited.

* * * * *

7. Add new §§ 13.918 and 13.920 in subpart L to read as follows:

§ 13.918 Sable Pass Wildlife Viewing Area.

(a) Entry into the Sable Pass Wildlife Viewing Area is prohibited from May 1 to September 30 unless authorized by the Superintendent.

(b) The Sable Pass Wildlife Viewing Area means the area within one mile of the shoulder of the Park Road between Mile 38.2 and Mile 42.8, excluding the Tattler Creek drainage. A map showing the specific boundaries of the closure is available for inspection at the park visitor center.

§ 13.920 Wildlife distance conditions.

(a) *Bears.* The following are prohibited:

(1) Approaching within 300 yards of a bear; or

(2) Engaging in photography within 300 yards of a bear.

(b) *Other wildlife.* The following are prohibited:

(1) Approaching within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site; or

(2) Engaging in photography within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site.

(c) The prohibitions in this section do not apply to persons—

(1) Within a motor vehicle or a hard sided building;

(2) Within 2 yards of a motor vehicle or entrance to a hard sided building that are 25 yards or more from a bear;

(3) Engaged in legal hunting or trapping activities;

(4) In compliance with a written protocol approved by the Superintendent;

(5) Who are otherwise directed by a park employee; or

(6) In accordance with a permit from the Superintendent.

8. Add § 13.1008 in subpart M to read as follows:

§ 13.1008 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within 1 mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

9. Add § 13.1106 to read as follows:

§ 13.1106 Pets.

Pets are prohibited except—

(a) On the Bartlett Cove Public Use Dock;

(b) On the beach between the Bartlett Cove Public Use Dock and the National Park Service Administrative Dock;

(c) Within 100 feet of Bartlett Cove Developed Area park roads or parking areas unless otherwise posted;

(d) On a vessel on the water; or

(e) Within Glacier Bay National Preserve.

10. Add § 13.1108 to read as follows:

§ 13.1108 Alsek Corridor.

(a) A permit is required to enter the Alsek Corridor. A map showing the boundaries of the Alsek Corridor is available from the park visitor center. Failure to obtain a permit is prohibited.

(b) Group size is limited to 15 persons except that specific concession permit holders are limited to 25 persons.

(c) Camping is prohibited for more than one night each at Walker Glacier, Alsek Spit and Gateway Knob plus one additional night at any one of these three locations. Camping is prohibited for more than four nights total among the three locations.

(d) Except at Dry Bay, campfires may be lighted and maintained inside a fire pan within ½ mile of the Alsek River.

(e) Disposal of solid human body waste within the Alsek Corridor is prohibited. This waste must be carried to the NPS designated facility.

11. Add § 13.1109 to read as follows:

§ 13.1109 Off-road vehicle use in Dry Bay.

The use of off-road vehicles is authorized only on designated routes and areas in Dry Bay. The use of off-road vehicles in all other areas in Dry Bay is prohibited. A map of designated routes and areas is available at park headquarters.

12. Add § 13.1118 to read as follows:

§ 13.1118 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

13. Amend § 13.1206 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 13.1206 Wildlife distance conditions.

* * * * *

(c) Continuing to engage in fishing or photography activities within 50 yards of a bear is prohibited.

* * * * *

14. Add § 13.1210 to read as follows:

§ 13.1210 Firearms.

The superintendent may designate areas or routes within Katmai National Park where a firearm may be carried.

15. Revise § 13.1304 to read as follows:

§ 13.1304 Exit Glacier Developed Area.

(a) *Location of Exit Glacier Developed Area.* A map showing the boundaries of the EGDA is available at the park visitor center. For the purposes of this subpart, the Exit Glacier Developed Area (EGDA) means:

(1) From the park boundary to Exit Glacier Campground Entrance Road, all park areas within 350 meters of the centerline of the Exit Glacier Road;

(2) From Exit Glacier Campground Entrance Road to the end of the main paved trail, all park areas within 500 meters of any paved surface; or

(3) All park areas within 300 meters of the terminus of Exit Glacier.

(b) *Camping.* Within the EGDA, camping is prohibited except in designated sites within the Exit Glacier Campground or as authorized by the Superintendent.

(c) *Food.* Cooking, consuming, storing or preparing food in the Exit Glacier Campground is prohibited except in designated areas.

(d) *Bicycles.* Within the EGDA, the use of a bicycle is prohibited except on the Exit Glacier road and parking areas.

(e) *Commercial transport of passengers by motor vehicles.* Commercial transport of passengers by motor vehicles on Exit Glacier Road is allowed without a written permit. However, if required to protect public health and safety or park resources, or to provide for the equitable use of park facilities, the Superintendent may establish a permit requirement with appropriate terms and conditions for the transport of passengers. Failure to comply with permit terms and conditions is prohibited.

(f) *Snowmachines.* The use of snowmachines is prohibited within the EGDA, except—

(1) On Exit Glacier Road;

(2) In parking areas;

(3) On a designated route through the Exit Glacier campground to Exit Creek;

(4) Within Exit Creek; and

(5) For NPS administrative activities.

(g) *Exit Glacier Developed Area closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the EGDA to protect public health, safety, or park resources, or to provide for the equitable and orderly use of park facilities. Information on closures and restrictions will be available at the park visitor information center. Violating closures or restrictions is prohibited.

(h) *Climbing and walking on Exit Glacier.* Except for areas designated by the Superintendent, climbing or walking on, in, or under Exit Glacier is prohibited within ½ mile of the glacial terminus from May 1 through October 31, and during other periods as determined by the Superintendent. Restrictions and exceptions will be available for inspection at the park visitor center, on bulletin boards or signs, or by other appropriate means.

(i) *Ice fall hazard zones.* Entering an ice fall hazard zone is prohibited. These zones will be designated with signs, fences, rope barriers, or similar devices.

16. Add § 13.1308 to read as follows:

§ 13.1308 Harding Icefield Trail.

The Harding Icefield Trail from the junction with the main paved trail near Exit Glacier to the emergency hut near the terminus is closed to—

(a) Camping within ⅛ mile of the trail; and

(b) Bicycles or other wheeled devices.

17. Add § 13.1310 to read as follows:

§ 13.1310 Pets.

(a) Pets are prohibited—

(1) In the Exit Glacier Developed Area except in the parking lot, on the Exit Glacier road, or other areas designated by the superintendent;

(2) Along the coast within the area extending from the mean high tide line to one quarter mile inland after May 30 and before November 1.

(b) The restrictions in this section do not apply to dogs when sufficient snow exists for skiing or dog sled use and the dogs are restrained as part of a sled dog team or for the purposes of skijoring.

18. Add § 13.1604 to read as follows:

§ 13.1604 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

(c) A transfer station located wholly on nonfederal lands within Lake Clark National Park and Preserve may be operated without a permit from the National Park Service as required by §§ 6.4(b) and 6.9(a) so long as the solid waste is generated within the

boundaries of the park area and the Regional Director determines that the operation will not degrade any of the natural or cultural resources of the park area. Such a transfer station must comply with the remaining provisions of part 6 of this chapter. A transfer station means a public use facility for the deposit and temporary storage of solid waste, excluding a facility for the storage of a regulated hazardous waste.

19. Add § 13.1912 to read as follows:

§ 13.1912 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

(c) A transfer station located wholly on nonfederal lands within Wrangell-St. Elias National Park and Preserve may be operated without the permit required by §§ 6.4(b) and 6.9(a) only if:

(1) The solid waste is generated within the boundaries of the park area;

(2) The Regional Director determines that the operation will not degrade any of the natural or cultural resources of the park area; and

(3) The transfer station complies with the provisions of part 6 of this chapter.

(d) For purposes of this section, a transfer station means a public use facility for the deposit and temporary storage of solid waste, excluding a facility for the storage of a regulated hazardous waste.

Dated: November 21, 2006.

David M. Verhey,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E6–22100 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–EF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0046; FRL–8261–6]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Belmont County to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 20, 2006, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request for EPA approval of redesignation of Belmont County (the Ohio portion of the Wheeling, West Virginia-Ohio (WV–OH) bi-state ozone nonattainment area) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and a request for EPA approval of an ozone maintenance plan for Belmont County as a revision to the Ohio State Implementation Plan (SIP). On August 24, 2006, the State submitted public hearing records for the ozone redesignation request and ozone maintenance plan. On December 4, 2006, the State submitted a clarification of its intent to implement contingency measures in the event of an ozone standard violation in the Wheeling, WV–OH area subsequent to the redesignation of this area to attainment of the ozone standard. EPA is proposing to approve Ohio's request and corresponding SIP revision. EPA is also proposing to approve the Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Motor Vehicle Emission Budgets (MVEBs) for Belmont County, as supported by the ozone maintenance plan for this County, for purposes of conformity determinations.

DATES: Comments must be received on or before January 26, 2007. Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0046, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov*.
- Fax: (312) 886–5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR–2006–0046. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hardcopy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary

information section is arranged as follows:

I. What Action is EPA Proposing to Take?
II. What Is the Background for These Actions?
III. What Are the Criteria for Redesignation to Attainment?
IV. What Are EPA's Analyses of the State's Requests and What Are the Bases for EPA's Proposed Actions?
V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used To Support Conformity Determinations?
VI. What Are the Effects of EPA's Proposed Actions?
VII. Statutory and Executive Order Reviews

I. What Action is EPA Proposing to Take?

We are proposing to take several related actions for Belmont County, Ohio. First, we are proposing to determine that Belmont County has attained the 8-hour ozone NAAQS and that Belmont County and the State of Ohio have met the requirements for redesignation to attainment of the 8-hour ozone NAAQS under section 107(d)(3)(E) of the CAA. We are, therefore, proposing to approve the June 20, 2006 and August 24, 2006 requests from the State of Ohio to change the designation of Belmont County from nonattainment to attainment of the 8-hour ozone NAAQS.[1]

Second, we are proposing to approve Ohio's ozone maintenance plan for Belmont County as a revision to the Ohio SIP. The maintenance plan is designed to keep Belmont County and, in conjunction with a West Virginia ozone maintenance plan for Marshall and Ohio Counties, the entire Wheeling, WV–OH area in attainment of the 8-hour ozone NAAQS for the next 12 years, through 2018. As supported by and consistent with the ozone maintenance plan, we are also proposing to approve the 2018 VOC and NO_X MVEBs for Belmont County for conformity determination purposes.

II. What is the Background for These Actions?

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)).[2] This 8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which was promulgated on February 8, 1979 (44 FR 8202) and revoked on June 15, 2005.

Ground-level ozone is not emitted directly by sources. Rather, emitted NO_X and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO_X and VOC are referred to as ''ozone precursors.''

The CAA required EPA to designate as nonattainment any area that violated the 8-hour ozone NAAQS. Ozone data for the three most recent years at the time when the 8-hour ozone designations were initially established (2001–2003) were considered to establish the ozone designations. The **Federal Register** notice making these designations was signed on April 15, 2004, and was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas. (Both are found in title I, part D of the CAA.) Subpart 1 contains general, less prescriptive requirements for nonattainment areas for any pollutant governed by a NAAQS, and applies to all nonattainment areas. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

In the April 30, 2004 designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment (''basic'' nonattainment) and subpart 2 nonattainment (''classified'' nonattainment) based on their 8-hour ozone design values (*i.e.*, on the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and on their 1-hour ozone design values (*i.e.*, on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas).[3] 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb were designated as subpart 2, classified nonattainment areas. Classification of the subpart 2 nonattainment areas were based on the levels of the monitored 8-hour ozone design values for each nonattainment area. All other 8-hour nonattainment areas were designated as subpart 1, basic nonattainment areas, which have no area-specific classifications.

Emission control requirements for classified nonattainment areas are linked to area classifications. Areas with more serious ozone pollution problems are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates, which also depend on the area classifications. For example, marginal nonattainment areas are subject to the fewest mandated control requirements and have the earliest attainment deadline. Whereas, severe nonattainment areas are required to meet more mandated emission controls, including tighter restrictions on the sizes of existing VOC and NO_X sources required to install emission controls and tighter restrictions on mandated emission controls and offsetting of new sources, and have a later attainment deadline. In contrast, the attainment deadline for basic nonattainment areas does not depend on the magnitude of the area 8-hour ozone design values.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, less than or equal to 0.084 ppm or 84 ppb based on data rounding conventions specified in appendix I of 40 CFR part 50) over the most recent three-year period at all monitors in an area and in its impacted downwind environs. (See 69 FR 23857 (April 30, 2004) for further information.) Such supporting data must meet a minimum data completeness requirement. The completeness requirement (specified in appendix I of 40 CFR part 50) for ozone data supporting a determination of attainment and a redesignation to attainment is met when the annual average percent of days with valid ambient monitoring data is greater than 90 percent for the ozone seasons during the three-year period, with no single year with less than 75 percent data completeness during the ozone season.

In the April 30, 2004 designation/classification rulemaking, the Wheeling, WV–OH area, including Belmont County, was designated as subpart 1 nonattainment for the 8-hour ozone standard. The designation was based on ozone data collected during the 2001–2003 period.

[1] A separate proposed rule from EPA addresses a request from the State of West Virginia to redesignate Marshall and Ohio Counties, West Virginia to attainment of the 8-hour ozone NAAQS. See 71 FR 57894, October 2, 2006.

[2] This standard is violated in an area when any ozone monitor in the area (or in its impacted downwind environs) records 8-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 85 ppb.

[3] The 8-hour ozone design value and the 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each ozone concentration averaging time was considered for each area.

On June 20, 2006, the State of Ohio requested redesignation of Belmont County to attainment of the 8-hour ozone NAAQS based on ozone data collected in these Counties during the 2003–2005 period. On August 24, 2006, the State of Ohio completed the ozone redesignation request by submitting documentation of the public hearing conducted by the State for the redesignation request and ozone maintenance plan. All information contained in the State's June 20, 2006 ozone redesignation request submittal was unchanged through the State's public review process (summarized in the August 24, 2006 submittal). On December 4, 2006, the State submitted a clarification to the State's ozone maintenance plan, indicating that the State is committed to implement contingency emission control measures in the event of a violation of the 8-hour ozone standard subsequent to the redesignation of Belmont County and the Wheeling, WV–OH area to attainment of the 8-hour ozone NAAQS.

Note that the State of West Virginia has also submitted an ozone redesignation request for the West Virginia portion of the Wheeling, WV–OH area (for Marshall and Ohio Counties). The West Virginia ozone redesignation request is being addressed through a separate rulemaking process. EPA published a notice of proposed rulemaking on the West Virginia request on October 2, 2006 (71 FR 57894).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation to attainment provided that:

(1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable state implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS). On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and,

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What Are EPA's Analyses of the State's Requests and What Are the Bases for EPA's Proposed Actions?

EPA is proposing to: (1) Determine that Belmont County has attained the 8-hour ozone standard and approve the redesignation of this County to attainment of the 8-hour ozone NAAQS; and (2) approve the ozone maintenance plan for this County and the VOC and NO_X MVEBs supported by the ozone maintenance plan. The bases for our proposed determination and approvals are as follows:

1. Belmont County and the Wheeling, WV–OH Area Have Attained the 8-Hour Ozone NAAQS

For ozone, as noted above, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and 40 CFR part 50 appendix I based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all monitoring sites in the area and in its impacted downwind environs. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and in its impacted downwind environs over the most recent three-year period must not exceed the ozone standard. Based on the ozone data rounding convention described in 40 CFR part 50 appendix I, the 8-hour ozone standard is attained if the area's ozone design value [4] is 0.084 ppm (84 ppb) or less. The data must be collected and quality-assured in accordance with 40 CFR part 50, and must be recorded in EPA's Air Quality System (AQS).

As part of the June 20, 2006 ozone redesignation request, the Ohio EPA submitted ozone monitoring data indicating the top four daily maximum 8-hour ozone concentrations for each monitoring site in the Wheeling, WV–OH area during the 2002–2005 period. These ozone concentrations are part of the quality-assured ozone data collected in this area and recorded in the AQS. The annual fourth-high 8-hour daily maximum concentrations for each year during the 2002–2005 period, along

[4] The worst-case monitoring site-specific ozone design value in the area or in its impacted downwind environs.

with the three-year averages,[5] are summarized in Table 1.

TABLE 1.—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM)

Site ID	County	Address	Year	Percent observations	Fourth-high concentration	Three-year average
54–069–0007	Ohio (WV)	Northern Panhandle	2002	100	0.097	NA
54–069–0007	Ohio (WV)	Northern Panhandle	2003	99	0.076	NA
54–069–0009	Ohio (WV)	Wheeling EPA	2004	100	0.063	0.079
54–069–0010	Ohio (WV)	Warwood Water Plant	2005	100	0.089	0.076

It is noted that the ozone monitor for this area was moved several times during the three-year attainment period. While the monitor was relocated twice after 2003, the monitoring site remained within five miles of its original location in 2003. Statistical analysis of data submitted by the State of West Virginia, which was conducted by EPA during the review of the West Virginia ozone redesignation request, led to the conclusion that the various ozone monitoring sites can be treated as one and that, collectively, the three monitoring sites have maintained the integrity of the conclusions drawn concerning the three-year averages of the fourth-high daily maximum 8-hour ozone concentrations. (See the Technical Support Document prepared for the review of the West Virginia ozone redesignation request available at EPA's Region III Air Division office. Also see 71 FR 57894, October 2, 2006.)

The monitored ozone concentrations for 2002–2004 show that the entire Wheeling, WV–OH area has attained the 8-hour ozone standard with a current (2003–2005) ozone design value of 0.076 ppm. The data collected at the Ohio County, West Virginia monitoring sites satisfy the CAA requirement that the ozone standard must be attained at all sites in the ozone nonattainment area. The three-year ozone design value for the nonattainment area is less than 0.085 ppm.

West Virginia has committed to continue ozone monitoring in this area as part of the State's ozone maintenance plan (see 71 FR 57897, October 2, 2006). Since the State of Ohio does not conduct ozone monitoring in this area, but relies on the State of West Virginia for this purpose, the commitment of West Virginia to continue monitoring in this area meets the redesignation requirement, in accordance with 40 CFR part 58, that ozone monitoring will be continued to assure continued attainment of the 8-hour ozone standard.

We believe that the ozone monitoring data submitted by the State of West Virginia provide an adequate demonstration that the Wheeling, WV–OH area has attained the 8-hour ozone NAAQS. Therefore, we propose to determine that Belmont County, Ohio, as part of the Wheeling, WV–OH area, has attained the 8-hour ozone NAAQS.

Please note that available, non-quality assured data for 2006 show that this area continues to attain the 8-hour ozone standard through 2006.

2. Belmont County and the State of Ohio Have Met All Applicable Requirements Under Section 110 and Part D of the CAA and This Area Has a Fully Approved SIP Under Section 110(k) of the CAA

We have determined that Belmont County and the State of Ohio have met all currently applicable SIP requirements for Belmont County under section 110 of the CAA (general SIP requirements). We have determined that the Ohio SIP meets the currently applicable SIP requirements under subpart 1 part D of title I of the CAA (requirements specific to basic ozone nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, we have determined that all applicable requirements are approved in the Ohio SIP. See section 107(d)(3)(E)(ii) of the CAA. In making these determinations, we determined the CAA requirements which are applicable to Belmont County, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA, which in this case are those CAA requirements applicable to Belmont County at the time the State submitted a complete ozone redesignation request for this area, on August 24, 2006.

a. Belmont County Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. To qualify for redesignation of an area to attainment under this interpretation, the state and the area must meet the relevant CAA requirements that apply at the time of the State's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum, and 66 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete redesignation request remain applicable until a redesignation of the area to attainment of the standard is approved, but are not required as prerequisites to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements: Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the emission limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements and SIP elements include, but are not limited to, the

[5] Three-year averages are specified for the last year of each three-year period.

following: (a) Submittal of a SIP that has been adopted by the State after reasonable public notice and a hearing; (b) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (c) implementation of a source permit program; (d) provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and part D requirements (New Source Review (NSR)) for new sources or major source modifications; (e) criteria for stationary source emission control measures, monitoring, and reporting; (f) provisions for air quality modeling; and (g) provisions for public and local agency participation.

SIP requirements and elements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also other guidance documents listed above.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA required states to establish programs to address transport of air pollutants (NO_X SIP call and Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) of the CAA to meet the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's classification. EPA believes that the requirements linked with a particular nonattainment area's classification are the relevant measures to evaluate when reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures for evaluating this aspect of a redesignation request. This approach is consistent with EPA's policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the Ohio SIP addressing section 110 elements under the 1-hour ozone standard. We have analyzed the Ohio SIP as codified in 40 CFR part 52, subpart KK and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA. The SIP, which has been adopted after reasonable public notice and hearing, contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications of existing sources; provisions for adequate funding, staff, and associated resources necessary to implement its requirements; requires stationary source emissions monitoring and reporting; and otherwise satisfies the applicable requirements of section 110(a)(2).

Part D SIP requirements: EPA has determined that the Ohio SIP meets applicable SIP requirements under part D of the CAA. Under part D, an area's classification (subpart 1, marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Part D, subpart 1 requirements: For purposes of evaluating this redesignation request, the applicable subpart 1 part D requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). See also 68 FR 4852–4853, a notice of proposed rulemaking for an ozone redesignation for the St. Louis area, for a discussion of section 172 requirements.

No requirements under part D of the CAA came due for Belmont County prior to the State's submittal (August 24, 2006) of a complete ozone redesignation request for this area. For example, the requirement for an ozone attainment demonstration, as contained in section 172(c)(1), is not yet applicable, nor are the requirements for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and attainment plan and RFP contingency measures (section 172(c)(9)). Therefore, none of the part D requirements are applicable to Belmont County for purposes of redesignation.

Section 176 conformity requirements: Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

As with other 8-hour ozone nonattainment area requirements, EPA believes that the conformity requirements do not apply for purposes of evaluating the ozone redesignation request under section 107(d) of the

CAA. Further support for this view lies in the fact that state conformity rules are still required after redesignation of areas to attainment of a NAAQS and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

Part D new source review requirements: EPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that Belmont County will be able to maintain the 8-hour ozone standard without part D NSR in effect, and therefore, we conclude that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Belmont County upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

We conclude that Belmont County and the State of Ohio have satisfied all applicable requirements under section 110 and part D of the CAA to the extent that these requirements apply for purposes of reviewing the State's ozone redesignation request for this area.

b. Belmont County Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Ohio SIP for Belmont County under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Belmont County for purposes of redesignation. No Belmont County SIP provisions are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of reviewing of the State's redesignation request. EPA has also noted that it may conclude that the section 110 SIP submission approved under the 1-hour standard will be adequate for purposes of attaining and maintaining the 8-hour standard. EPA also believes that since the part D requirements did not become due prior to Ohio's submission of a final, complete redesignation request for Belmont County, they also are not applicable requirements for purposes of redesignation.

3. The Air Quality Improvement in the Wheeling, WV–OH Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP, Federal Air Pollution Control Regulations, and Other Permanent and Enforceable Emission Reductions

In making this demonstration, the States of West Virginia [6] and Ohio have documented changes in VOC and NO_X emissions from all anthropogenic (man-made or man-based) sources in the Wheeling, WV–OH area occurring between 2002, an ozone standard violation year, and 2004, one of the years in which the Wheeling, WV–OH area has recorded attainment of the 8-hour ozone standard. The States have also discussed permanent and enforceable emission reductions that have occurred elsewhere in the States and in other upwind areas that have contributed to the air quality improvement in the Wheeling, WV–OH area. Table 2 summarizes the VOC and NO_X emissions totals from the anthropogenic sources in 2002 and 2004 for the Wheeling, WV–OH area. From the table, it can be seen that VOC emissions have essentially remained constant between 2002 and 2004, whereas NO_X emissions have significantly declined between 2002 and 2004.

The States of Ohio and West Virginia conclude that the differences in the 2002 and 2004 emissions are due primarily to the implementation of permanent and enforceable emission control requirements. The States have asserted that these emission reductions along with those occurring elsewhere in the two States and in other upwind areas have led to the observed improvement in air quality in the Wheeling, WV–OH area.

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN THE WHEELING, WV–OH AREA

[tons per day]

County	Point	Area	Non-road	Mobile	Total
2002 Volatile Organic Compounds					
Belmont County, Ohio	0.2	4.1	1.0	4.2	9.5
Marshall and Ohio Counties, West Virginia	3.0	14.8	2.3	3.4	23.5
2002 Total	3.2	18.9	3.3	7.6	33.0
2004 Volatile Organic Compounds					
Belmont County, Ohio	0.2	4.0	0.9	3.5	8.6

[6] West Virginia submitted a separate ozone redesignation request for its portion of the Wheeling, WV–OH area. The West Virginia redesignation request is addressed in a separate EPA proposed rule. West Virginia did supply emissions data for the Wheeling area to the State of Ohio for inclusion in Ohio's ozone request.

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN THE WHEELING, WV–OH AREA—Continued

[tons per day]

County	Point	Area	Non-road	Mobile	Total
Marshall and Ohio Counties, West Virginia	3.0	15.4	2.3	2.8	23.5
2004 Total	3.2	19.4	3.2	6.3	32.1
Difference (2002–2004) [7]	0.0	−0.5	0.1	1.3	0.9
2002 Nitrogen Oxides					
Belmont County, Ohio	31.8	0.3	3.0	7.4	42.5
Marshall and Ohio Counties, West Virginia	152.2	3.4	5.6	5.4	166.6
2002 Total	174.0	3.7	8.6	15.8	209.1
2004 Nitrogen Oxides					
Belmont County, Ohio	28.7	0.3	2.9	6.3	38.2
Marshall and Ohio Counties, West Virginia	85.8	3.4	7.3	4.7	101.2
2004 Total	114.5	3.7	10.2	11.0	139.4
Difference (2002–2004)	59.5	0.0	−1.6	4.8	69.7

The significant decline in NO_X emissions in this area between 2002 and 2004 occurred primarily at Electric Generating Units (EGU) and at large industrial boilers as the result of the implementation of the States' NO_X emission control rules (resulting from the implementation of EPA's NO_X SIP call and acid rain emission controls under title IV of the CAA). Besides the NO_X emission reductions occurring within the nonattainment area itself, the implementation of the States' NO_X control rules have reduced NO_X emission throughout both Ohio and West Virginia. The additional statewide emission reductions have contributed to attainment of the 8-hour ozone standard in the Wheeling, WV-OH area.

We concur with the State of Ohio that NO_X emissions have been significantly lowered in the Wheeling, WV-OH area and throughout the States of Ohio and West Virginia. We also concur with the State that these emission reductions have contributed to attainment of the 8-hour ozone standard in the Wheeling, WV-OH area. Therefore, the State of Ohio has met this criteria for redesignation of Belmont County to attainment of the 8-hour ozone standard.

Besides implementation of the NO_X emission control rules and despite the general lack of decreasing emissions for VOC (the data imply that existing VOC control measures are reducing VOC emission at current rates that are generally keeping pace with new source growth), additional emission controls are being implemented in the Wheeling, WV-OH area which will also contribute to attainment and maintenance of the 8-hour ozone standard. The State of Ohio notes that, in the mid-1990's, the State promulgated statewide rules requiring Reasonably Available Control Techniques (RACT) for significant new sources of VOC emissions. The RACT rules have been implemented for significant new sources locating in Ohio subsequent to the State adoption of the rules. Additional implemented, or soon to be implemented, emission control rules include several Federal rules: (1) Tier II emission standards for vehicles and gasoline sulfur standards (promulgated by EPA in February 2000 and currently being implemented); (2) heavy-duty diesel engine emission control rules (promulgated by the EPA in July 2000 and currently being implemented; and (3) clean air non-road diesel rule (promulgated by the EPA in May 2004 and currently being phased in through 2009). All of these rules have contributed to reducing VOC and NO_X emissions throughout the States of Ohio and West Virginia and will contribute to future emission reductions in these States.

The State of Ohio commits to continuing the existing VOC and NO_X emission controls after the Wheeling, WV-OH area is redesignated to attainment of the 8-hour ozone standard.

4. Belmont County Has a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Belmont County to attainment of the ozone NAAQS, Ohio submitted a SIP revision request to provide for maintenance of the 8-hour ozone NAAQS in Belmont County and in the entire Wheeling, WV-OH area through 2018, exceeding the minimum 10 year maintenance period required by the CAA.

a. What Is Required in an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that maintenance of the standard will continue for 10 years following the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations. The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the

[7] Positive differences indicate a decrease in emissions over time from 2002 to 2004. Negative differences indicate emissions were increasing over time, primarily as the result of emission changes from source growth exceeding the impacts of implemented emission controls.

following items: (1) The attainment VOC and NO_X emissions inventories; (2) a maintenance demonstration showing maintenance for the first 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

b. What Are the Attainment Emission Inventories for Belmont County?

Ohio EPA prepared comprehensive VOC and NO_X emission inventories for Belmont County, including EGU and non-EGU point (significant stationary sources), other (area) (smaller and widely-distributed stationary sources), Marine, Aircraft, and Rail mobile (MAR), mobile on-road, and mobile non-road sources for 2002 (the base year). To develop the attainment year (2004) and projected maintenance years (2009 and 2018) emissions, the Ohio EPA projected the 2002 emissions applying various source category-specific growth factors and emission control factors.

The State has thoroughly documented how the 2002 base year emissions were derived. The following summarizes the procedures and sources of data used by the Ohio EPA to derive the base year emissions.

i. *Point Sources.* The primary source of point source information was facility-specific information collected annually by the State for sources covered by Title V source permits. This information includes emissions, process rates, operating schedules, emissions control data, and other relevant information. The State also used emissions data provided by EPA's EGU emission inventory, maintained to support the NO_X SIP call emissions trading program and the acid rain control program. The sources included in the 2002 point source inventory were identified using Ohio's Title V STARS database. The emissions included in this database are facility-reported actual emissions.

Ohio EPA defines point source process emissions as those which occur at an identifiable stationary stack or vent. Point source emissions not emitted from discrete stacks or vents are defined to be fugitive emissions. Facility-specific fugitive emissions are also reported by each Title V facility and stored in the Title V STARS database.

Point source emissions included in the 2002 base year emissions inventory were provided to the Lake Michigan Air Directors Consortium (LADCO) in National Emissions Inventory Input Format (NIF) 3.0 format. LADCO imported and processed the NIF files in the Emissions Modeling System (EMS) and applied temporal and spatial profiles to calculate July weekday emissions rates. The Belmont County emissions derived from this set of emissions data were split into EGU emissions and non-EGU emissions for inclusion in the base year emissions inventory used to support the Belmont County ozone redesignation request.

ii. *Area (Other) Sources.* Area sources are those sources which are generally small, numerous, and have not been inventoried as specific point, mobile, or biogenic sources. The emissions for these sources are calculated and grouped by source type and are estimated using various surrogates, such as population, estimates of employees in various occupational groups and facility-types, etc. The area source emissions are typically defined at the county level.

To estimate the area source emissions, Ohio EPA has either used published Emission Inventory Improvement Program (EIIP) emissions estimation methodologies or other methodologies typically used by other states. Area source categories include: Various stationary combustion sources (not including the EGU sources included in the point source portion of the emissions inventory); human cremation; agricultural pesticides; architectural surface coatings; auto body refinishing; consumer and commercial solvents; degreasing and solvent cleaning (not included in point source emissions); fuel marketing; graphic arts (the emissions from the smaller facilities not included in the Title V STARS database); hospital sterilizers; small industry surface coating; small industry rubber and plastics coating; landfills; portable fuel containers; traffic markings; and Privately Owned Treatment Works (POTWs). The State has documented the data sources and emission factors or calculation procedures used for each of these area source categories.

iii. *Non-Road Mobile Sources.* The non-road mobile source emissions inventory was generated regionally by running EPA's National Mobile Inventory Model (NMIM). The output of the NMIM was converted to the NIF format and submitted to LADCO for processing in the EMS to obtain spatially and temporally allocated emissions for a July weekday. The basic non-road algorithm for calculating emissions in NMIM uses base year equipment populations, average load factors, available engine powers, activity hours and emission factors to calculate the emissions. To address concerns about the accuracy of NMIM for some source categories, LADCO contracted with two consulting companies to review the base data and make recommended changes.

iv. *Marine, Aircraft, and Rail (MAR) Sources.* Due to the significance of the emissions from these source types, the Ohio EPA has decided to treat these source categories separately from other non-road mobile sources. The MAR emissions include emissions from commercial marine, aircraft, and locomotive sources.

Commercial marine vessels consist of several different categories of vessel types. For each vessel type, there are unique engine types, emission rates, and activity data sets. The emissions inventory documentation lists the vessel types and activity data sources by vessel type, along with the special distribution of each vessel type.

Locomotive activity was divided into various rail categories: Class I operations; Class II/III operations; passenger trains; consumer lines; and yard operations. Since Class I operations are expected to be the most significant rail operations in most areas, including Belmont County, operators of Class I operations were queried for activity and emissions-related information for each railroad line. Class I activity levels were provided by county in terms of ton-miles of freight movement and estimated fuel consumption. This approach provided for more specific estimates of emissions by railroad line. Class II/III emissions were based on national fuel consumption and per employee fuel consumption estimates. The number of employees in each county was used to allocate the fuel consumption to each county and, therefore, the emissions to each county. The passenger train estimates were based on information provided by AMTRAK on the weekly schedule of train operation, and the emissions were based on an assumption of 2.35 gallons of fuel use per train-mile of travel. No commuter lines or yard operations exist in Belmont County.

EPA provided the aircraft emission estimates based on Federal Aviation Administration (FAA) published Landing and Take-Off (LTO) rates by engine type for each airline and major airport in the State of Ohio. The LTO-engine information was combined with engine type-specific emission factors developed by the International Civil Aviation Organization (ICAO), and, through use of an FAA Emissions and Dispersion Modeling System (EDMS), emissions were assigned to each county in the State, including Belmont County.

LADCO processed all of the MAR emissions data through the EMS to calculate July 2002 weekday emissions for VOC and NO_X.

v. *On-Road Mobile Sources.* A regional transportation model operated by the Belmont, Ohio, Marshall Regional Council Metropolitan Planning Organization (Bel-O-Mar), West Virginia Department of Transportation (WVDOT), and Ohio Department of Transportation (Ohio DOT) was used to estimate traffic levels, vehicle age and type distributions, vehicle speeds, and other emissions-related vehicle parameters for the roadways in Belmont County and elsewhere in the Wheeling, WV-OH area. This vehicle travel information, along with the MOBILE 6.2 vehicle emission factor model, was used to estimate mobile source VOC and NO_X emissions for Belmont County and the entire Wheeling, WV-OH area.

vi. *Projected Emissions for the Attainment Year.* Ambient air quality data showed that the Wheeling, WV-OH area met the 8-hour ozone NAAQS in 2004. Ohio EPA used point source growth data provided by individual point source facilities along with other source category growth estimates and emission control estimates to estimate 2004 VOC and NO_X emissions for Belmont County. The State of West Virginia estimated 2004 VOC and NO_X emissions for the remainder of the Wheeling, WV-OH area. The estimated 2004 emissions have been compared to the 2002 emissions to demonstrate the basis for the improved air quality in the Wheeling, WV-OH area. See Table 2 above for the 2004 attainment level emissions.

c. Demonstration of Maintenance

To demonstrate maintenance of the attainment of the 8-hour ozone standard for at least 10 years following the redesignation of the Wheeling, WV-OH area to attainment of the 8-hour ozone NAAQS, the State of Ohio and the State of West Virginia projected the VOC and NO_X emissions in the Wheeling, WV-OH area for the years of 2009 and 2018. For Belmont County, Ohio EPA used source growth estimates provided by LADCO along with mobile source growth estimates generated using the regional transportation model and MOBILE 6.2 to project the Belmont County VOC and NO_X emissions. The methods used by the State of West Virginia are described in West Virginia's ozone redesignation request (reviewed in a separate EPA proposed rule. See 71 FR 57894, October 2, 2006). Note that a maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F. 3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001) and 68 FR 25430–25432 (May 12, 2003).

Table 3 summarizes the VOC emissions projected to occur in Belmont County, Ohio and in Marshall and Ohio Counties, West Virginia during the demonstrated ozone maintenance period. Similarly, Table 4 summarizes the NO_X emissions projected to occur in the same area during the demonstrated ozone maintenance period. The State of Ohio and the State of West Virginia chose 2018 as a projection year to meet the 10-year maintenance demonstration requirement, allowing several years for EPA to complete the redesignation rulemaking process. The States also chose 2009 as an interim year to demonstrate that VOC and NO_X emissions will remain below the attainment year levels throughout the 10-year maintenance period.

TABLE 3.—PROJECTED VOC EMISSIONS IN THE WHEELING, WV-OH AREA

[tons/day]

Source sector	2004 attainment	2009 interim	2018 maintenance	Safety margin
Belmont County VOC Emissions				
EGU Point	0.17	0.12	0.17	
Non-EGU Point	0.03	0.03	0.04	
Area (Other)	4.03	3.85	3.86	
Non-Road Mobile	0.88	0.76	0.56	
On-Road Mobile	3.52	*2.60	*1.52	
Marine-Air-Railroad	0.05	0.05	0.5	
Total Belmont County	8.68	7.41	6.20	**2.48
Marshall and Ohio Counties, West Virginia VOC Emissions				
EGU Point	0.5	0.7	0.7	
Non-EGU Point	2.5	2.1	2.6	
Area (Other)	15.4	7.3	8.4	
Non-Road Mobile (MAR included)	2.3	2.1	1.8	
On-Road Mobile	2.81	2.22	1.24	
Total Marshall and Ohio Counties	23.51	14.42	14.74	**8.77
Total Wheeling, WV-OH	32.19	21.83	20.94	

* Includes 15 percent mobile source budget increase as a safety margin. Actual projected 2018 on-road mobile source VOC emissions in Belmont County are 1.32 tons per day.

** Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

TABLE 4.—PROJECTED NO_X EMISSIONS IN THE WHEELING, WV–OH AREA

[tons/day]

Source sector	2004 attainment	2009 interim	2018 maintenance	Safety margin
Belmont County NO_X Emissions				
EGU Point	28.61	20.96	18.85	
Non-EGU Point	0.08	0.08	0.08	
Area (Other)	0.29	0.36	0.38	
Non-Road Mobile	1.35	1.16	0.63	
On-Road Mobile	6.29	*4.69	*1.91	
Marine-Air-Railroad	1.54	1.38	1.28	
Total Belmont County	38.16	28.63	23.13	**15.03
Marshall and Ohio Counties, West Virginia NO_X Emissions				
EGU Point	73.20	51.1	14.9	
Non-EGU Point	12.6	10.6	11.3	
Area (Other)	3.4	1.8	2.0	
Non-Road Mobile (MAR included)	7.3	5.2	4.6	
On-Road Mobile	4.67	3.75	1.47	
Total Marshall and Ohio Counties	101.47	72.45	34.27	**67.20
Total Wheeling, WV–OH	139.63	101.08	57.40	.....

*Includes 15 percent mobile source budget increase as a safety margin. Actual projected 2018 on-road mobile source NO_X emissions in Belmont County are 1.66 tons per day.

**Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

The Ohio EPA also notes that the State's EGU NO_X emissions control rules stemming from EPA's NO_X SIP call and Clean Air Interstate Rule (CAIR), to be implemented beyond 2006, will further lower NO_X emissions in upwind areas, resulting in decreased ozone and ozone precursor transport into Belmont County and the Wheeling, WV–OH area. This will also support maintenance of the ozone standard in this area.

The emission projections for Belmont County and the Wheeling, WV–OH area as a whole coupled with the expected impacts of the States' EGU NO_X rules and CAIR led to the conclusion that Belmont County and the Wheeling, WV–OH area should maintain the 8-hour ozone NAAQS throughout the required 10-year maintenance period and through 2018. The projected decreases in local VOC and local and regional NO_X emissions indicate that peak ozone levels in the Wheeling, WV–OH area may actually further decline during the maintenance period.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that Ohio EPA has successfully demonstrated that the 8-hour ozone standard should be maintained in Belmont County and in the Wheeling, WV–OH area. We believe that this is especially likely given the expected impacts of the NO_X SIP call and CAIR. As noted by Ohio EPA, this conclusion is further supported by the fact that other states in the eastern portion of the United States are also expected to further reduce regional NO_X emissions through implementation of their ozone NO_X emission control rules for EGUs and other NO_X sources through the implementation of the NO_X SIP call and CAIR.

d. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might occur after redesignation of an area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were included in the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan to address a possible future ozone air quality problem in the Wheeling, WV–OH area. The contingency plan has two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred or appears to be very imminent (Action Level Response).

A Warning Level Response will be triggered whenever an annual (1-year) fourth-high monitored 8-hour ozone concentration of 88 ppb occurs within the ozone maintenance area (within the Wheeling, WV–OH) area. A Warning Level Response will consist of a study to determine whether the ozone value indicates a trend toward higher ozone concentrations or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend taking into consideration ease and timing for implementation, as well as economic and social consideration, will be selected for possible adoption. Implementation of necessary controls in response to a Warning Level Response triggering will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season (September 30).

An Action Level Response will be triggered whenever a two-year averaged annual fourth-high monitored 8-hour ozone concentration of 85 ppb occurs within the maintenance area or whenever a violation of the 8-hour ozone standard is actually monitored in the maintenance area. An Action Level Response will also be triggered if a violation of the 8-hour ozone standard is monitored in the Wheeling, WV–OH area. In the event that an Action Level Response is triggered and is not due to an exceptional event, malfunction, or noncompliance with a source permit condition or rule requirement, Ohio EPA will determine the additional emission control measures needed to assure future attainment of the ozone NAAQS. Emission control measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the ozone season that prompted the Action Level Response. Any new emission control measure that is selected for implementation will be given a public review. If a new emission control measure is already promulgated and scheduled to be implemented at the Federal or State level and that emission control measure is determined to be sufficient to address the upward trend in peak ozone concentrations, additional local measures may be unnecessary. Ohio EPA will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to reverse the upward trend in peak ozone concentrations and to maintain the 8-hour ozone standard in the Wheeling, WV–OH area. The selection of emission control measures will be based on cost-effectiveness, emission reduction potential, economic and social considerations, or other factors that the Ohio EPA and West Virginia Department of Environmental Protection (WVDEP) deem to be appropriate. Selected emission control measures will be subjected to public review and the States will seek public input prior to selecting new emission control measures.

The State of Ohio ozone redesignation request lists the following possible emission control measures as contingency measures in the ozone maintenance portion of the State's submittal:

- Extension of Reasonably Available Control Techniques (RACT) requirements to include source categories previously excluded. New VOC RACT rules could be adopted for the following source categories:
  - Consumer products
  - Architectural and industrial maintenance coatings
  - Stage I gasoline dispensing facilities (including pressure valves)
  - Automobile refinishing
  - Cold cleaner degreasers
  - Portable fuel containers
  - Synthetic organic compound manufacturing
  - Organic compound batch processes
  - Wood products manufacturing
  - Industrial wastewater
  - Aerospace industry
  - Ship building
  - Bakeries
  - Plastic parts coating
  - Volatile organic liquid storage
  - Industrial solvent cleaning
  - Offset lithography
  - Industrial surface coating; and
  - Other sources with VOC emissions greater than 50 tons per year;
- Revision of new source permitting requirements to require more stringent emissions control technology and/or greater emissions offsets;
- NO_X RACT, with the following being potential source categories covered by such RACT requirements:
  - EGUs
  - Asphalt batching plants
  - Industrial/commercial and institutional boilers
  - Process heaters
  - Internal combustion engines
  - Combustion turbines
  - Other sources with NO_X emissions exceeding 100 tons per year;
- Regulations to establish plant-wide emission caps (potentially with emission trading provisions);
- Stage II vapor recovery regulations for gasoline service stations; and,
- Establishment of a Public Awareness/Ozone Action Days Program, focusing on increasing the public's understanding of air quality issues in the region and on increasing support for actions to improve the air quality, resulting in reduced emissions on days with the potential for high ozone concentrations.

One or more of these regulatory revisions would be selected within three (3) months after verification of a monitored ozone standard violation. For each regulatory revision selected, a draft rule will be developed within six (6) months of selection. The State will file the rule as an emergency rule, which will be become effective within 42 days after filing and fully implemented within six (6) months after adoption. Rules will be filed as legislative rules for permanent authorization by the Legislature during the following legislative session. This approach means that less than 18 months should elapse from the time a violation of the standard occurs until the appropriate control measure(s) is fully in place. No contingency measure, however, will be implemented without the State providing the opportunity for full public participation and review.

e. Provisions for a Future Update of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, the State commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of Belmont County to attainment of the 8-hour ozone NAAQS. The updated maintenance plan will provide for maintenance of the 8-hour ozone standard in Belmont County and the Wheeling, WV–OH area for an additional 10 years beyond the period covered by the initial ozone maintenance plan.

We consider Ohio's ozone maintenance demonstration and contingency plan to be acceptable.

V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used To Support Conformity Determinations?

A. How Are the Motor Vehicle Emission Budgets Developed and What Are the Motor Vehicle Emission Budgets for Belmont County?

Under the CAA, states are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g. reasonable further progress and attainment demonstration SIP revisions), including ozone maintenance plans, must create MVEBs based on on-road mobile source emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan (for the maintenance demonstration year). The MVEBs serve as ceilings on mobile source emissions from an area's planned transportation system and are used to test planned transportation system changes or projects to assure compliance with the emission limits assumed in the SIP. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR

62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the SIP that addresses emissions from cars, trucks, and other on-roadway vehicles. Conformity to the SIP means that transportation activities will not cause new air quality standard violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of the roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

EPA's process of determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) finally making a finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Rule Amendments—Response to Court Decision and Additional Rule Change'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Transportation Conformity Rule, in 40 CFR 93.118(f), provides for adequacy findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm* and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan submission simultaneously with its review of the implementation plan itself. In this notice, EPA is reviewing the adequacy of the Belmont County motor vehicle emission budgets as part of the review and proposal on the overall ozone maintenance plan. The State of Ohio had previously requested parallel processing and the expediency of this review process is best suited to following the 40 CFR 93.118(f)(2) mechanism.

The Belmont County ozone maintenance plan contains VOC and NO_X MVEBs for 2018. EPA has reviewed the submittal and the proposed VOC and NO_X MVEBs for Belmont County, and finds that the MVEBs meet the adequacy criteria in the Transportation Conformity Rule. The 30-day comment period for the adequacy period will be the same as the 30-day comment period for the proposed approval of the MVEBs and ozone maintenance plan. Any and all comments on the adequacy or approvability of the MVEBs should be submitted during the comment period stated in the DATES section of this notice.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in Belmont County because EPA has determined that the budgets are consistent with the control measures and future emissions projected in the SIP and that Belmont County and the Wheeling, WV–OH area can maintain attainment of the 8-hour ozone NAAQS for the relevant required 10-year period with mobile source emissions at the levels of the MVEBs. Ohio EPA has determined the 2018 MVEBs for Belmont County to be 1.52 tons per day for VOC and 1.91 tons per day for NO_X. It should be noted that these MVEBs exceed the on-road mobile source VOC and NO_X emissions projected by the Ohio EPA for 2018, but do match the on-road mobile source emissions for 2018 summarized in Tables 3 and 4 above. Through discussions with all organizations involved in transportation planning for Belmont County, Ohio EPA decided to include 15 percent safety margins in the MVEBs to provide for mobile source growth not anticipated in the projected 2018 emissions. Ohio EPA has demonstrated that Belmont County and the Wheeling, WV–OH area can maintain the 8-hour ozone NAAQS with mobile source emissions at the levels of the MVEBs since total source emissions with the increased mobile source emissions will remain under the attainment year levels.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan for a future maintenance year. As noted in Tables 3 and 4 above, Belmont County VOC and NO_X emissions are projected to have safety margins of 2.48 tons per day for VOC and 15.03 tons per day for NO_X in 2018 (the differences between the 2004, attainment year, and 2018 VOC and NO_X emissions for all sources in Belmont County).

The MVEBs requested by Ohio EPA contain safety margins (selected by the State) significantly smaller than the safety margins reflected in the total emissions for Belmont County. The State is not requesting allocation of the entire available safety margins actually reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected on-road mobile source emissions for 2018 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration.

C. Are the MVEBs Approvable?

The VOC and NO_X MVEBs for Belmont County are approvable because they maintain the total emissions for Belmont County at or below the attainment year emission inventory levels, as required by the transportation conformity regulations.

VI. What Are the Effects of EPA's Proposed Actions?

Approval of the redesignation request would change the official designation of the Belmont County for the 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment. It would also incorporate into the Ohio SIP a plan for maintaining the ozone NAAQS through 2018. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes MVEBs of 1.52 tons per day for VOC and 1.91 tons per day for NO_X.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 19, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6–22140 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0046; FRL–8261–5]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Allen and Stark Counties to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 20, 2005, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request for EPA approval of redesignations of Allen County (Lima) and Stark County (Canton) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and a request for EPA approval of ozone maintenance plans for Allen and Stark Counties as revisions to the Ohio State Implementation Plan (SIP). Additional supporting information was submitted on August 24, 2006, and December 4, 2006. EPA is proposing to approve Ohio's requests and corresponding SIP revisions. EPA is also proposing to approve the Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Motor Vehicle Emission Budgets (MVEBs) for Allen and Stark Counties, as supported by the ozone maintenance plans for these Counties, for purposes of conformity determinations.

DATES: Comments must be received on or before January 26, 2007. Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0046, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday,

8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0046. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hardcopy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary information section is arranged as follow:

I. What Action is EPA Proposing to Take?
II. What is the Background for These Actions?
III. What are the Criteria for Redesignation to Attainment?
IV. What are EPA's Analyses of the State's Requests and What are the Bases for EPA's Proposed Actions?
V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used to Support Conformity Determinations?
VI. What Are the Effects of EPA's Proposed Actions?
VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing to Take?

We are proposing to take several related actions for both Allen County and Stark County, Ohio. First, we are proposing to determine that Allen and Stark Counties have attained the 8-hour ozone NAAQS and that both of these Counties have met the requirements for redesignation to attainment of the 8-hour ozone NAAQS under section 107(d)(3)(E) of the CAA. We are, therefore, proposing to approve the request from the State of Ohio to change the designations of Allen and Stark Counties from nonattainment to attainment of the 8-hour ozone NAAQS.

Second, we are proposing to approve Ohio's ozone maintenance plans for Allen and Stark Counties as revisions to the Ohio SIP. The maintenance plans are designed to keep these Counties in attainment of the 8-hour ozone NAAQS for the next 12 years, through 2018. As supported by and consistent with the ozone maintenance plans, we are also proposing to approve the 2018 VOC and NO_X MVEBs for Allen and Stark Counties for conformity determination purposes.

II. What Is the Background for These Actions?

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)). This standard is violated in an area when any ozone monitor in the area (or in its impacted downwind environs) records 8-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 85 ppb. This 8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which was promulgated on February 8, 1979 (44 FR 8202), and revoked on June 15, 2005.

Ground-level ozone is not generally emitted directly by sources. Rather, emitted NO_X and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO_X and VOC are referred to as ''ozone precursors.''

The CAA required EPA to designate as nonattainment any area that violated the 8-hour ozone NAAQS. The **Federal Register** notice promulgating these designations was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas (both are found in title I, part D of the CAA). Subpart 1 contains general, less prescriptive, requirements for nonattainment areas for any pollutant governed by a NAAQS, and applies to all nonattainment areas. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

In the April 30, 2004 designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment (''basic'' nonattainment) and subpart 2 nonattainment (''classified'' nonattainment) based on their 8-hour ozone design values (*i.e.*, on the three-year averages of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and on their 1-hour ozone design values (*i.e.*, on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas).[1] 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb were designated as subpart 2, classified nonattainment areas. Classification of the subpart 2 nonattainment areas was based on the levels of the monitored 8-

[1] The 8-hour ozone design value and the 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each ozone concentration averaging time was considered for each area.

hour ozone design values for each nonattainment area. All other 8-hour nonattainment areas were designated as subpart 1, basic nonattainment areas, which have no area-specific classifications.

Emission control requirements for classified nonattainment areas are linked to area classifications. Areas with more serious ozone pollution problems are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates, which also depend on the area classifications. For example, marginal nonattainment areas are subject to the fewest mandated control requirements and have the earliest attainment deadline. Severe nonattainment areas are required to meet more mandated emission controls, including tighter restrictions on the sizes of existing VOC and NO_X sources required to install emission controls and tighter restrictions on mandated emission controls and offsetting of new sources, and have a later attainment deadline. In contrast, the attainment deadline for basic nonattainment areas does not depend on the magnitude of the areas' 8-hour ozone design values, and the required emission controls are less prescriptive.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, less than or equal to 0.084 ppm or 84 ppb based on data rounding conventions specified in appendix I of 40 CFR part 50) at all monitors in an area and in nearby downwind environs (for further information, see 69 FR 23857, April 30, 2004). The supporting data must meet a minimum data completeness requirement. The completeness requirement (specified in appendix I of 40 CFR part 50) for ozone data supporting a determination of attainment and a redesignation to attainment is met when the annual average percent of days with valid ambient monitoring data is greater than 90 percent for the ozone seasons during the three-year period, with no single year with less than 75 percent data completeness during the ozone season.

In the April 30, 2004 designation/classification rulemaking, Allen and Stark Counties were both designated as subpart 1 nonattainment for the 8-hour ozone standard. The designations were based on ozone data collected during the 2001–2003 period.

On June 20, 2006, the State of Ohio requested redesignation of Allen and Stark Counties to attainment of the 8-hour ozone NAAQS based on ozone data collected in these Counties during the 2003–2005 period. On August 24, 2006, the State of Ohio completed the ozone redesignation request by submitting documentation of the public hearings conducted by the State for the ozone redesignation request and ozone maintenance plans. The information contained in the State's June 20, 2006 ozone redesignation request submittal was unchanged through the State's public review process. On December 4, 2006, the State submitted a clarification of the State's ozone maintenance plans, confirming that the State is committed to implement contingency emission control measures in the event of a violation of the 8-hour ozone standard in either Allen County or Stark County after these Counties are redesignated to attainment of the 8-hour ozone standard.

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable state implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and,

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What Are EPA's Analyses of the State's Requests and What Are the Bases for EPA's Proposed Actions?

EPA is proposing to determine that Allen and Stark Counties have attained the 8-hour ozone standard, approve the ozone maintenance plans for these Counties, and approve the VOC and NO_X MVEBs supported by these ozone

maintenance plans. EPA is also proposing to approve the redesignation of these Counties to attainment of the 8-hour ozone NAAQS. The bases for our proposed determinations and approvals follow.

1. Allen and Stark Counties Have Attained the 8-Hour Ozone NAAQS

For ozone, as noted above, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and 40 CFR part 50 appendix I based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all monitoring sites in the area. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and in its impacted downwind environs over a three-year period must not exceed the ozone standard. Based on the ozone data rounding convention described in 40 CFR part 50 appendix I, the 8-hour standard is attained if the area's ozone design value [2] is 0.084 ppm (84 ppb) or lower. The data must be collected and quality-assured in accordance with 40 CFR part 50, and must be recorded in EPA's Air Quality System (AQS).

As part of the June 20, 2006 ozone redesignation request, Ohio EPA submitted ozone monitoring data indicating the top four daily maximum 8-hour ozone concentrations for each monitoring site in Allen and Stark Counties during the 2003–2005 period. These ozone concentrations are part of the quality-assured ozone data collected and recorded in these Counties. These data have been entered into EPA's AQS. The annual fourth-high 8-hour daily maximum ozone concentrations, along with their three-year averages, are summarized in Table 1.

TABLE 1.—FOURTH-HIGH 8-HOUR OZONE CONCENTRATIONS IN PARTS PER BILLION (PPB)

County	Monitoring site	2003	2004	2005	Average
Allen	2650 Bible	88	76	81	82
Stark	Malone College	87	74	76	79
Stark	245 West Fifth	85	71	76	77
Stark	1175 West Vine	86	76	86	83

These data show that the site-specific ozone design values (average fourth-high daily maximum 8-hour ozone concentrations over the period of 2003–2005) for all monitoring sites in Allen and Stark Counties are below the 85 ppb ozone standard violation cut-off. These data support the conclusion that the Allen County and Stark County ozone monitors did not record a violation of the 8-hour ozone standard during the 2003–2005 period, and monitored attainment of the standard during this period. We note that the ozone data recorded in the AQS show that these monitoring sites met completeness requirements for the period covered here. Based on these data, we propose to find that Allen and Stark Counties have attained the 8-hour ozone NAAQS.

Based on available data (not fully quality assured), these monitoring sites continue to show attainment of the 8-hour ozone NAAQS through 2006.

The State of Ohio has committed to continue the operation of these ozone monitors through the ozone maintenance period, and will consult with the EPA if changes in the monitoring system are required.

2. Allen and Stark Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA and These Areas Have a Fully Approved SIP Under Section 110(k) of the CAA

We have determined that Allen and Stark Counties and the State of Ohio have met all currently applicable SIP requirements for Allen and Stark Counties, including the requirements under section 110 of the CAA (general SIP requirements) and the requirements under subpart 1 part D of title I of the CAA (requirements specific to basic ozone nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, EPA has fully approved the pertinent elements of the Ohio SIP. See section 107(d)(3)(E)(ii) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA, those CAA requirements applicable to Allen and Stark Counties at the time the State submitted the final, complete ozone redesignation request for these areas (August 24, 2006).

a. Allen and Stark Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. To qualify for redesignation of an area to attainment under this interpretation, the state and the area must meet the relevant CAA requirements that come due prior to the State's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 66 FR 12459, 12465–12466 (March 7, 1995, redesignating Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete redesignation request remain applicable until a redesignation of the area to attainment of the standard is approved, but are not required as prerequisites to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003, redesignating the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements: Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; programs to enforce the emission limitations; submittal of a SIP that has been adopted by the State after reasonable public notice and a hearing; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and part D requirements (New Source Review

[2] The worst-case monitoring site-specific ozone design value in the area.

(NSR)) for new sources or major source modifications; criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation.

SIP requirements and elements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also other guidance documents listed above.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA required states to establish programs to address transport of air pollutants (NO_X SIP call and Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) of the CAA to meet the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular area's designation. EPA believes that the requirements linked with a particular area's nonattainment designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures for evaluating this aspect of a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the Ohio SIP addressing section 110 elements under the 1-hour ozone standard. We have analyzed the Ohio SIP as codified in 40 CFR part 52, subpart KK and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA. The SIP, which has been adopted after reasonable public notice and hearing, contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications of existing sources; provisions for adequate funding, staff, and associated resources necessary to implement its requirements; requires stationary source emissions monitoring and reporting; and otherwise satisfies the applicable requirements of section 110(a)(2).

Part D SIP requirements: EPA has determined that the Ohio SIP meets applicable SIP requirements under part D of the CAA. Under part D, an area's classification (subpart 1, marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification. Since Allen and Stark Counties are designated as subpart 1 nonattainment areas for the 8-hour ozone standard, the subpart 2 part D requirements do not apply to these Counties.

Part D, subpart 1 requirements: For purposes of evaluating this redesignation request, the applicable subpart 1 part D requirements are contained in sections 172(c)(1)-(9) and 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). See also 68 FR 4852–4853, in an ozone redesignation notice of proposed rulemaking for the St. Louis area, for a discussion of section 172 requirements.

No requirements for the 8-hour ozone standard under part D of the CAA came due for Allen and Stark Counties prior to when the State submitted the complete ozone redesignation request. For example, the requirement for an ozone attainment demonstration, as contained in section 172(c)(1), was not yet due when the State submitted the ozone redesignation request for these Counties, nor were the requirements for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and attainment plan and RFP contingency measures (section 172(c)(9)). All of these required SIP elements are required for submittal after Ohio submitted the complete, adopted ozone redesignation request and maintenance plans for Allen and Stark Counties. Therefore, none of the part D requirements for the 8-hour ozone standard are considered to be applicable to Allen and Stark Counties for purposes of redesignation.

Section 176 conformity requirements: Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

As with other part D requirements, EPA interprets the conformity requirements as not applying for purposes of evaluating the ozone

redesignation request under section 107(d) of the CAA. In addition, please note that conformity rules are required for areas that are redesignated to attainment of a NAAQS, and that Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

Part D new source review requirements: EPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation, provided that that the area demonstrates maintenance of the standard without emission reductions from part D NSR, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that Allen and Stark Counties will be able to maintain the 8-hour ozone standard without part D NSR in effect, and therefore, we conclude that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Allen and Stark Counties upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

We conclude that Allen and Stark Counties have satisfied all applicable requirements under section 110 and part D of the CAA to the extent that these requirements apply for purposes of reviewing the State's ozone redesignation request.

b. Allen and Stark Counties Have a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Ohio SIP for Allen and Stark Counties under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998), Wall v. EPA, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Allen and Stark Counties for purposes of ozone redesignation. No SIP provisions relevant to Allen or Stark Counties are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of review of the State's redesignation request. EPA believes that approval of section 110 SIP elements under the 1-hour ozone standard satisfies the prerequisite for approval of the ozone redesignation request for purposes of attaining and maintaining the 8-hour ozone standard. EPA also believes that since the part D requirements for the 8-hour ozone standard did not become due prior to Ohio's submittal of the final, complete redesignation request, they also are not applicable requirements for purposes of redesignation.

3. The Air Quality Improvements in Allen and Stark Counties Are Due To Permanent and Enforceable Reductions in Emissions From Implementation of the SIP and Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions

We believe that the State of Ohio has adequately demonstrated that the observed air quality improvements in Allen and Stark Counties are due to permanent and enforceable emission reductions resulting from the implementation of the SIP, Federal measures, and other State-adopted measures. In making this demonstration, the State has documented the changes in VOC and NO_X emissions from all anthropogenic (man-made or man-based) sources in Allen and Stark Counties between 2002, an ozone standard violation year, and 2004, one of the years in which Allen and Stark Counties recorded attainment of the 8-hour ozone standard. The Ohio EPA has also identified permanent and enforceable emission reductions which occurred elsewhere in the State and in other upwind areas that have contributed to the air quality improvement in Allen and Stark Counties. Table 2 summarizes the VOC and NO_X emissions totals from the anthropogenic sources in 2002 and 2004 for both Counties as summarized in the State's ozone redesignation submittal.

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN ALLEN AND STARK COUNTIES (TONS PER SUMMER DAY)

Source category	2002	2004
Allen County Volatile Organic Compounds Emissions		
Point	4.77	4.92
Area	5.17	5.08
Non-Road Mobile	2.19	2.11
On-Road Mobile	7.72	6.51
Total	19.85	18.62
Allen County Nitrogen Oxides Emissions		
Point	12.14	12.57
Area	0.45	0.47
Non-Road Mobile	5.30	4.85
On-Road Mobile	11.71	10.13
Total	29.60	28.02

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN ALLEN AND STARK COUNTIES (TONS PER SUMMER DAY)—Continued

Source category	2002	2004
Stark County Volatile Organic Compounds Emissions		
Point	2.90	2.97
Area	21.23	21.03
Non-Road Mobile	5.98	5.44
On-Road Mobile	16.56	14.03
Total	46.67	43.47
Stark County Nitrogen Oxides Emissions		
Point	5.12	4.85
Area	1.17	1.23
Non-Road Mobile	10.06	9.25
On-Road Mobile	25.35	22.00
Total	41.70	37.33

Information in the above table indicates that both Counties experienced decreases in VOC and NO_X anthropogenic emissions between 2002 and 2004. The State of Ohio concludes that the differences in the 2002 and 2004 emissions are due primarily to the implementation of permanent and enforceable emission control requirements. The State asserts that these emission reductions, along with those occurring elsewhere in the State and in upwind areas, have led to observed improvements in air quality in Allen and Stark Counties.

The State notes a significant decline in regional NO_X emissions between 2002 and 2004 as the result of the implementation of State NO_X emission control rules for combustion sources, primarily Electric Generating Units (EGUs), in compliance with EPA's NO_X SIP call and acid rain control requirements under title IV of the CAA. Besides the NO_X emission reductions occurring within the State itself, the implementation of statewide NO_X emission control rules occurred in many States east of the Mississippi River. EPA believes these emission reductions contributed significantly to the air quality improvements in Allen and Stark Counties through the reduction of transported ozone and ozone precursors. Although both Allen and Stark Counties have no significant EGUs, these Counties have benefited from the NO_X emission reductions occurring in the surrounding areas. These regional NO_X emission reductions are considered to be permanent and enforceable.

Besides implementation of the regional NO_X emission controls, the State of Ohio notes that, in the mid-1990's, the State of Ohio promulgated statewide rules requiring Reasonably Available Control Techniques (RACT) for significant sources of VOC emissions (those with potential VOC emissions of 100 tons or more per year) whose construction or modification commenced on or after October 19, 1979. RACT rules for smaller sources have been implemented in the ozone nonattainment areas.

Additional implemented, or soon to be implemented, emission control rules include several Federal rules: (1) Tier II emission standards for vehicles and gasoline sulfur content standards (promulgated by EPA in February 2000 and currently being implemented); (2) heavy-duty diesel engine emission control rules (promulgated by the EPA in July 2000 and currently being implemented); and (3) clean air non-road diesel rule (promulgated by the EPA in May 2004 and currently being phased in through 2009).

All of these rules have contributed to reducing VOC and NO_X emissions throughout the State of Ohio (and in other States surrounding Ohio) and will contribute to further, future emission reductions in Ohio. The emission limits in the SIP will assure that these emission reductions will remain in place even after redesignation of Allen and Stark Counties to attainment of the 8-hour ozone NAAQS, and the State commits to maintaining these emission controls after the redesignation.

4. Allen and Stark Counties Have Fully Approvable Ozone Maintenance Plans Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Allen and Stark Counties to attainment of the 8-hour ozone NAAQS, Ohio submitted SIP revision requests to provide for maintenance of the 8-hour ozone NAAQS in Allen and Stark Counties through 2018, exceeding the 10 year minimum maintenance period required by the CAA.

a. What Is Required In an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that maintenance of the standard will continue for 10 years following the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations. The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the following items: (1) The attainment VOC and NO_X emissions inventories; (2) a maintenance demonstration showing maintenance for the first 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

b. What Are the Attainment Emission Inventories for Allen and Stark Counties?

Ohio EPA prepared VOC and NO_X emission inventories for Allen and Stark Counties, including point (significant stationary sources), other (area sources, smaller and widely-distributed stationary sources), Marine, Aircraft, and Railroad (MAR) mobile sources, non-road (off-road) mobile sources, and on-road mobile sources for 2002 (the base nonattainment year), 2004 (the attainment year), 2009, and 2018 (the projected maintenance year). To develop the 2004, 2009, and 2018 emission inventories, the Ohio EPA projected the 2002 emissions applying various source category-specific growth factors and emission control factors. The State has documented how the 2002 base year emissions were derived and how these emissions were projected to derive the 2004, 2009, and 2018 emissions. The following summarizes the procedures and sources of data used by the Ohio EPA to derive the 2002 emissions.

i. *Point Sources.* The primary source of point source information was facility-specific emissions and source activity data collected annually by the State for sources covered by Title V [3] source permits. This information includes emissions, process rates, source operating schedules, emissions control data, and other relevant source information. The State also used emissions data provided by EPA's EGU emission inventory, maintained to support the NO_X SIP call emissions trading program and the acid rain control/trading program. The sources included in the 2002 point source emissions inventory were identified using Ohio's Title V STARS database system. The emissions included in this database are facility-reported actual emissions.

Ohio EPA defines point source emissions as those which occur at an identifiable stationary stack or vent. Point source emissions not emitted from discrete stacks or vents are defined to be fugitive emissions. Facility-specific fugitive emissions are also reported by each Title V facility and stored in the Title V STARS database.

Point source emissions included in the 2002 base year emissions inventory were provided to the Lake Michigan Air Directors Consortium (LADCO) in National Emissions Inventory Input Format (NIF) 3.0 format. LADCO imported and processed the NIF files in the Emissions Modeling System (EMS) and applied temporal and spatial profiles to calculate July weekday emissions rates. The Allen and Stark Counties' emissions derived from this set of emissions data were split into EGU emissions and non-EGU emissions for inclusion in the base year emissions inventory used to support the Allen and Stark Counties ozone redesignation requests. Since no EGUs exist in Allen and Stark Counties, there are no EGU emissions in these Counties.

ii. *Area (Other) Sources.* Area sources are those sources which are generally small, numerous, and have not been inventoried as specific point, mobile, or biogenic sources. The emissions for these sources are generally calculated using various surrogates, such as population, estimates of employees in various occupational groups, etc., and grouped by general source types. The area source emissions are typically defined at the county level.

Ohio EPA has either used published Emission Inventory Improvement Program (EIIP) emissions estimation methodologies or other methodologies typically used by other states to estimate the area source emissions. Area source categories include: Various stationary combustion sources (not including the EGU sources included in the point source portion of the emissions inventory); agricultural pesticides; architectural surface coatings; auto body refinishing; consumer and commercial solvent usage; solvent cleaning; fuel marketing; graphic arts; hospital sterilizers; industrial surface coating (minus point source emissions for this source category); municipal solid waste disposal; portable fuel containers; privately owned treatment works; traffic markings; human cremation; industrial fuel combustion; residential fuel combustion; structural fires; and miscellaneous source categories. The State has documented the data sources used for each of these source categories.

iii. *Non-Road Mobile Sources.* The non-road mobile source emissions inventory was generated regionally by running EPA's National Mobile Inventory Model (NMIM). The output of the NMIM was converted to the NIF format and submitted to LADCO for processing in the EMS to obtain spatially and temporally allocated emissions for a July weekday. The basic non-road algorithm for calculating emissions in NMIM uses base year equipment populations, average load factors, available engine powers, activity hours and emission factors to calculate the emissions. To address concerns about the accuracy of NMIM results for some source categories, LADCO contracted with a consultant to review the base data and to make recommended changes. The non-road mobile source emissions inventory has been appropriately adjusted based on the contractor recommendations.

iv. *Marine, Aircraft, and Rail (MAR) Sources.* Due to the significance of the emissions from these mobile source types, the Ohio EPA has decided to treat these source categories separately from other non-road mobile sources. The MAR emissions include emissions from commercial marine, aircraft, and locomotive sources.

Commercial marine vessels consist of several different categories of vessel types. For each vessel type, there are unique engine types, emission rates, and activity data sets. The emissions inventory documentation lists the vessel types and activity data sources by vessel type, along with special distribution of each vessel type.

Locomotive activity was divided into various rail categories: Class I operations; Class II/III operations; passenger trains; commuter lines; and yard operations. Since Class I operations are expected to be the most significant rail operations in the two Counties, operators of Class I operations were queried for activity and emissions-related information for each railroad line. This approach provided for more specific estimates of emissions by railroad line. Class II/III emissions were based on national fuel consumption and per employee fuel consumption estimates. The number of railroad employees in each county was used to allocate the fuel consumption to each county and, therefore, the emissions to each county. For passenger trains and commuter lines, the Ohio EPA obtained information from AMTRAK concerning train schedules, miles of transport, and schedules of operation. This information was coupled with a fuel usage rate estimate of 2.35 gallons per train-mile of travel to obtain the total fuel usage per unit time in each of the Counties. Total fuel use by county was used to assign emissions from this source category to each county.

EPA provided the aircraft emission estimates based on Federal Aviation Administration (FAA) published Landing and Take-Off (LTO) rates by engine type for each airline and major airport in the State of Ohio. The LTO-engine information was combined with engine type-specific emission factors developed by the International Civil Aviation Organization (ICAO), and, through use of a FAA Emissions and

[3] Title V of the CAA requires source-specific emission permits detailing all applicable emission control requirements and emission limits, as specified in the SIP, for each source facility covered by the State's Title V source permit program and requirements.

Dispersion Modeling System (EDMS), emissions were calculated and assigned to each county in the State, including Allen and Stark Counties.

The MAR data were processed by LADCO using the EMS to calculate July 2002 daily emissions of VOC and NO_X.

v. *On-Road Mobile Sources.* The inventories of on-road mobile source emissions for both Allen County and Stark County were developed by the Ohio EPA in conjunction with the Ohio Department of Transportation (Ohio DOT), LADCO, and EPA. The Ohio DOT provided the daily vehicle miles traveled data and vehicle age and type distribution data. The Ohio DOT and the Ohio EPA jointly developed estimated vehicle speeds for functional roadway class categories (the Ohio DOT also provided the roadway miles by functional class). Traffic monitoring conducted by the Ohio DOT was used to modify the vehicle speeds and traffic levels for specific roadway segments where deemed necessary. This vehicle travel information, along with the MOBILE 6.2 vehicle emission factor model, was used to estimate mobile source VOC and NO_X emissions for Allen and Stark Counties.

vi. *Projected Emissions for the Attainment Year.* Ambient ozone air quality data showed that Allen and Stark Counties met the 8-hour ozone NAAQS in the 2003–2005 period. Ohio EPA selected 2004, the central year of this period, to estimate the ''attainment year'' emissions for both Counties, needed as the base period emissions for the demonstrations of maintenance. The 2004 emissions were estimated by growing the emissions from the 2002 base year emission levels.

Ohio EPA used point source growth data provided by individual point source facilities along with other source category-specific growth estimates and emission control estimates to estimate stationary source VOC and NO_X emissions for Allen and Stark Counties. LADCO provided growth and source control projection data to project VOC and NO_X area source emissions. The Ohio DOT provided projections of vehicle travel estimates (Vehicle Miles Traveled (VMT)) to allow the projection of mobile source emissions, with MOBILE 6.2 providing the projected changes in vehicle emission factors. The estimated 2004 emissions have been compared to the 2002 base year emissions to demonstrate the basis for the improved air quality in Allen and Stark Counties. See Table 2 above for a summary of the 2004 VOC and NO_X emissions and for a comparison of these emissions with the 2002 emissions.

There are no EGU facilities in Allen and Stark Counties, but the emissions from these source types have been derived by the Ohio EPA for other Counties in Ohio and have been factored into the State's demonstration of maintenance. Reductions in NO_X emissions in surrounding counties are assumed to reduce ozone levels in Allen and Stark Counties through reductions in transported ozone and NO_X.

c. Demonstration of Maintenance

As part of the June 20, 2006 redesignation request submittal, Ohio EPA requested revisions to the Ohio SIP to incorporate ozone maintenance plans for Allen and Stark Counties as required under section 175A of the CAA. The maintenance plans demonstrate maintenance of the 8-hour ozone NAAQS through 2018 by documenting attainment year and future projected VOC and NO_X emissions and showing that future emissions of VOC and NO_X will remain at or below the attainment year emission levels. An ozone maintenance demonstration need not to be based on ozone modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), and 68 FR 25430–25432 (May 12, 2003).

The Ohio EPA projected the VOC and NO_X emissions in Allen and Stark Counties to the years of 2009 and 2018 to demonstrate maintenance of the 8-hour ozone NAAQS for at least 10 years after the expected redesignation dates for these areas. For both Counties, Ohio EPA used source growth estimates provided by LADCO along with mobile source growth estimates generated using VMT projections provided by the Ohio DOT and MOBILE 6.2 to project the Allen and Stark Counties VOC and NO_X emissions.

Table 3 summarizes the VOC and NO_X emissions projected to occur in Allen County during the demonstrated maintenance period. Similarly, Table 4 summarizes the VOC and NO_X emissions projected to occur in Stark County during the demonstrated maintenance period. The State of Ohio chose 2018 as a maintenance year to meet the 10-year maintenance requirement of the CAA, allowing several years for EPA to complete the redesignation rulemaking process. The State also chose 2009 as an interim year to demonstrate that VOC and NO_X emissions will remain below the attainment year levels throughout the 10-year maintenance period.

TABLE 3.—PROJECTED VOC AND NO_X EMISSIONS IN ALLEN COUNTY (TONS/DAY)

Source sector	2004 Attainment	2009 Interim	2018 Maintenance	Safety margin
VOC Emissions:				
Point	4.92	5.28	6.44	
Area (Other)	5.08	4.85	4.89	
Non-Road Mobile	1.98	1.77	1.24	
On-Road Mobile	6.51	*5.08	*2.89	
Marine-Air-Railroad	0.13	0.12	0.12	
Total VOC Emissions	18.62	17.10	15.58	**3.04
NO_X Emissions:				
Point	12.57	13.66	15.98	
Area (Other)	0.47	0.52	0.55	
Non-Road Mobile	2.29	1.92	1.13	
On-Road Mobile	10.13	*8.28	*3.47	
Marine-Air-Railroad	2.56	1.80	1.69	
Total NO_X Emissions	28.02	26.18	22.82	**5.20

* Includes 15 percent growth cushion increase to mobile source budget.
** Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

TABLE 4.—PROJECTED VOC AND NO_X EMISSIONS IN STARK COUNTY (TONS/DAY)

Source sector	2004 Attainment	2009 Interim	2018 Maintenance	Safety margin
VOC Emissions:				
Point	2.97	3.14	3.77	
Area (Other)	21.03	20.49	21.93	
Non-Road Mobile	5.29	3.92	3.22	
On-Road Mobile	14.03	*10.02	*5.37	
Marine-Air-Railroad	0.15	0.14	0.14	
Total VOC Emissions	43.47	37.71	34.43	**9.04
NO_X Emissions:				
Point	4.85	4.16	4.72	
Area (Other)	1.23	1.40	1.46	
Non-Road Mobile	6.22	4.81	2.50	
On-Road Mobile	22.00	*18.03	*7.08	
Marine-Air-Railroad	3.03	2.39	2.22	
Total NO_X Emissions	37.33	30.79	17.98	**19.35

* Includes 15 percent growth cushion increase to mobile source budget.
** Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

The Ohio EPA also notes that the State's EGU NO_X emissions control rules stemming from EPA's NO_X SIP call and Clean Air Interstate Rule (CAIR), to be implemented after 2006, will further lower NO_X emissions throughout the State and upwind of Allen and Stark Counties. This will result in decreased ozone and ozone precursor transport into Allen and Stark Counties, and will support maintenance of the 8-hour ozone standard in these areas.

The emissions projections for Allen and Stark Counties lead to the conclusion that Allen and Stark Counties should maintain the 8-hour ozone NAAQS throughout the required 10-year maintenance period and through 2018. The projected decreases in local VOC and local and regional NO_X emissions indicate that peak ozone levels in Allen and Stark Counties may actually further decline during the maintenance period.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that Ohio EPA has successfully demonstrated that the 8-hour ozone standard will be maintained in Allen and Stark Counties. As also noted by Ohio EPA, this conclusion is further supported by the fact that other states in the eastern portion of the United States are also expected to reduce regional NO_X emissions through implementation of their NO_X emission control rules for EGUs and other NO_X sources through the implementation of the NO_X SIP call and CAIR.

d. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might occur after redesignation of an area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will continue to implement all measures with respect to control of the pollutant(s) that were included in the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted contingency plans to address possible future ozone air quality problems in Allen and Stark Counties. The contingency plans have two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred or appears to be imminent (Action Level Response).

A Warning Level Response will be triggered whenever an annual (1-year) fourth-high monitored 8-hour ozone concentration of 88 ppb occurs in Stark County or an annual fourth-high monitored 8-hour ozone concentration of 85 ppb occurs in Allen County. A Warning Level Response will consist of a study to determine whether the high ozone value indicates a trend toward higher ozone concentrations and/or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue. If so, the control measures necessary to reverse the trend will be selected by the State for evaluation and possible adoption. Implementation of necessary controls in response to a Warning Level Response triggering will occur as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season (September 30).

An Action Level Response will be triggered whenever a two-year averaged annual fourth-high monitored 8-hour ozone concentration of 85 ppb occurs within either of the maintenance areas or whenever a violation of the 8-hour ozone standard is actually monitored in either of the maintenance areas. An Action Level Response will also be triggered if a violation of the 8-hour ozone NAAQS is recorded in either Allen County or in Stark County after these two Counties are redesignated to attainment of the 8-hour ozone NAAQS. In the event that an Action Level Response is triggered and is not due to an exceptional event, malfunction, or noncompliance with a source permit condition or rule requirement, Ohio EPA will determine the additional emission control measures needed to assure future attainment of the ozone NAAQS. Emission control measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the ozone season that prompted the Action Level Response. If a new emission control measure is already promulgated

and scheduled to be implemented at the Federal or State level and if that emission control measure is determined to be sufficient to address the ozone air quality problem, additional local measures may be unnecessary. Ohio EPA will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to reverse the upward trend in peak ozone concentrations and to maintain the 8-hour ozone standard in the subject maintenance area (the area in which the Action Level Response is triggered). The selection of emission control measures will be based on cost-effectiveness, emission reduction potential, economic and social considerations, or other factors that the Ohio EPA deems to be appropriate. Selected emission control measures will be subjected to public review and the State will seek public input prior to selecting new emission control measures. Finally, emission control measures that can be implemented in a short period of time will be selected so that they can be in place within 18 months from the close of the ozone season in which the Action Level Response is triggered.

The State's ozone maintenance plans list the following emission control measures as possible contingency measures:

- Low Reid vapor pressure gasoline;
- Tightening of RACT on existing sources covered by EPA Control Technique Guidelines issued in response to the 1990 Clean Air Act amendments;
- Application of RACT to smaller existing sources;
- One or more transportation control measures sufficient to achieve at least half of a percent reduction in actual area-wide VOC emissions. The transportation control measures to be considered include:
- Trip reduction programs, including: employer-based transportation management plans; area-wide rideshare programs; work schedule changes; and telecommuting;
- Traffic flow and transit improvements; and,
- Other new or innovative transportation measures not yet in widespread use that affect state and local governments deemed appropriate;
- Alternative fuel and diesel retrofit programs for fleet vehicle operations;
- Controls on consumer products consistent with those adopted elsewhere in the United States;
- Requirements for VOC or NO_X emission offsets for new and modified major sources;
- Requirements for VOC or NO_X emission offsets for new and modified minor sources;
- Increase of the ratio of emission offsets required for new sources; and,
- Requirements for VOC or NO_X emission controls on new minor sources (with emissions of less than 100 tons per year).

No contingency measures will be adopted and implemented without providing the opportunity for full public participation and comment in the contingency measure selection process.

A list of VOC and NO_X source types potentially subject to future emission controls include:

NO_X RACT:

- EGUs
- Asphalt batching plants
- Industrial/commercial and institutional boilers
- Process heaters
- Internal combustion engines
- Combustion turbines
- Other sources with NO_X emissions exceeding 100 tons per year

VOC RACT:

- Consumer products
- Architectural and industrial maintenance coatings
- Stage I gasoline dispensing facilities
- Automobile refinishing shops
- Cold cleaner degreasers
- Portable fuel containers
- Synthetic organic compound manufacturing
- Wood manufacturing
- Industrial wastewater
- Aerospace industry
- Ship building
- Bakeries
- Plastic parts coating
- Volatile organic liquid storage
- Industrial solvent cleaning
- Offset lithography
- Industrial surface coating
- Other VOC sources with emissions exceeding 50 tons per year

e. Provisions for a Future Update of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, the State commits to review the maintenance plans 8 years after redesignation of Allen and Stark Counties to attainment of the 8-hour ozone NAAQS and to submit revised maintenance plans extending the maintenance period for an additional 10 years. We find Ohio's ozone maintenance demonstration and contingency plan acceptable.

V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used To Support Conformity Determinations?

A. What Are Motor Vehicle Emission Budgets and Are They Adequate?

Under the CAA, states are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g. reasonable further progress and attainment demonstration SIP revisions), including ozone maintenance plans, must create MVEBs based on on-road mobile source emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan (for the maintenance demonstration year). The MVEBs serve as ceilings on mobile source emissions from an area's planned transportation system and are used to test planned transportation system changes or projects to assure compliance with the emission limits assumed in the SIP. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the SIP that addresses emissions from cars, trucks, and other on-roadway vehicles. Conformity to the SIP means that transportation activities will not cause new air quality standard violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of the roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must find that the MVEBs are

''adequate'' for use in determining transportation conformity. Once EPA finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

EPA's process of determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) making a finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Rule Amendments—Response to Court Decision and Additional Rule Change'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Transportation Conformity Rule, in 40 CFR 93.118(f), provides for adequacy findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm* and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan submission simultaneously with its review of the implementation plan itself. We have opened the public comment period on the adequacy of the submitted MVEBs for Allen and Stark Counties at the adequacy review Web site.

The Allen County and Stark County ozone maintenance plans contain VOC and NO_X MVEBs for 2018. EPA has reviewed the submittal and the proposed VOC and NO_X MVEBs for Allen and Stark Counties, and finds that the MVEBs meet the adequacy criteria in the Transportation Conformity Rule. Any comments on the adequacy of the MVEBs should be noted through the adequacy review Web site.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan for a future maintenance year. As noted in Tables 3 and 4 above, Allen County is projected to have a VOC safety margin of 3.04 tons per day and a NO_X safety margin of 5.20 tons per day in 2018, and Stark County is projected to have a VOC safety margin of 9.04 tons per day and a NO_X safety margin of 19.35 tons per day in 2018 (the differences between the 2004, attainment year, and 2018 VOC and NO_X emissions for all sources in these Counties).

C. Are the MVEBs Approvable?

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in Allen and Stark Counties because EPA has determined that the budgets are consistent with the control measures and future emissions projected in the SIP and that Allen and Stark Counties can maintain attainment of the 8-hour ozone NAAQS for the relevant required 10-year period with mobile source emissions at the levels of the MVEBs. Ohio EPA has determined the 2018 MVEBs for Allen County as 2.89 tons per day for VOC and 3.47 tons per day for NO_X and the 2018 MVEBs for Stark County as 5.37 tons per day for VOC and 7.08 tons per day for NO_X. These MVEBs exceed the on-road mobile source VOC and NO_X emissions projected by the Ohio EPA for 2018, but do match the on-road mobile source emissions for 2018 summarized in Tables 3 and 4 above. Through discussions with all organizations involved in transportation planning for Allen and Stark Counties, Ohio EPA decided to include 15 percent safety margins in the MVEBs to provide for mobile source growth not anticipated in the projected 2018 emissions. Ohio EPA has demonstrated that Allen and Stark Counties can maintain the 8-hour ozone NAAQS with mobile source emissions at the levels of the MVEBs since total source emissions with the increased mobile source emissions will remain under the attainment year levels.

The VOC and NO_X MVEBs for Allen and Stark Counties are approvable because they maintain the total emissions for Allen and Stark Counties at or below the attainment year emission inventory levels, as required by the transportation conformity regulations.

VI. What Are the Effects of EPA's Proposed Actions?

Approval of the redesignation request would change the official designations of Allen and Stark Counties for the 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Final rulemaking approving the redesignation request would also incorporate into the Ohio SIP plans for maintaining the ozone NAAQS through 2018 in these areas. The maintenance plans include contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes 2018 MVEBs for these Counties.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 19, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6–22156 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2006–0841; FRL–8261–8]

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the East St. Louis, IL Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, the Administrator of EPA shall require the sale of reformulated gasoline (RFG) in an ozone nonattainment area upon the application of the Governor of the State in which the nonattainment area is located. This notice proposes to extend the Act's prohibition against the sale of conventional (i.e., non-reformulated) gasoline in RFG areas to the Illinois portion of the St. Louis, Missouri-Illinois 8-hour ozone nonattainment area hereafter referred to as the East St. Louis, Illinois nonattainment area. The Agency proposes to implement this prohibition on May 1, 2007, for all persons other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA proposes to implement the prohibition on June 1, 2007. On June 1, 2007, the East St. Louis ozone nonattainment area would be a covered area for all purposes in the federal RFG program. EPA seeks comment on alternative implementation dates it could establish if unexpected delays in issuing the final rule render the proposed implementation dates impractical.

DATES: Comments on this proposed rule must be received in writing by January 26, 2007. To request a public hearing, contact Kurt Gustafson at (202) 343–9219 or *gustafson.kurt@epa.gov*. If a hearing is requested no later than January 16, 2007, a hearing will be held at a time and place to be published in the **Federal Register**. Persons wishing to testify at a public hearing must contact Kurt Gustafson at (202) 343–9219, and submit copies of their testimony to the docket and to Kurt Gustafson at the addresses below, no later than 10 days prior to the hearing. After the hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments. If a hearing is held, EPA will publish a document in the **Federal Register** extending the comment period for 30 days after the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0841, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0841. Comments may also be e-mailed to *a-and-r-docket@epamail.epa.gov*. 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.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0841. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Kurt Gustafson, Transportation and Regional Programs Division (Mail Code 6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9219; fax number: 202–343–2800; e-mail address: *gustafson.kurt@epa.gov*.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, we are setting forth this amendment to the federal RFG regulations as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

This document concerns the amendment to EPA's regulations governing RFG and the prohibition of the sale of conventional gasoline supplied to the East St. Louis area of Illinois. For further information, including the regulatory language, please see the information provided in the direct final rule of the same title which is located in the ''Rules and Regulations'' section of this **Federal Register**.

I. Public Participation and Effective Date

A. Public Comments

Section 211(k)(6) states that, ''[u]pon the application of the Governor of a State, the Administrator shall apply the prohibition'' against the sale of conventional gasoline in any area of the State classified as marginal, moderate, serious, or severe for ozone. Although section 211(k)(6) provides EPA some discretion to establish the effective date for this prohibition, and allows EPA to consider whether there is sufficient domestic capacity to produce RFG in establishing the effective date, EPA does not have discretion to deny a Governor's request. Therefore, the scope of this action is limited to setting an effective date for East St. Louis' opt-in to the RFG program, and not to decide whether East St. Louis should in fact opt in. For this reason, EPA is only soliciting comments addressing the implementation date and whether there is sufficient capacity to produce RFG, and is not soliciting comments that support or oppose East St. Louis' participating in the program.

EPA is proposing implementation dates for this rule of May 1, 2007, for all persons other than retailers and wholesale purchaser-consumers, and June 1, 2007 for retailers and purchaser-consumers. These dates coincide with the dates that regulated parties are to switch from producing or dispensing RFG with a wintertime formulation, to producing or dispensing VOC-controlled RFG for the summer ozone season. Section 211(k)(6)(A) of the Act stipulates that the effective date of an RFG opt-in must be no later than one year after the application of the Governor is received. In this case, therefore, the effective date could be no later than July 10, 2007. EPA solicits comment on the proposed implementation dates, and also solicits comment on alternative implementation dates that could be used in the event that EPA is unable to issue a final rule quickly enough to use the proposed implementation dates.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent and label it as ''Confidential Business Information.'' If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

B. Public Hearing Procedures

Any person desiring to present testimony regarding this proposed rule at the public hearing (see DATES) should notify the contact person listed above of such intent as soon as possible. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first served basis to follow the previously scheduled testimony. EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed above.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. EPA–HQ–OAR–2006–0841 (see **ADDRESSES**).

The Director of EPA's Transportation and Regional Programs Division, Office of Transportation and Air Quality, or her designee, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. Because a public hearing is designed to give interested parties an opportunity to participate in the proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding. The Presiding Officer is authorized to strike from the record statements which he/she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness. This information will be available for public inspection at the EPA Air Docket, Docket No. EPA–HQ–OAR–2006–0841 (see **ADDRESSES**).

II. Background

The background for this proposal, including the text of the letter from the Governor of Illinois requesting that RFG requirements be applied in the East St. Louis ozone nonattainment area, is set forth in the companion direct final rule also published in today's **Federal Register**.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. EPA notes that the economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules. See 59 FR 7810–7811 (February 16, 1994). In that analysis the production cost of RFG was estimated to be 4 to 8 cents per gallon more than conventional gasoline. Since conventional gas regulations have evolved since that time to be more like RFG and since the State has a low RVP requirement that also more closely resembles RFG, EPA expects the costs of RFG in the East St. Louis area to be at the low end or lower than this range. Nonetheless, using the 4 to 8 cent per gallon estimate, the cost of the program in East St. Louis would be significantly lower than the trigger for a significant regulatory action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements that apply to the RFG/anti-dumping program (see 59 FR 7716, February 16, 1994), and has assigned OMB control number 2060–0277 (EPA ICR No. 1951.08).

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

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In promulgating the RFG and the related anti-dumping regulations for conventional gasoline, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. See 59 FR 7810–7811 (February 16, 1994). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A–92–12.

Today's proposed rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the East St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations located in East St. Louis, which will become a covered area as a result of today's proposed rule, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The Agency did not find the RFG regulations to significantly affect these entities. Based on this, EPA certifies that this proposed rule would not have a significant adverse impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Although EPA does not believe that UMRA imposes requirements for this rulemaking, EPA notes that the environmental and economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules.

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. The proposed rule would only impose requirements on certain refiners and other entities in the gasoline distribution system, and not on States. The requirements of the proposed rule will be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this proposed rule.

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. Today's proposed rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the East St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant.

H. Executive Order 13211: Actions that Significantly Effect Energy Supply

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Statutory Authority

The Statutory authority for the action proposed today is granted to EPA by sections 211(c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k) and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: December 20, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–22161 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 061212327–6327–01; I.D. 120706A]

RIN 0648–XB57

Endangered And Threatened Species; Proposed Endangered Status for North Pacific Right Whale

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a status review of the northern right whale under the Endangered Species Act (ESA). We initiated this review in response to a petition submitted by the Center for Biological Diversity, dated August 16, 2005, to list the North Pacific right whale as a separate endangered species. Based on the findings from the status review and consideration of the factors affecting this species, we have concluded that right whales in the northern hemisphere exist as two species: the North Pacific right whale (*Eubalaena japonica*) and the North Atlantic right whale (*E. glacialis*). We have also determined that each of these species is in danger of extinction throughout its range. To reflect this taxonomic revision, we are designating each separately as an endangered species. This rule proposes to list the North Pacific right whale as an endangered species; a proposed rule to list the North Atlantic right whale isissued separately. We also intend to designate critical habitat for the North Pacific right whale. A proposed rule for designation of critical habitat will follow this action. We are soliciting public comment on this proposed listing determination.

DATES: Comments on this proposed rule must be received by close of business on February 26, 2007. Requests for public hearings must be made in writing by February 12, 2007.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

- E-mail: *ESA-NRW-status@noaa.gov*. Include in the subject line the following document identifier: North Pacific Right Whale PR. 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.
- Mail: P. O Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, Alaska.
- Fax: (907) 586–7012.

The proposed rule and other materials relating to this proposal can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, telephone (907) 271–5006, fax (907) 271–3030; Kaja Brix, NMFS,(907)586–7235, fax (907) 586–7012; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Petition

On August 16, 2005, we received a petition from the Center for Biological Diversity (CBD) to list the North Pacific right whale as a separate endangered species under the ESA. A copy of the petition may be viewed at our Alaska Region website (see **ADDRESSES**). CBD requested that we list the North Pacific right whale as a new endangered species based, in part, on recent scientific information that establishes a new taxonomic classification for right whale species. On January 26, 2006, we issued our finding that the petition presented substantial information indicating that the petitioned action may be warranted (71 FR 4344), and we requested information regarding the taxonomy and status of the North Pacific right whale, its habitat, biology, movements and distribution, threats to the species, or other pertinent information. This proposed rule summarizes the information gathered and the analyses conducted in a status review of right whales in the North Pacific Ocean and in the North Atlantic Ocean and constitutes our 12-month determination on CBD's petition.

Status Review

The review of the status of right whales in the North Atlantic and North Pacific Oceans describes the population structure and examines the extent to which phylogenetic uniqueness exists between right whales found in the North Atlantic and North Pacific. The review also examines the biological status and threats to the right whales and their habitat.

Biology of Right Whales in the North Pacific Ocean

Right whales are large baleen whales that grow to lengths and weights exceeding 18 meters and 100 tons (90.7 metric tons), respectively. They are filter feeders whose prey consists exclusively of zooplankton. Right whales attain sexual maturity at an average age of 8–10 years, and females produce a single calf at intervals of 3–5 years (Kraus *et al.*, 2001). Their life expectancy is unclear, but is known to reach 70 years in some cases (Hamilton *et al.*, 1998; Kenney, 2002).

Right whales are generally migratory, with at least a portion of the population movingbetween summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters (Kraus *et al.*, 1986; Clapham *et al.*, 2004). In the North Pacific, individuals have been observed feeding in the Gulf of Alaska, the Bering Sea, and the Sea of Okhotsk. Although a general northward movement is evident in spring and summer, it is unclear whether the entire population undertakes a predictable seasonal migration, and the location of calving grounds remains completely unknown (Scarff, 1986; Scarff, 1991; Brownell *et al.*, 2001; Clapham *et al.*,2004; Shelden *et al.*, 2005).

Historically, right whales occurred across the entire North Pacific Ocean from the western coast of North America to the Russian Far East (Scarff, 1986; Brownell *et al.*, 2001, Clapham *et al.*, 2004, Shelden *et al.*, 2005). Sightings in the 20th century were from as far south as central Baja California, Mexico, and the Yellow Sea, and as far north as the Bering Sea and the Okhotsk Sea (Goddard and Rugh, 1998; Brownell *et al.*, 2001). Right whales are frequently found in coastal or shelf waters. Such sightings, however, may be partially a function of survey effort, and thus may not reflect current or historical distribution. Sighting records also indicate that right whales occur far offshore, and movements over abyssal depths are known (Scarff, 1986; Mate *et al.* 1997). Clapham *et al.* (2004) plotted 20th century records together with data summarized from 19th century whaling catches. These plots show that right whales had an extensive offshore distribution in the 19th century, and were common in areas where few or no

right whales occur today. Sightings diminished and occurred further south in autumn, and very few animals were recorded anywhere in winter. Whalers never reported winter calving areas in the North Pacific, and calving locations remain unknown (Scarff, 1986; Clapham *et al.,* 2004). Overall, these analyses confirmed that the size and range of the right whale population is now considerably diminished in the North Pacific relative to the situation during the peak period of whaling for this species in the 19th century.

Little is known regarding the migratory behavior of right whales in the North Pacific. Historical sighting and catch records provide the only information on possible migration patterns for North Pacific right whales (Omura, 1958; Omura *et al.*, 1969; Scarff, 1986). During summer, whales were found in the Gulf of Alaska, along both coasts of the Kamchatka Peninsula, the Kuril Islands, the Aleutian Islands, the southeastern Bering Sea, and in the Okhotsk Sea. Fall and spring distribution was the most widely dispersed, with whales occurring in mid-ocean waters and extending from the Sea of Japan to the eastern Bering Sea. In winter, right whales were found in the Ryukyu Islands (south of Kyushu, Japan), the Bonin Islands, the Yellow Sea, and the Sea of Japan. The current distribution patterns and migration routes of these whales are not known.

In the North Pacific, whaling for right whales began in the Gulf of Alaska (known to whalers as the ''Northwest Ground'') in 1835 (Webb, 1988). Right whales were extensively hunted in the western North Pacific in the latter half of the 19th century, and by 1900 were scarce throughout their range. Right whales were protected worldwide in 1935 through a League ofNations agreement. However, because neither Japan nor the USSR signed this agreement, both nations asserted authority to continue hunting right whales until 1949 when the newly-created International Whaling Commission endorsed the ban. Despite this ban, a total of 23 right whales were legally killed in the North Pacific by Japan and the USSR under Article VIII of theInternational Convention for the Regulation of Whaling (1946), which permits the taking of whales for scientific research purposes. However, it is now known that the USSR illegally caught many right whales in the North Pacific (Doroshenko, 2000; Brownell *et al.*, 2001). In the eastern North Pacific, 372 right whales were killed by the Soviets between 1963 and 1967; of these, 251 were taken in the Gulf of Alaska south of Kodiak, and 121 in the southeastern Bering Sea. These takes devastated a population that, while undoubtedly small, may have been undergoing a slow recovery (Brownell *et al.*, 2001).

As a result of this historic and recent hunting, right whales today are among the most endangered of all whales worldwide. In the western North Pacific (the Sea of Okhotsk and adjacent areas), current abundance is unknown but is probably in the low to mid-hundreds (Brownell *et al.*, 2001). There is no estimate of abundance for the eastern North Pacific (Bering Sea, Aleutian Islands, and Gulf of Alaska), but sightings are rare. Most biologists believe the current population is unlikely to exceed a hundred individuals, and is probably much smaller. Prior to the illegal Soviet catches of the 1960s, on average, 25 whales were observed each year in the eastern North Pacific (Brownell *et al.*, 2001); in contrast, the total number of records in the 35 years from 1965 to 1999 was only 82, or an average of 2.3 whales per annum.

The current population size of right whales in the North Pacific is likely fewer than 1,000 animals. Exploitation by commercial whaling reduced the North Pacific right whales nearly to the point of extinction by the beginning of the 20th century. There are insufficient data to estimate the pre-exploitation size of this or any other species of right whale. Based upon catch levels, it is reasonable to assume there were in excess of 10,000 animals in the North Pacific. Based upon the number of animals taken illegally by Soviets during the 1960s, there were at least 372 right whales alive at that time. That estimate would not include right whales found in the western North Pacific. There are no reliable estimates of current abundance or trends for this species. Rice (1974) indicated only a few individuals remained in the eastern North Pacific management unit (i.e., within U.S. waters), and that the population was essentially extinct. Despite high levels of survey effort in the region, most notably from Japanese sighting surveys (Miyashita and Kato, 1998), right whale sightings in the eastern North Pacific have been rare and geographically scattered (Perry *et al.*, 1999).

Recent sightings of right whales in the eastern Bering Sea during the summer (Goddard and Rugh, 1998; Tynan, 1998, 1999; Moore *et al.*, 2000; LeDuc *et al.*, 2001; Tynan *et al.*, 2001; Wade *et al.*, 2006) represent the first reliable observations of aggregations of right whales in the eastern North Pacific since the 1960s. Although a few calves have recently been documented in the eastern North Pacific (Goddard and Rugh, 1998; LeDuc, 2004; Wade *et al.*, 2006), these were the first such sightings in over a century (Brownell *et al.*, 2001). These recent sightings, the first of which occurred in 1996, and other surveys (directed specifically at right whales or otherwise) have detected small numbers of right whales in the southeastern Bering Sea, including an aggregation estimated at 24 animals in the summer of 2004. Photo-identification and genetic data have identified 17 individuals from the Bering Sea, and the high inter-annual resighting rate further reinforces the idea that this population is small. Right whales have also been sighted in the northern Gulf of Alaska, including sightings in 2005 and 2006. However, the overall number of right whales using habitats in the North Pacific other than the Bering Sea is not known.

Prior to the onset of commercial whaling in 1835, right whales were widely distributed across the North Pacific (Scarff, 1986; Clapham *et al.*, 2004; Shelden *et al.*, 2005). However, no reason exists to suspect that the right whales that remain alive today inhabit a substantially different range than right whales alive during the time of the Soviet catches; indeed, given the longevity of this species, it is likely that some of the individuals who survived that whaling episode remain extant. Both the southeastern Bering Sea and the western Gulf of Alaska (shelf and slope waters south of Kodiak) have been the focus of many sightings (as well as the illegal Soviet catches) in recent decades. In general, the majority of northern right whale sightings (historically and in recent times) in the Northeast Pacific have occurred from about 40°N to 60°N latitude (lat.). There are historical records from north of 60°N. lat., but these are rare and are likely to have been misidentified bowhead whales. Right whales have on rare occasions been recorded off California and Mexico, as well as off Hawaii. However, as noted by Brownell et al. (2001), there is no evidence that either Hawaii or the west coast of North America from Washington State to Baja California were ever important habitats for right whales. Given the amount of whaling effort as well as the human population density in these regions, it is highly unlikely that substantial concentrations of right whales would have passed unnoticed. Furthermore, no archaeological evidence exists from the U.S. west coast suggesting that right whales were the target of local native hunts. Consequently, the few records

from this region areconsidered to represent vagrants. We have determined the range of the North Pacific right whale extends over a broad area of the North Pacific Ocean as depicted in Figure 1.

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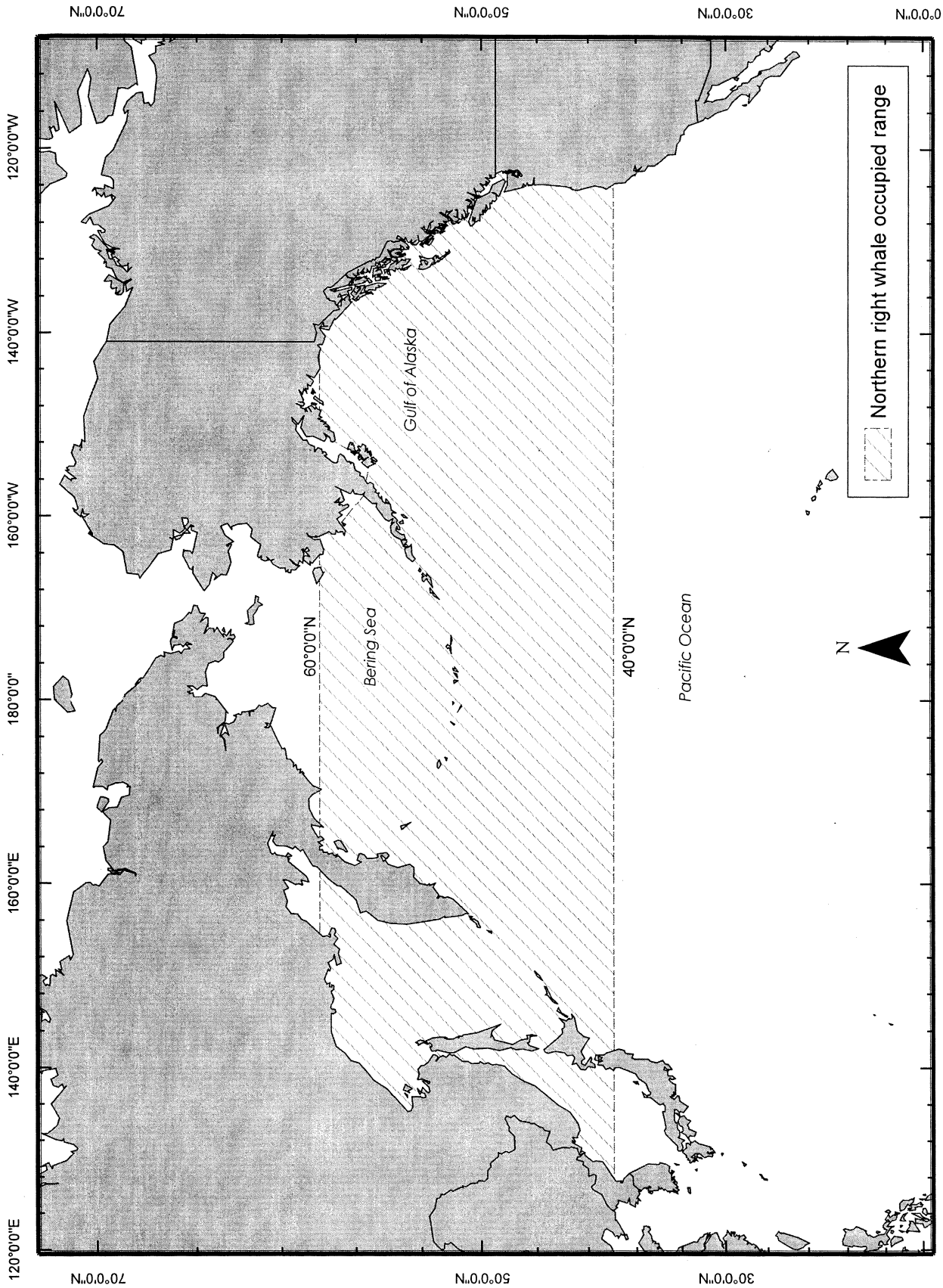

Figure 1. Occupied range of Northern right whales in the North Pacific at time of listing under the Endangered Species Act.

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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 becomeendangered 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 one 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) theinadequacy 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.

Review of ''Species'' Delineation

Since 1974, NMFS has maintained the right whale listing as originally listed by the United States Fish and Wildlife Service (USFWS) under the Endangered Species Conservation Act of 1969, the precursor to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; the ESA)(35 FR 18319, December 2, 1970)—*Eubalaena* spp., i.e., all the species within the genus *Eubalaena*. The USFWS maintains the official lists of threatened and endangered species and isrequired to add species to the official lists when NMFS or USFWS determines species under itsjurisdiction should be listed. The USFWS has changed the nomenclature for right whales severaltimes over the years in various iterations of the list of threatened and endangered wildlife. NMFS also changed the nomenclature for a period of time after one of the USFWS changes, butlater reverted back to the original Eubalaena spp. listing. The changes may have been made as a reflection of the discussion in the scientific literature over the appropriate taxonomic status of right whales. At no point did the USFWS ever propose delisting any of the species that were included in the original listing of *Eubalaena* spp. Regardless of the changes to the list, NMFS maintains that right whale species were listed as *Eubalaena* spp., which reflects the predominant view that existed in 1974: that right whale species are distinct from bowhead whales (*Balaena mysticetus*), they belong in the genus *Eubalaena*, and the genus *Eubalaena* contains at least twospecies: *E. glacialis* in the northern hemisphere and *E. australis* in the southern hemisphere.

Recent investigations of right whale genetics confirm the distinction between *E. glacialis* and *E. australis* at the species level and suggest that the North Pacific form of *E. glacialis* should be recognized as a separate species and named *E. japonica*, distinct from the other two species. NMFS is proposing to adopt this view and, in a separate rulemaking, to modify its listing to add *E. japonica* to the current listing *Eubalaena*spp. (which includes *E. glacialis* and *E. australis*).

Taxonomy of Right Whales

All whales belong to the mammalian order Cetacea, which is divided into two suborders: Odontoceti (toothed whales) and Mysticeti (baleen whales). The Mysticeti are further dividedinto four families: the Eschrichtidae, a monotypic family (i.e., containing only one species), the gray whale; Neobalaenidae, another monotypic family containing only the pygmy right whale;Balaenidae, which contains two genera: *Balaena*(bowhead whales) and *Eubalaena* (right whales); and Balaenopteridae, which contains all of the other baleen whales.

Balaena is the genus name for the bowhead whale (*Balaena mysticetus*), recognized byLinnaeus in 1758. *Eubalaena* is the genus name for right whales, first proposed by Gray in 1864. The first right whale to be named was what we today call the North Atlantic right whale or Nord-Kaper (Balaena glacialis, Muller, 1776), from North Cape, Norway. The second right whale to be named was what we today call the North Pacific right whale (*Balaena japonica*, Lacepede,1818), from Japan. And the third right whale to be named was what we today call the Southern right whale (*Balaena australis*, Desmoulins, 1822), from Algoa Bay, Cape of Good Hope, South Africa. In the 1970s when all baleen whales were being considered for listing as endangered under the Endangered Species Conservation Act of 1969, authors disagreed on the taxonomic status of right whales. One view was that they belonged in the genus Balaena along with bowhead whales and that the genus contains two species: Baleana mysticetus and Baleana glacialis (Rice, 1977). The subspecific composition of B. glacialis was unclear. The other view was that right whales were distinct from bowhead whales at the genus level and that right whales should be identified as Eubalaena (Schevill, 1986). This later view is currently the prevailing view, and it is the view embraced by USFWS and NMFS.

There were also two views about the species composition of *Eubalaena*. One view was that there was only one species *Eubalaena glacialis* containing several subspecies (*E. glacialis glacialis* (North Atlantic), *E. glacialis sieboldii* (North Pacific), and E. glacialis australis (Southern oceans)) (Tomilin, 1957). Hershkovitz (1966) also describes these three subspecies,except that he refers to North Pacific right whales as E. glacialis japonica. The other view was that Eubalaena comprised two species *E. glacialis* and *E. australis* (Omura, 1958; Omura *et al.*,1969). This is the view represented by the designation of *Eubalaena* spp. in the original listing by USFWS in 1970 and by NMFS in its first listing in 1974. Generally accepted taxonomic nomenclature recognized the term ''spp.'' as an abbreviation for multiple species within a genus.

The two-species view is summarized by Perry *et al.*'s (1999) summary of morphological (Muller, 1954) and genetic data (Schaeff et al., 1991), both of which recognized distinct species in the northern and southern hemispheres. Cummings (1985) used E. australis for all right whales below the equator (southern right whales). The International Whaling Commission also recognizes the presence of two distinct species, E. glacialis and E. australis, in the schedule appended to the Convention in which species under purview of the Commission are listed.

Conclusion

Although the listing of right whales has changed from the original nomenclature of *Eubalaena* spp., there is no indication in the record that USFWS ever intended to delist any of the species contained in the original listing of the entire genus. Since the

original 1970 listing wasdescribed as ''Eubalaena spp.'', the logical interpretation is that at least two species of right whalewere listed, the northern right whale (*E. glacialis*) and the southern right whale (*E. australis*), since ''spp.'' refers to more than one species, not ''subspecies.'' Even if three separate species had been recognized in 1970, southern right whale (*E. australis*) would have been one of them. Eachplausible scenario results in the right whale in the Southern Hemisphere being recognized as a separate species. Since NMFS has maintained its listing as ''Right whales, Eubalaena spp.'', and USFWS has never proposed delisting any of the species included in the original listing, we conclude that both *E. glacialis* and *E. australis* were listed in 1970, carried forward to the list created pursuant to the ESA, and determined to be endangered in our listing in 1974.

Right Whale Species Currently Being Considered for Listing

Genetic data now provide unequivocal support to distinguish three right whale lineages as separate phylogenetic species: (1) the North Atlantic right whale (*Eubalaena glacialis*), ranging in the North Atlantic Ocean; (2) the North Pacific right whale (*Eubalaena japonica*), ranging in the North Pacific Ocean, and (3) the southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's Oceans (Rosenbaum *et al.*, 2000). Based on evidence from recent genetic studies (Gaines *et al.*, 2005), we conclude that the current taxonomic classification of right whales in the northern hemisphere should be revised consistent with the generally accepted analyses by Rosenbaum *et al.* (2000). We have determined that listing right whales in the North Atlantic and the North Pacific as two separate species is warranted in light of the compelling evidence provided by recent scientific studies on right whale taxonomy and classification. In accordance with the applicable statutory definitions and requirements, the North Atlantic right whale (*E. glacialis*) and the North Pacific right whale (*E. japonica*) are being considered for listing as separate species under the ESA.

Refining the taxonomy of these endangered cetaceans is critical to the recovery planning and conservation of these species. The separate listings of these two species in the northern hemisphere will allow for consistent scientific practice and management policies in recovering these species.

Status of the Three Right Whale Species

The determination that right whales in the North Atlantic and North Pacific Oceans are two separate species requires us to consider these species separately for the purposes of listingunder the ESA. We will consider the status of the North Pacific right whale (*E. japonica*) in this proposed rule and that of the North Atlantic right whale (*E. glacialis*) in a separate proposed rule in today's issue of the **Federal Register**. At the final rule stage, we will address both species in the same rule so that any changes become effective together. The southern right whale, *E. australis*, will remain listed as endangered, though we intend to conduct a 5-year review of its status in the near future. In the following discussion of the status of the North Pacific right whale, E. japonica, we provide the rationale for today's proposal to list this species as a separate endangered species. The other proposed rule in today's issue of the **Federal Register** provides the rationale for this proposal to list the North Atlantic right whale, *E. glacialis*, as a separate endangered species. We also identify the southern right whale, *E. australis* (one of two species that was listed in 1970 and is still listed) in the regulatory language as a separate endangered species and remove *Eubalaena* spp. from the list.

Status of the North Pacific Right Whale (*Eubalaena japonica*)

Abundance and Trends

The basic life history parameters and census data, including population abundance, growth rate, age structure, breeding ages, and distribution, remain undetermined for North Pacificright whale. To date, the largest number of North Pacific right whale individuals identified in the eastern Bering Sea is 23 (based on genetic sampling), while abundance in the western NorthPacific appears to number fewer than 1,000 individuals (with a minimum estimate near 400). Abundance estimates and other vital rate indices in both the eastern and western North Pacificare not well established. Where such estimates exist, they have very wide confidence limits.

Life History Characteristics

Although there are no data for the North Pacific, studies of other right whale populations suggest calving intervals of 3–6 years, lifespans of up to 70 years, and growth rates that are likely dependent on feeding success (Reynolds *et al.*, 2002; Kenney, 2002). Long-lived organisms have limited abilities to respond to chronic increases in juvenile mortality and even lesser abilities to respond to increased mortality through commercial harvest of juveniles and adults (Congdon *et al.*, 1993). Life history characteristics such as low reproductive rates, delayed sexual maturity, and reliance on high juvenile survivorship make long-lived species such as whales particularly vulnerable to overexploitation. This likely explains the paucity of sightings in the North Pacific following the illegal kills by Soviet whalers in the 1960s. The effects of past commercial and illegal harvests persist. These removals remain an obstacle to the recovery of the North Pacific right whale, despite the cessation of such whaling.

Distorted Age, Size or Structure of the Population, and Reduced Reproductive Success

To date, photogrammetric data in the Bering Sea have been collected primarily for adult animals (LeDuc *et al.*, 2001). Of the 12 whales for which lengths were determined (range: 14.7-17.6m), none were smaller than the smallest length estimate for sexually mature right whales (13–16m: Kenney, 2002). Length measurements for two whales observed off California suggestat least one of these whales was not yet sexually mature (12.6m: Carretta et al., 1994). The presence of two calves during the 2004 season in the Bering Sea (Wade *et al.*, 2006) is encouraging. However, to date, there is no evidence of reproductive success (i.e., young reared to independence) in the eastern North Pacific. No data are available for the western North Pacific.

Genetic Diversity

The Allee effect has been defined as the impact of reduced social interactions and loss of mating opportunities in a small population. Marine mammal populations with an effective population size of a few dozen individuals are usually sufficiently large to avoid most of the deleterious consequences of inbreeding (Lande, 1991). Theoretically, during a rapid decline in population size, nearly all (i.e., >95 percent) of the diversity in a population is maintained in an effective population of 10 individuals, and more than 99 percent of the diversity in a population is maintained in an effective population of 50 individuals (Ralls et al., 1983). However, it has been suggested that if the number of reproductive animals is fewer than 50, the potential for impacts associated with inbreeding depression increases substantially (IUCN, 2003). In 2002, the ratio of right whale females to males biopsied in the Bering Sea was 1:9. In

2004, biopsy results indicated a ratio of 7:16. Excluding the two male calves from the sample and assumingall other whales were adults, a 1:2 ratio of females to males can be estimated, with a possible effective abundance of 21. Although there is some evidence of mating success among NorthPacific right whales, the extent of reproductive success has not been quantified.

Habitat Specificity or Site Fidelity

Other large whale populations such as humpback whales (*Megaptera novaeangliae*) appear to use common breeding grounds with a ''maternally directed site-fidelity to specific feeding grounds'' (Baker et al., 1990, 1994; Palsb ll et al., 1995, 1997; Larsen et al., 1996). Genetic sampling revealed similar patterns in western North Atlantic right whales (*E. glacialis*), indicating this population probably occupies a single breeding area but segregates into distinct,maternally-linked subpopulations during migration to isolated nursery areas (Schaeff et al., 1993). There is some suggestion of site fidelity among right whales found in the Bering Sea. Ofthe whales observed between 1997 and 2004, at least five were photographed and five were biopsied over multiple years. It is possible that similar site fidelity is occurring in the westernNorth Pacific. It is not known where these animals overwinter, nor if they share a common wintering area. This is a critical gap in understanding dynamics of right whales in the NorthPacific Ocean.

Summary of Factors Affecting the North Pacific Right Whale

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, if a species isendangered 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 orpredation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence. A discussion of these considerations follows:

The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

One potential source of habitat degradation for baleen whales is spilled oil. Data on the effects of oil pollution on cetaceans are inconclusive (Geraci, 1990; Loughlin, 1994). However, general concerns with regard to oil pollution, some of which are direct impacts on the whales rather than habitat impacts, are ingestion of contaminated prey, potential irritation of skin and eyes, inhalation of toxic fumes, and abandonment of polluted feeding habitat (Geraci and St. Aubin, 1980; Geraci, 1990). Although there is currently no oil exploration or production underway in known right whale habitat in offshore areas of the Bering Sea or Gulf of Alaska, and limited activity elsewhere in the species' range, the possibility remains that there will be lease sales in these areas in the future. Furthermore, large amounts of oil are transported by ship alongthe western North American coast through areas that have been used by right whales in the past, and where they have been occasionally seen recently (Brownell et al., 2001).

The Minerals Management Service (MMS) has proposed an Outer Continental Shelf (OCS) leasing for conducting lease sales for the North Aleutian Basin (in the southeast Bering Sea) in 2010 and 2012. This planning area is presently under a moratorium from OCS leasing by Presidential Executive Order. It is unknown whether the moratorium may be lifted or to what extent these activities may disturb or otherwise affect right whales. In addition to oil and gas exploration and development, undersea exploration and development of mineral deposits may affect the habitat of the North Pacific right whale. Development of oil fields off the Sakhalin Islands is also occurring within habitat of the western North Pacific population of the North Pacific right whale. The effect on habitat of shipping or oil and gas development is unclear.

Right whale life history characteristics make them very slow to adapt to rapid changes in their habitat (Reynolds *et al.*., 2002). They are also feeding specialists that require exceptionally high densities of their prey (Baumgartner and Mate, 2003; Baumgartner *et al.*, 2003). Zooplankton abundance and density in the Bering Sea has been shown to be highly variable, affected by climate, weather, and ocean processes and in particular ice extent (Napp and Hunt, 2001; Baier and Napp, 2003). The largest concentrations of copepods occurred in years with the greatest southern extent of sea ice (Baier and Napp, 2003). It is possible that changes in ice extent, density, and persistence may alter the dynamics of the Bering Sea shelf zooplankton community and in turn affect the foraging behavior and success of right whales. No data are available for the western North Pacific.

Chemical contaminants are an additional potential source of habitat degradation for right whales. The direct impact of chemical contaminants on right whales is uncertain. O'Shea andBrownell (1994) conclude that there is currently no evidence for significant contaminant-related problems in baleen whales. Although additional research is needed, existing data on mysticetes indicate that the lower trophic levels at which these animals feed should result in smaller contaminant burdens than would be expected in many odontocetes, which typically show burdens that differ from those of baleen whales by an order of magnitude (O'Shea and Brownell, 1994). However, the manner in which pollutants negatively impact animals is complex and difficult to study, particularly in taxa (such as large whales) for which many of the key variables and pathways are unknown (Aguilar, 1987; O'Shea and Brownell, 1994). The trans-generational accumulation of contaminants (Colborn and Smolen, 1996) is perhaps a more likely source for concern, but this remains unstudied in right whales or any other cetacean.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

North Pacific right whales were heavily exploited by commercial whalers during the 19th and 20th centuries. The IWC estimates 15,451 right whales were taken in the North Pacificbetween 1840 and 1909 (Brownell et al., 1986). There were 741 recorded catches of right whales in the North Pacific in the 20th century (411 in the eastern unit and 330 in the western unit)(Brownell et al., 2001). According to Estes (1979) and Congdon et al. (1993), long-lived organisms have limited abilities to respond to chronic increases in juvenile mortality and evenless ability to respond to increased mortality through commercial hunting of juveniles and adults. Life history characteristics such as low reproductive rates, delayed sexual maturity, and reliance on high juvenile survivorship make long-lived species such as whales particularly vulnerable to overexploitation. Commercial whaling very likely reduced the genetic variability of the North Pacific right whale. The small, remnant populations that survived commercial whaling likely lost genetic variability because of genetic drift and inbreeding, further confounding conservation and recovery efforts.

Currently, the IWC has assigned ''Protected Stock'' status to all stocks of right whales (IWC, 1995). The catch quota for these whales is therefore set at zero for all signatory nations at the IWC. The Soviet Union killed right whales illegally for commercial purposes in the OkhotskSea/Kuril Islands (reported as ''hundreds'' by Yablokov (1994), although this is known to include bowhead whales). Furthermore, the Soviets killed 372 right whales in the eastern North Pacific(notably in the Bering Sea and Gulf of Alaska) in the 1960s (Doroshenko, 2000). These catches presumably occurred primarily during summer.

Right whales were historically hunted by native peoples along the Northwest Pacific coast and in the Aleutian Islands, although the level of such take was probably insignificant. We haveno information on aboriginal harvests for the western North Pacific. However, given the current status of this species, the North Pacific right whale could not tolerate even a very low level of commercial or aboriginal hunt. While no hunting currently occurs on North Pacific right whales, the impact from historical commercial harvest persists and likely presents a threat to the recovery of the species throughout all of its range. These removals are the primary causative factor for thedecline of the North Pacific right whale, and the North Pacific right whale is in danger of extinction throughout its range because of historical and more recent whaling.

There are no known recreational or educational uses of North Pacific right whales. However, if a right whale were to be seen in a highly accessible area, such as near the coast ofCalifornia, there could be a large response from whale watching operations trying to observe the whale.

Scientific studies of right whales may involve close approaches to the animals for the purpose of photographs, genetic sampling, or tagging. These activities are controlled by permitsin both U.S. and Canadian waters, and potential negative impact on the animals is considered in the permitting process. While the potential for disturbance or harassment exists for scientificresearch, the overall impact from this activity on North Pacific right whales is likely minimal, and the information gained in this research may play a critical role in helping manage and recover the species.

Disease or Predation

Disease and predation are not believed to be factors causing the North Pacific right whale to be in danger of extinction. Very little is known about disease in, or predation on, NorthPacific right whales. There have been no recorded epizootics in baleen whales. Reeves et al. (2001) presented the results of a workshop on right whale reproduction, which considered fivepossible factors including disease as explanations for the decline in North Atlantic right whales. The information reviewed and summarized, along with associated caveats at this NMFSworkshop, are likely applicable to other balaenids (Reeves et al., 2001).

The only four known cases of mass mortalities of baleen whales involved humpback whales (*Megaptera novaeangliae*) in the Northeast United States in 1987–1988, 2003, 2005, and 2006. Geraci et al. (1989) provide strong evidence that, in the former case, these deaths resulted from consumption of mackerel whose livers contained high levels of saxitoxin, a naturally occurring red-tide toxin originating with dinoflagellate (*Alexandrium* spp). It has been suggested that red tide phenomena are related to increased freshwater runoff from coastal development, leading some observers to suggest that such events may become more common among marine mammals as coastal development increases. There is currently no evidence linking red tide toxins to deaths or chronic health problems in North Pacific right whales.

It is not known whether right whales suffer from stress-induced bacterial infections similar to those observed in captive cetaceans (Buck et al., 1987). Studies of bowhead whaleskilled in the Alaskan native hunt have provided information on bacterial, mycotic, and viral infections, but not on the level to which they contribute to mortality and morbidity (Philo et al.,1993). Skin lesions, found on all the hunted bowhead whales, were not malignant or contagious. However, potentially pathogenic microorganisms inhabit these lesions and may contribute toepidermal necrosis and the spread of disease (Shotts et al., 1990). Exposure of these roughened areas of skin to environmental contaminants, such as petroleum products, could have significant effects (Albert, 1981; Shotts et al., 1990); however, Bratton et al.(1993) concluded that such encounters were not likely to be hazardous. The occurrence of skin lesions on North Atlantic right whales has been documented in recent years (Marx et al., 1999; Pettis et al., 2004). The origins and significance of these lesions are unknown, and further research is required to determine whether they represent a topical or systemic health problem for the affected animals.The system developed by Pettis et al. (2004) to assess health and body condition of North Atlantic right whales is currently being applied to photographs of North Pacific right whales.

Predation of right whales by killer whales and large shark species is likely to occur, but the level is not documented, and no attacks have been observed. North Atlantic right whalesbearing scars from killer whale, *Orcinus orca*, attacks have been photographed (Kraus, 1990), but the number of whales killed by this predator is unknown (Perry et al., 1999). More recently, Mehta (2004) concluded that scars recorded on the flukes and bodies of North Atlantic right whales are more consistent with harassment by some smaller cetacean, possibly pilot whales, *Globicephala* spp., and do not originate from killer whales.

Of 195 bowhead whales examined during the Alaskan subsistence hunt (1976–92), 8 had been wounded by killer whales (George et al., 1994). Seven of the eight bowhead whales were greater than 13 m in length, suggesting either that scars are accumulated over time, or young animals do not survive a killer whale attack. Hunters on St. Lawrence Island reported two small (<9 m) bowhead whales found dead as a result of killer whale attacks (George et al., 1994). Bowhead whales are pagophilic (''ice-loving''), unlike right whales, and ice-covered waters mayprovide some protection from killer whale attacks. The frequency of attacks is unknown, and killer whale distribution in the North Pacific has not been well documented (George et al., 1994).

The Inadequacy of Existing Regulatory Mechanisms

Right whales are protected under both U.S. and Canadian law, and internationally by the IWC. At present, there is no information to indicate that existing regulatory mechanisms areinadequate, resulting in activities having adverse effects on North Pacific right whales. If additional studies reveal that significant impacts are occurring, it may be necessary to enhanceexisting laws or promulgate new regulations to reduce or eliminate these threats.

Other Natural or Manmade Factors Affecting its Continued Existence

Vessel Collisions–The role vessel interactions play in the mortality of North Pacific rightwhales is not known. In the North Atlantic, ship collisions and fishing gear entanglements are the most common direct known causes of mortality in North Atlantic right whales (Kraus, 1990;Knowlton and Kraus, 1998; Gillespie and Leaper, 2001), but little is

known of the nature or extent of this problem in the North Pacific, and no collisions have been recorded. The areawhere right whales have been seen in recent surveys is not in a major vessel traffic lane. However, the proximity of the other known right whale habitats to shipping lanes (e.g., UnimakPass) suggests that collisions with vessels may represent a threat to North Pacific right whales. Because of the rarity of right whales, the impact to the species from even low levels ofinteraction could be significant.

Fisheries Interactions–The eastern Bering Sea supports extensive fisheries, and, therefore, fishery interactions with right whales are possible. Types of gear that most frequently entangle North Atlantic right whales include pots and gillnets. Gillnet fisheries in the eastern Bering Sea occur in nearshore waters (state waters) not associated and generally not overlapping with known North Pacific right whale distribution. Pot fisheries occur in offshore waters, thoughthey are often prosecuted during seasons when right whales are not known to be present (i.e., winter).

Entanglements of North Pacific right whales in fishing gear appear to be uncommon; though this may be due to the very low numbers of whales influencing the probability of encounter. Perry et al. (1999) reported two fishery-related mortalities due to entanglement in fishing gear from Russian waters (Kornev, 1994; NMFS, 1991). On review of the original records in the Platforms of Opportunity Program database, one of the encounters was actually a sighting and not an entanglement. Therefore, only one case of entanglement is known from the western North Pacific (Brownell et al., 2001), though the occurrence of right whales near pot fisheries in the Bering Sea creates a potential for interactions and, as with vessel collisions, the direct impact from even low levels of interaction could be significant.

Several cases of entanglements of bowhead whales have been recorded during the Alaska Native subsistence hunt (Philo et al., 1992). These reports included three bowheads killed in thehunt with scars attributed to rope entanglements, one bowhead found dead entangled in ropes similar to those used with fishing gear in the Bering Sea, and one bowhead with ropes on it thatwere attributed to rigging from a commercial offshore fishing pot, most likely a crab pot. There have been two other recent reports of bowheads with gear attached or marks that likely werefrom crab gear (J. C. George, North Slope Borough, Barrow, AK, pers. comm.). Aerial photographs in at least two cases have shown ropes trailing from the mouths of bowheads (NMFS, NMML, unpublished data). A similar review of photographs of North Pacific right whales is planned.

Injuries and entanglements that are not initially lethal may result in a gradual weakening of entangled individuals, making them more vulnerable to some other direct cause of mortality(Kenney and Kraus, 1993). Entanglement-related stress may decrease an individual's reproductive success or reduce its life span, which may in turn depress population growth. Studies of scarring rates have been conducted in the North Atlantic to determine the frequency of right whale entanglements with fishing gear (Kraus, 1990; Hamilton et al., 1998b). Studies of scarring rates among North Pacific right whales would be difficult due to the extreme rarity of this species, but may provide significant insight into the extent of this problem in the North Pacific Ocean.

Noise–Noise pollution may also have an impact on critical behaviors of marine mammals (e.g., foraging, mating, nursing), although the effect is unclear. Richardson et al. (1995) provides a review of the impacts of noise on marine mammals. It is unclear whether activities, such as oil exploration and development and shipping, adversely affect critical behaviors such as reproductive success, population productivity, and feeding activity. Some observations suggest that marine mammals can habituate to high levels of sound (Geraci and St. Aubin, 1980). However, playback experiments on gray and bowhead whales indicate these whales actively avoid very loud sources of noise (Malme et al., 1983).

While certain species of large whales have shown behavioral changes in response to anthropogenic noise in the marine environment, there have been few studies of the effects ofanthropogenic noise on right whales specifically. In right whales, the level of sensitivity to noise disturbance and vessel activity appears related to the behavior and activity in which they are engaged at the time (Watkins, 1986; Mayo, Watkins, and Kraus pers. comm., as cited in NMFS, 1991; Kraus and Mayo, unpubl. data as cited in NMFS, 1991). In particular, feeding or courting right whales may be relatively unresponsive to loud sounds and, therefore, slow to react to approaching vessels or even oblivious to them. In general, the impact of noise from shipping or industrial activities on the communication, behavior, and distribution of right whales remains unknown.

Conservation Efforts

When considering the listing of a species, section 4 (b)(1)(A) of the ESA requires consideration of efforts by any State, foreign nation, or political subdivision of a State or foreignnation to protect such species. Such efforts would include measures by Native tribes and organizations, local governments, and private organizations. Also, Federal, tribal, state, andforeign recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. On March 28, 2003, we and USFWS (the Services) published the final policy for evaluating conservation efforts (PECE)(68 FR 15100). The PECE provides guidance on evaluating current protectiveefforts 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 PECE establishes two basic criteria for evaluating current conservation efforts: (1) the certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. The PECE provides specific factors under these two basic criteria that direct the analysis of adequacy and efficacy ofexisting conservation efforts.

North Pacific right whales benefit from protections afforded by the MMPA and the ESA (by virtue of their current inclusion as part of the endangered northern right whale). Also, theMarine Conservation Alliance, with support from NMFS, has developed an outreach program and informational brochures to be distributed throughout the commercial fishing industry to alertfishermen to the presence of right whales, and to take proactive measures to avoid interaction. This Alliance is also coordinating with commercial shipping interests to extend this network sothat it might reach the commercial cargo vessels that transit the North Pacific. The effectiveness of such voluntary measures has not been determined.

The Canadian Department of Fisheries and Oceans has prepared a draft National Recovery Strategy for the North Pacific right whale (*E. japonica*) in Canadian waters in thePacific Ocean. At this time the document has not been finalized.

Except for the IWC hunting ban noted above, we are not aware of any other

conservation efforts undertaken by foreign nations specifically to protect North Pacific right whales. We support the conservation efforts currently in effect; however, these efforts lack certainty of implementation and effectiveness. In developing our final listing determination, we will consider the best available information concerning these conservation efforts and any other protective efforts for which we have information.

Proposed Listing Determination

We have reviewed the status of the North Pacific right whale, considered the factors set forth in section 4 (a)(1) of the ESA, and taken into account any conservation efforts to protect the species. We conclude that the North Pacific right whale should be listed as an endangered species under the ESA because it is in danger of extinction throughout all of its range because of:(1) overutilization for commercial, recreational, scientific or educational purposes; and (2) other natural and manmade factors affecting its continued existence (see above for a description of these section 4 (a)(1) factors). This endangered determination is also supported by the fact that the factors confounding recovery have not been thoroughly identified and may continue to persist until more is known, and corrective actions can be taken.

We also conclude that, at present, no protective or conservation measures are in place that substantially mitigate the factors affecting the future viability of this species. Based on the best available information, we propose to list the North Pacific right whale under the ESA as an endangered species.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Sections 7(a)(2) and (4) of the ESA require Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to destroy or adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Examples of Federal actions that may affect the North Pacific right whale include oil and gas development, seismic exploration, emerging chemical contaminant practices, vessel operations, and fishery management practices.

Sections 10(a)(1)(A) and (B) of the ESA authorize us to grant exceptions to the ESA's Section 9 ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets North Pacific right whales. Under section 10(a)(1)(B), the Secretary may permit takings otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, we and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of our ESA listing on proposed and ongoing activities within the species' range. We will identify, to the extent known at the time of the final rule, specific activities that will be considered likely to result in violation of section 9, as well as activities that will not be considered likely to result in violation. Activities that we believe could result in violation of section 9 prohibitions against ''take'' of the North Atlantic right whale include, but are not limited to, the following: (1) Operating vessels in a manner that results in ship strikes or disrupts foraging, resting, or care for young; (2) fishing practices that can result in entanglement when lines, nets, or other gear are placed in the water column; (4) discharging or dumping toxic chemicals or other pollutants into areas used by North Pacific right whales; (5) scientific research activities; (6) Land/water use or fishing practices that result in reduced availability of prey species during periods when North Pacific right whales are present.

We believe, based on the best available information, the following actions will not result in a violation of Section 9: (1) federally funded or approved projects for which ESA section 7 consultation has been completed, and that are conducted in accordance with any terms and conditions we provide in an incidental take statement accompanying a biological opinion; and (2) takes of North Pacific right whales that have been authorized by NMFS pursuant to section 10 of the ESA.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that we might or might not consider as constituting a take of North Pacific right whales.

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 final listing of a species under the ESA. Critical habitat has previously been designated for the Northern right whale in the North Pacific Ocean (71 FR 38277; July 6, 2006). The designation of the North Pacific right whale as a new species under the ESA necessitates the designation of critical habitat, replacing that previously designated. We intend to propose designation of critical habitat for the North Pacific right whale in a separate rulemaking.

Public Comments

To ensure that final action resulting from this proposed rule will be as accurate and effective as possible and be based upon the best available scientific and commercial information, we solicit comment from the public, other governmental agencies, the scientific community, industry, and any other interested parties. 50 CFR 424.16(c)(3) requires the Secretary of Commerce to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species under the ESA. Requests for public hearing must be made in writing (see **DATES** and **ADDRESSES**). Such hearings provide the opportunity for interested individuals and parties to 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.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F 2d 825 (6th Cir.1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (see also NOAA Administrative Order 216–6.)

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.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed listing determination. 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 each state in which the North Pacific right whale is believed to occur, who will be invited to comment.

Government-to-Government Relationship With Tribes E.O. 13175

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E. O. 13175 - Consultation and Coordination with Indian Tribal Governments- outlines the responsibilities of the Federal Government in matters affecting tribal interests.

We have determined the proposed listing of the North Pacific right whale would not have tribal implications, nor affect any tribal governments or issues. The North Pacific right whale is not hunted by Alaskan Natives for traditional use or subsistence purposes.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 20, 2006.

Samuel D. Rauch III.,

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

For the reasons set out in the preamble, we propose to amend 50 CFR part 224 as follows:

PART 224 ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. Revise § 224.101(b) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(b) *Marine mammals.* Blue whale (*Balaenoptera musculus*); Bowhead whale (*Balaena mysticetus*); Caribbean monk seal (*Monachus tropicalis*); Chinese river dolphin (*Lipotes vexillifer*); Cochito (*Phocoena sinus*); Fin or finback whale (*Balaenoptera physalus*); Hawaiian monk seal (*Monachus schauinslandi*); Humpback whale (*Megaptera novaeangliae*); Indus River dolphin (*Platanista minor*); Mediterranean monk seal (*Monachus monachus*); North Pacific right whale (*Eubalaena japonica*); Saimaa seal (*Phoca hispida saimensis*); Sei whale (*Balaenoptera borealis*); Sperm whale (*Physeter catodon*); Western North Pacific (Korean) gray whale (*Eschrichtius robustus*); Steller sea lion, western population, (Eumetopias jubatus), which consists of Stellar sea lions from breeding colonies located west of 144° W. longitude.

* * * * *

[FR Doc. 06–9908 Filed 12–26–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 061212328–6328–01; I.D. 120706B]

RIN 0648–XB58

Endangered And Threatened Species; Proposed Endangered Status for North Atlantic Right Whales

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review of right whales in the northern hemisphere under the Endangered Species Act (ESA). Based on the findings from the status review, we have concluded these right whales exist as two species, the North Atlantic right whale (*Eubalaena glacialis*) and the North Pacific right whale (*E. japonicus*). We have also determined that each of these species is in danger of extinction throughout its range. To reflect this taxonomic revision, we are issuing two proposed rules to designate each separately as an endangered species. This proposed rule is to list the North Atlantic right whale; a proposed rule to list the North Pacific right whale is issued separately. We are soliciting public comment on this proposed listing determination.

DATES: Comments on this proposed rule must be received by close of business on February 26, 2007. Requests for public hearings must be made in writing by February 12, 2007.

ADDRESSES: Send comments to Mark Minton on the North Atlantic right whale. Comments may be submitted by:

• E-mail: *NARW.ProposedRule@noaa.gov.* Include in the subject line the following

document identifier: ''NARW Proposed Rule.'' 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.

• Mail: Mark Minton, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930

• Hand delivery to: NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930

• Fax: 978–281–9394

The proposed rule and other materials relating to this proposed rule can be found on NMFS' Northeast Region website: *http://www.nero.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Mark Minton, NMFS, Northeast Region, 978–281–9328, ext. 6534; or Marta Nammack, NMFS, Office of Protected Resources, 301–713–1401, ext. 180.

SUPPLEMENTARY INFORMATION:

Background

Status Review

We have completed a status review report that assesses the status of right whales in the North Atlantic and North Pacific Oceans. Specifically, we describe the population structure and examine the extent to which phylogenetic uniqueness exists between right whales found in the North Atlantic and North Pacific. We also examine the biological status and adverse impacts on the right whale and its habitat in those oceans.

Biology of Right Whales in the North Atlantic Ocean

The right whale is a large baleen whale. Adults are generally between 45 and 55 feet (13.7 - 16.8 m) in length and can weigh up to 70 tons (63.5 metric tons). Females are larger than males. The distinguishing features of right whales include a stocky body, generally black coloration (although some individuals have white patches on their undersides), lack of a dorsal fin, large head (about 1/4 of the body length), strongly bowed margin of the lower lip, and callosities on the head region. Two rows of long (up to about eight feet (2.4 m) in length), dark baleen plates hang from the upper jaw, with about 225 plates on each side. The tail is broad, deeply notched, and all black with smooth trailing edge.

The International Whaling Commission (IWC) recognizes two right whale populations in the North Atlantic: a western and eastern population (IWC, 1986). The current distribution and migration patterns of the eastern North Atlantic right whale population are unknown. Based on whaling records, it appears that the eastern population migrated along the coast from northern Europe to northwest Africa. Sighting surveys from the eastern Atlantic Ocean suggest that right whales present in this region are rare (Best *et al.*, 2001). The western North Atlantic population is believed to contain only about 300 individuals, and it is unclear whether its abundance is remaining static, undergoing modest growth, or declining, as recent modeling exercises suggest (Caswell *et al.*, 1999).

Prior to extensive exploitation, the North Atlantic right whale was found distributed in temperate, subarctic, coastal and continental shelf waters throughout the North Atlantic Ocean rim (Perry *et al.*, 1999). Right whales prefer shallow coastal waters, but their distribution is also strongly correlated to the distribution of zooplankton prey. In both northern and southern hemispheres, right whales are observed in low latitudes and in nearshore waters during winter where calving takes place. During the summer and fall months, right whales tend to migrate to the high latitudes where their distribution is likely linked to the patchy distribution of their principal zooplankton prey (Winn *et al.*, 1986; Perry *et al.*, 1999).

In the western North Atlantic, right whales migrate along the North American coast from Nova Scotia to Florida. Considerable data exist documenting use of areas in the western North Atlantic Ocean where right whales presently occur. Right whales have been observed from the Mid-Atlantic Bight northward through the Gulf of Maine during all months of the year. Foraging right whales (and their habitat) appear to be concentrated in New England waters. In New England, peak abundance of right whales in feeding areas occurs in Cape Cod Bay beginning in late winter. In early spring (May), peak right whale abundance occurs in Wilkinson Basin to the Great South Channel (Kenney *et al.*, 1995). In late June and July, right whale distribution gradually shifts to the northern edge of Georges Bank. In late summer (August) and fall, much of the population is found in waters in the Bay of Fundy and around Roseway Basin (Winn *et al.*, 1986; Kenny *et al.*, 1995; Kenny *et al.*, 2001). Variation in the abundance and development of suitable food patches appears to modify the general patterns of movement by reducing peak numbers, stay durations, and specific locales (Brown *et al.*, 2001; Kenny, 2001). In particular, large changes in the typical pattern of food abundance will dramatically change the general pattern of right whale habitat use (Kenny, 2001). Known wintering areas for the North Atlantic right whale occur along the southeastern U.S. coast where calving occurs from December through March (Winn, 1984; Kraus *et al.*, 1986; IWC, 1986). In the North Atlantic it appears that not all reproductively active females return to the calving grounds each year (Kraus *et al.*, 1986; Payne, 1986). The location of the majority of the population during the winter months remains unknown (NMFS, 2005).

Knowlton *et al.* (1992) reported several long-distance movements as far north as Newfoundland, the Labrador Basin, and southeast of Greenland; in addition, recent resightings of photographically identified individuals have been made off Iceland, arctic Norway, and in the old Cape Farewell whaling ground east of Greenland. The Norwegian sighting (September 1999) represents one of only two sightings this century of a right whale in Norwegian waters, and the first since 1926. Together, these long-range matches indicate an extended range for at least some individuals and perhaps the existence of important habitat areas not presently well described. Similarly, records from the Gulf of Mexico (Moore and Clark, 1963; Schmidly *et al.*, 1972) represent either geographic anomalies or a more extensive historic range beyond the sole known calving and wintering ground in the waters of the southeastern United States (Waring *et al.*, 2004).

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 one 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.

Review of ''Species'' Delineation

Since 1974, NMFS has maintained the right whale listing as originally listed by the United States Fish and Wildlife Service (USFWS) under the Endangered Species Conservation Act of 1969, the precursor to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; the ESA)(35 FR 18319, December 2, 1970) -- *Eubalaena* spp., i.e., all the species within the genus *Eubalaena*. The USFWS maintains the official lists of threatened and endangered species and is required to add species to the official lists when NMFS or USFWS determines species under its jurisdiction should be listed. The USFWS has changed the nomenclature for right whales several times over the years in various iterations of the list of threatened and endangered wildlife. NMFS also changed the nomenclature for a period of time after one of the USFWS changes, but later reverted back to the original *Eubalaena* spp. listing. The changes may have been made as a reflection of the discussion in the scientific literature over the appropriate taxonomic status of right whales. At no point did the USFWS ever propose delisting any of the species that were included in the original listing of *Eubalaena* spp. Regardless of the changes to the list, NMFS maintains that right whale species were listed as *Eubalaena* spp., which reflects the predominant view that existed in 1974: that right whale species are distinct from bowhead whales (*Balaena mysticetus*), they belong in the genus *Eubalaena*, and the genus *Eubalaena* contains at least two species: *E. glacialis* in the northern hemisphere and *E. australis* in the southern hemisphere.

Recent investigations of right whale genetics confirm the distinction between *E. glacialis* and *E. australis* at the species level and suggest that the North Pacific form of *E. glacialis* should be recognized as a separate species and named *E. japonica*, distinct from the other two species. NMFS is proposing to adopt this view and, in a separate rulemaking, to modify its listing to add *E. japonica* to the current listing *Eubalaena* spp. (which includes *E. glacialis* and *E. australis*).

Taxonomy of Right Whales

All whales belong to the mammalian order Cetacea, which is divided into two suborders: Odontoceti (toothed whales) and Mysticeti (baleen whales). The Mysticeti are further divided into four families: the Eschrichtidae, a monotypic family (i.e., containing only one species), the gray whale; Neobalaenidae, another monotypic family containing only the pygmy right whale; Balaenidae, which contains two genera: *Balaena* (bowhead whales) and *Eubalaena* (right whales); and Balaenopteridae, which contains all of the other baleen whales.

Balaena is the genus name for the bowhead whale (*Balaena mysticetus*), recognized by Linnaeus in 1758. *Eubalaena* is the genus name for right whales, first proposed by Gray in 1864. The first right whale to be named was what we today call the North Atlantic right whale or Nord-Kaper (*Balaena glacialis*, Muller, 1776), from North Cape, Norway. The second right whale to be named was what we today call the North Pacific right whale (*Balaena japonica*, Lacepede, 1818), from Japan. And the third right whale to be named was what we today call the Southern right whale (*Balaena australis*, Desmoulins, 1822), from Algoa Bay, Cape of Good Hope, South Africa. In the 1970s when all baleen whales were being considered for listing as endangered under the Endangered Species Conservation Act of 1969, authors disagreed on the taxonomic status of right whales. One view was that they belonged in the genus *Balaena* along with bowhead whales and that the genus contains two species: *Baleana mysticetus* and *Baleana glacialis* (Rice, 1977). The subspecific composition of *B. glacialis* was unclear. The other view was that right whales were distinct from bowhead whales at the genus level and that right whales should be identified as *Eubalaena* (Schevill, 1986). This later view is currently the prevailing view, and it is the view embraced by USFWS and NMFS.

There were also two views about the species composition of *Eubalaena*. One view was that there was only one species *Eubalaena glacialis* containing several subspecies (*E. glacialis glacialis* (North Atlantic), *E. glacialis sieboldii* (North Pacific), and *E. glacialis australis* (Southern oceans)) (Tomilin, 1957). Hershkovitz (1966) also describes these three subspecies, except that he refers to North Pacific right whales as *E. glacialis japonica*. The other view was that *Eubalaena* comprised two species *E. glacialis* and *E. australis* (Omura, 1958; Omura *et al.*, 1969). This is the view represented by the designation of *Eubalaena* spp. in the original listing by USFWS in 1970 and by NMFS in its first listing in 1974. Generally accepted taxonomic nomenclature recognized the term ''spp.'' as an abbreviation for multiple species within a genus.

The two-species view is summarized by Perry *et al.*'s (1999) summary of morphological (Muller, 1954) and genetic data (Schaeff *et al.*, 1991), both of which recognized distinct species in the northern and southern hemispheres. Cummings (1985) used *E. australis* for all right whales below the equator (southern right whales). The International Whaling Commission also recognizes the presence of two distinct species, *E. glacialis* and *E. australis*, in the schedule appended to the Convention in which species under purview of the Commission are listed.

Conclusion

Although the listing of right whales has changed from the original nomenclature of *Eubalaena* spp., there is no indication in the record that USFWS ever intended to delist any of the species contained in the original listing of the entire genus. Since the original 1970 listing was described as ''*Eubalaena* spp.'', the logical interpretation is that at least two species of right whale were listed, the northern right whale (*E. glacialis*) and the southern right whale (*E. australis*), since ''spp.'' refers to more than one species, not ''subspecies.'' Even if three separate species had been recognized in 1970, southern right whale (*E. australis*) would have been one of them. Each plausible scenario results in the right whale in the Southern Hemisphere being recognized as a separate species. Since NMFS has maintained its listing as ''Right whales, *Eubalaena* spp.'', and USFWS has never proposed delisting any of the species included in the original listing, we conclude that both *E. glacialis* and *E. australis* were listed in 1970, carried forward to the list created pursuant to the ESA, and determined to be endangered in our listing in 1974.

Right Whale Species Currently Being Considered for Listing

As discussed above, genetic data now provide unequivocal support to distinguish three right whale lineages as separate phylogenetic species: (1) the North Atlantic right whale (*Eubalaena glacialis*), ranging in the North Atlantic Ocean; (2) the North Pacific right whale

(*Eubalaena japonica*), ranging in the North Pacific Ocean, and (3) the southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's oceans (Rosenbaum *et al.*, 2000). Based on evidence from recent genetic studies (Gaines *et al.*, 2005), we conclude that the current taxonomic classification of right whales in the northern hemisphere should be revised consistent with the generally accepted analyses by Rosenbaum *et al.* (2000). We have determined that listing right whales in the North Atlantic and the North Pacific as two separate species is warranted in light of the compelling evidence provided by recent scientific studies on right whale taxonomy and classification. In accordance with the applicable statutory definitions and requirements, the North Atlantic right whale (*E. glacialis*) and the North Pacific right whale (*E. japonica*) are being considered for listing as separate species under the ESA.

Refining the taxonomy of these endangered cetaceans is critical to the recovery planning and conservation of these species. The separate listings of these two species in the northern hemisphere will allow for consistent scientific practice and management policies in recovering these species.

Status of the Three Right Whale Species

The determination that right whales in the North Atlantic and North Pacific Oceans are two separate species requires us to consider these species separately for the purposes of listing under the ESA. We will consider the status of the North Atlantic right whale (*E. glacialis*) in this proposed rule and that of the North Pacific right whale (*E. japonica*) in a separate proposed rule in today's issue of the **Federal Register**. At the final rule stage, we will address both species in the same rule so that any changes become effective together. The southern right whale, *E. australis*, will remain listed as endangered, though we intend to conduct a 5-year review of its status in the near future. In the following discussion of the status of the North Atlantic right whale, *E. glacialis*, we provide the rationale for today's proposal to list this species as a separate endangered species. The other proposed rule in today's issue of the **Federal Register**, referenced above, provides the rationale for the proposal to list the North Pacific right whale, *E. japonica*, as a separate endangered species. We also identify the southern right whale, *E. australis* (one of two species that was listed in 1970 and is still listed) in the regulatory language as a separate endangered species and remove *Eubalaena* spp. from the list.

Status of the North Atlantic Right Whale (*Eubalaena glacialis*)

Abundance and Trends

Sighting surveys from the eastern Atlantic Ocean suggest that right whales present in this region are rare (Best et al,. 2001). In 1992, based on a census of individual whales identified using photo-identification techniques and the assumption that whales not seen for 7 years are dead, the western North Atlantic stock size was estimated to be 295 individuals (Knowlton *et al.*,1994). In 1998, an updated analysis using the same method gave an estimate of 299 animals (Kraus *et al.*, 2001). Because this was a nearly complete census, it is assumed that this represents a minimum population size estimate. However, no estimate of abundance with an associated coefficient of variation has been calculated for this population. Calculation of a reliable point estimate is likely to be difficult, given the known problem of heterogeneity of distribution in this population. An IWC workshop on status and trends of western North Atlantic right whales gave a minimum direct-count estimate of 263 right whales alive in 1996 and noted that the true population was unlikely to be substantially greater than this (Best *et al.*, 2001).

The population growth rate for North Atlantic right whale reported for the period 1986–1992 by Knowlton *et al.* (1994) was 2.5 percent (coefficient of variation=0.12), suggesting that the stock was showing signs of slow recovery. In contrast, southern right whale populations (those off Argentina, Australia, and South Africa) are increasing at annual rates on the order of 7 to 8 percent (IWC, 1998). However, Caswell *et al.* (1999) found that crude survival probabilities for North Atlantic right whale decreased from about 0.99 per year in 1980 to about 0.94 in 1994, and that population growth rate declined from about 5.3 percent in 1980 to a negative 2.4 percent in 1994 (Caswell *et al.*, 1999). The decline was statistically significant. This model suggested that the western population of North Atlantic right whales was headed for extinction with an upper bound on the expected time to extinction of 191 years (Caswell *et al.*, 1999). Modified versions of the Caswell *et al.* (1999) model as well as several other models were reviewed at the 1999 IWC workshop (Best *et al.*, 2001). Despite differences in approach, all of the models indicated a decline in right whale survival in the 1990s relative to the 1980s with female survival, in particular, apparently affected (Best *et al.*, 2001; Waring *et al.*, 2002).

In 2002, our Northeast Fisheries Science Center (NEFSC) hosted a workshop to review right whale population models to examine: (1) potential bias in the models, and (2) changes in the subpopulation trend based on new information collected in the late 1990s (Clapham *et al.*, 2002). Three different models were used to explore right whale survivability and to address potential sources of bias. Although biases were identified that could negatively affect the results, all three modeling techniques resulted in the same conclusion; survival has continued to decline and seems due to female mortalities (Clapham *et al.*, 2002).

Life History Characteristics

Females give birth to their first calf at an average age of 9 years (Best *et al.*, 1998; Hamilton *et al.*, 1998a). Standard reproductive rates for the western North Atlantic population have yet to be calculated. The calving interval for right whales is between 2 and 7 years, with means ranging from 3.12 (95 percent confidence interval (CI) 3.05–3.17) to 3.67 years (95 percent CI 3.3–4.1) (Knowlton *et al.*, 1994; Best *et al.*, 2001; Burwell, 2001; Cooke *et al.*, 2001). In the western North Atlantic, there was a significant increase in the calving interval from 3.67 years for the period 1980 to 1992 (Knowlton *et al.*, 1994) to 5.8 years for the period 1990 to 1998 (Kraus *et al.* 2001). The increase in the calving interval is of particular concern and, together with other perplexing biological parameters, may suggest the population is under rather unusual biological, energetic, or reproductive stress. Most recently (2001–2005), a dramatic increase in North Atlantic right whale calving (23 calves per year) may have decreased the interval to levels more similar to that of the southern right whale (Kraus *et al.*, in press).

Since 1999, 125 right whale calves have been observed, including 31 right whale births during a record calving season in 2000–2001 (B. Pike, New England Aquarium, pers. comm.). Calving numbers have been sporadic, with large differences among years. The three calving years (1997–2000) prior to the record year in 2000–2001 provided low recruitment with only 10 calves born. The last five calving seasons (2001–2005) have been substantially better (31, 21, 19, 16, and 28 calves, respectively). Despite improved calving rates over the last several years,

mortalities of calves, juveniles, and adults have continued.

An analysis of the age structure of this population suggests that it contains a smaller proportion of juvenile whales than expected (Hamilton *et al.*, 1998a; Best *et al.*, 2001), which may reflect low recruitment and/or high juvenile mortality. In addition, it is possible that the apparently low reproductive rate is due in part to unstable age structure or to decreased reproduction due to aging (i.e., reproductive senescence) on the part of some females (Waring *et al.*, 2004).

Genetic Diversity

The size of the western population of the North Atlantic right whale at the cessation of whaling is unknown, but generally it is believed to have been very small. Such a reduction of population size may have resulted in a loss of genetic diversity that could affect the ability of the current population to successfully reproduce (e.g., decreased conceptions, increased abortions, increased neonate mortality). Studies by Schaeff *et al.* (1997) and Malik *et al.* (2000) indicate that the western population of the North Atlantic right whale is less genetically diverse than southern right whale populations. However, several apparently healthy populations of cetaceans, such as sperm whales and pilot whales, have even lower genetic diversity than observed in the western North Atlantic right whales (IWC, 2001b).

Summary of Factors Affecting the North Atlantic Right Whale

Section 4(a)(1) of the ESA requires the Secretary of Commerce (Secretary) to determine whether a species is endangered or threatened because of any of the following factors: (A) the present or threatened destruction, modification or curtailment of a species' habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation factors; (D) the inadequacy of existing regulatory mechanisms; (E) other natural or manmade factors affecting its continued existence. A discussion of these considerations follows:

The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat loss or degradation is not believed to be a causal factor placing the North Atlantic right whale in danger of extinction at this time or in the foreseeable future. Unlike many terrestrial species, right whales and other cetaceans do not compete directly with human populations for space (Clapham *et al.*, 1999). Because right whales are dependent on coastal waters adjacent to highly developed coastline, however, habitat degradation may adversely affect this species. Consequently, threats to right whales may arise from onshore and near shore activities.

Right whales frequent coastal waters where dredging and dredge spoil disposal occur on a regular basis, such as along the southeastern U.S. coast (Perry *et al.*, 1999). Dredging of harbors and port channels occurs in a number of locations in or near areas where right whales aggregate. Noise, increased ship traffic, disposal of dredge material, and related activities may all contribute to degrade right whale habitat. It is unknown to what extent these activities affect right whales (Perry *et al.*, 1999). It appears that more information is needed to determine specific habitat impacts, if any, from these activities. Increased ship traffic associated with dredging activities may increase the risk of ship strikes of right whales resulting in serious injury and mortality. At present, efforts made to reduce adverse effects on right whales include posting observers on ships transporting dredge spoils to reduce the risk of ship strikes.

One potential source of habitat degradation for baleen whales is oil pollution. General concerns with regard to oil pollution, some of which are direct impacts on the whales rather than habitat impacts, are ingestion of contaminated prey, potential irritation of skin and eyes, inhalation of toxic fumes, and abandonment of polluted feeding habitat (Geraci and St. Aubin, 1980; Geraci, 1990). However, data on the effects of oil pollution on cetaceans are inconclusive, and the large baleen whales appear to be generally unaffected by oil per se (Geraci, 1990; Loughlin, 1994).

Offshore oil and gas exploration activities have been proposed off the U.S. Atlantic coast. At the present time however, there are no known plans for oil exploration in the major habitats of the western population of the North Atlantic right whale, but the possibility remains for future oil and gas exploration and development activity.

In addition to oil and gas exploration and production, the undersea exploration and development of techniques for mining minerals deposits could threaten the North Atlantic right whale and its habitat (Perry *et al.*, 1999).

An additional potential source of habitat degradation for right whales is chemical contaminants. The impact of pollution on right whales is debatable. O'Shea and Brownell (1994) conclude that there is currently no evidence for significant contaminant-related problems in baleen whales. Although more research is needed, the existing data on mysticetes support the view that the lower trophic levels at which these animals feed should result in lower levels of contaminant accumulation than would be expected in many odontocetes, which typically show concentrations that differ from those of baleen whales by an order of magnitude (O'Shea and Brownell, 1994). However, the manner in which pollutants negatively impact animals is complex and difficult to study, particularly in taxa such as large whales for which many of the key variables and pathways are unknown (Aguilar, 1987; O'Shea and Brownell, 1994). A more plausible potential problem is that of transgenerational accumulation (Colborn and Smolen, 1996), but this remains unstudied in right whales or any other cetacean species.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Right whales have not been the target of commercial hunting in the North Atlantic since 1935, and relatively few catches were made in the 20th century prior to that date. Historical whaling activities are responsible for the significant depletion of the eastern population of the North Atlantic right whale and the current severely depleted numbers of individuals remaining in the western population. The small population size of the North Atlantic right whale is probably the most significant factor affecting its continued existence because small populations are subject to extinction from a variety of factors that would not seriously affect a larger population. The North Atlantic right whale is in danger of extinction throughout its range because of historical whaling. Unlike right whales in the North Pacific, there is no evidence of the illegal harvest of right whales.

An estimate of pre-exploitation population size is not available. Basque whalers may have taken substantial numbers of right whales at times during the 1500s in the Strait of Belle Isle region (Aguilar, 1986), and the stock of right whales may have already been substantially reduced by the time colonists began whaling in the Plymouth area in the 1600s (Reeves and Mitchell, 1987). A modest but persistent whaling effort along the coast of the eastern United States lasted 3 centuries, and the records include one report of 29 whales killed in Cape Cod Bay in a single day during January 1700. Based

on incomplete historical whaling data, Reeves and Mitchell (1987) could conclude only that there were at least some hundreds of right whales present in the western North Atlantic during the late 1600s. In a later study (Reeves *et al.*, 1992), a series of population trajectories using historical data and an estimated present population size of 350 were plotted. The results suggest that there may have been at least 1,000 right whales in this population during the early to mid–1600s, with the greatest population decline occurring in the early 1700s. The authors cautioned, however, that the record of removals is incomplete, the results were preliminary, and refinements are required. Based on back calculations using the present population size and growth rate, the population may have numbered fewer than 100 individuals by the time international protection for right whales came into effect in 1935 (Hain, 1975; Reeves *et al.*, 1992; Kenney *et al.*, 1995). However, too little is known about the population dynamics of right whales in the intervening years to estimate a pre-exploitation population size with confidence.

An intense period of whaling in the eastern North Atlantic between 1902 and 1967 (including harvest off the Shetlands, Hebrides, and Ireland in the years 1906–1910) was particularly catastrophic for the eastern North Atlantic right whale population. Since that time, there have only been sporadic sightings of right whales in the eastern North Atlantic (Best *et al.*, 2001). In two recent winter surveys of Cintra Bay (off the northwestern coast of Africa), no evidence was found to suggest that right whales still use the area; this absence of evidence also corresponds to a lack of recent observations in northern European waters (Reeves, 2001). Based on the paucity of sighting information, current distribution and migration patterns of the eastern North Atlantic right whale population are unknown.

With respect to recreational and educational use, problems may arise from vessels whose operations are directed at the whales themselves (i.e., whale watching from either commercial or recreational vessels). These activities have the potential to disturb right whales or disrupt their activities and behavior such as feeding, courtship, and nursing. The impact of such harassment on the reproductive success of individuals has not been studied and is unknown. Currently, Federal regulations prohibit the close approach by vessels within 500 yards (457.2 m) of North Atlantic right whales in U.S. waters. This activity is allowed, however, in Canadian waters.

Scientific research on right whales frequently involves close approaches to the animals for the purpose of photographic, genetic, or behavioral sampling. These activities are controlled by permits in both U.S. and Canadian waters, and the potential adverse impact on the animals is considered during the permitting process. Efforts are needed to ensure coordination of research activities between the United States and Canada, as well as among U.S. researchers themselves to minimize any potential adverse impact to right whales.

Disease or Predation

Disease and predation are not believed to be factors causing the North Atlantic right whale to be in danger of extinction. Unlike in some dolphin and pinniped (i.e., seals and sea lions) species, there have been no recorded epizootics in baleen whales. The occurrence of skin lesions on the bodies of North Atlantic right whales has been documented in recent years, with an apparent increase in frequency culminating in a peak in 1995 when they were observed on 24 percent of photographed individuals (Marx *et al.*, 1999). The origins and significance of these lesions are unknown. Further research is required to determine whether they represent a topical or systemic health problem for the affected animals.

In October 2006, we declared an unusual mortality event (UME) for humpback whales in the Northeast United States. At least 17 dead humpback whales have been discovered since March 2006. There has also been a documented bloom of *Alexandrium* sp., a toxic dinoflagellate that causes red tide from Maine to Massachusetts. Prior to the most recent UME, there had been only three other known cases of a mass mortality involving large whale species along the east coast: 1987–1988, 2003, and 2005. Geraci *et al.* (1989) provide strong evidence that, in the former case, these deaths of humpback whales resulted from the consumption of mackerel whose livers contained high levels of saxitoxin, a naturally occurring red tide toxin, the origin of which remains unknown. It has been suggested that the occurrence of a red tide event is related to an increase in freshwater runoff from coastal development, leading some observers to suggest that such events may become more common among marine mammals as coastal development continues. There is currently no conclusive evidence linking red tide toxins to the deaths or chronic health problems in right whales. Doucette *et al.* (2006) assessed the occurrence of paralytic shellfish poisoning (PSP) toxins in right whales and in co-occurring zooplankton assemblages dominated by *Calanus finmarchicus*, the primary food of the North Atlantic right whale. Samples of right whale feces collected from at least 11 different whales by these researchers in the Bay of Fundy tested positive for PSP toxins. These results suggest that trophic transfer of marine algal toxins may be a factor inhibiting the recovery of the North Atlantic right whale.

Predation of right whales by killer whales and large shark species is likely to occur, but the level is not documented. North Atlantic right whales bearing scars thought to be from killer whale attacks have been photographed (Kraus, 1990), but the number of whales killed by this predator is unknown (Perry *et al.*, 1999). Mehta (2004) more recently concluded that scars recorded on the flukes and bodies of North Atlantic right whales are more consistent with harassment by some smaller cetacean, possibly pilot whales (*Globicephala* spp) and do not originate from killer whales.

The Inadequacy of Existing Regulatory Mechanisms

Right whales are protected under both U.S. and Canadian law, and internationally by the IWC. Death and serious injury resulting from ship strikes and fishing gear interactions are significant factors that, at current rates, place the North Atlantic right whale in danger of extinction throughout its range. There are numerous ongoing conservation efforts to reduce the impact of ship strikes on the survival and recovery of the species. These efforts involve Federal, state, local, conservation, academic, and industry agencies and organizations. We, in cooperation with other state, Federal, industry, and private groups and organizations, have developed a plan to implement a broad Ship Strike Reduction Strategy (SSRS) designed to reduce the impacts of vessel interactions on the survival of the North Atlantic right whale.

The SSRS consists of both regulatory and non-regulatory components. As part of efforts to implement the SSRS, we published an advanced notice of proposed rulemaking (ANPR) on June 1, 2004 (69 FR 30857) and proposed regulations on June 14, 2006, that contain speed restrictions and routing measures to reduce the likelihood of collisions between vessels and endangered North Atlantic right whales (71 FR 36299).

We have implemented a number of measures to reduce the impact to right

whale survival due to fishing gear interactions. We, with the assistance of the Atlantic Large Whale Take Reduction Team (ALWTRT), developed the Atlantic Large Whale Take Reduction Plan (ALWTRP). The goal of this plan is to reduce the level of serious injury and mortality of three strategic stocks of large whales, including North Atlantic right whales, in commercial gillnet and trap/pot fisheries. In general, the ALWTRP consists of a combination of regulatory and non-regulatory programs, including broad gear modifications, time-area closures, expanded disentanglement efforts, extensive outreach efforts in key areas, gear research, and an expanded right whale surveillance program to supplement the Mandatory Ship Reporting System.

Since its implementation in 1997, the ALWTRP has been modified on several occasions in response to the serious injury and mortality of large whales in gillnet and lobster trap/pot gear. Recent amendments to the ALWTRP include restrictions to the Southeast Atlantic gillnet fishery (67 FR 59471, September 23, 2002; 68 FR 19464, April 21, 2003). Other amendments to the ALWTRP include additional gear modifications for lobster trap/pot gear in particular management areas and changes to the lobster trap/pot and gillnet take reduction technology lists (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), a Seasonal Area Management (SAM) program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), a Dynamic Area Management (DAM) program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002), and implementation of gear modifications determined to sufficiently reduce the risk of entanglement to right whales (68 FR 10195, March 4, 2003; 68 FR 51195, August 26, 2003).

We continue to work with the ALWTRT to evaluate the ALWTRP and determine whether additional modifications are necessary to meet the goals of the MMPA and the ESA. On June 30, 2003, we published a Notice of Intent (NOI) to announce the agency's intent to prepare an Environmental Impact Statement (EIS) to analyze the impacts of alternatives for amending the ALWTRP (68 FR 38676). On June 21, 2005, we also published a proposed rule (70 FR 35894) that details how modifications to the ALWTRP would be implemented.

Despite previous efforts, ship strikes and fishing gear interactions remain a serious factor negatively affecting the continued survival and recovery of the species. As the new conservation measures discussed above are implemented, the frequency of ship strikes and fishing gear interactions will need to be monitored to assess the effectiveness of measures in reducing the impact of these factors on the survival of the species. Based on the efficacy of these measures, it may be necessary to continue or enhance existing regulations or promulgate new regulations to reduce or eliminate the effect of these factors on the survival and recovery of the species.

Other Natural or Manmade Factors Affecting its Continued Existence

Ship strikes and fishing gear interactions are the most common anthropogenic causes of mortality in western North Atlantic right whales, and place the North Atlantic right whale in danger of extinction throughout its range. The available evidence strongly suggests that the North Atlantic right whale cannot sustain the current number of deaths that result from vessel collisions and fishing gear interactions. If mortality from these activities continues at current rates, it is likely to result in the extinction of the North Atlantic right whale.

Ship Strikes - Collisions with ships are the single largest cause of right whale mortality in the western North Atlantic. Of 45 confirmed deaths of western North Atlantic right whales between 1970 and 1999, 16 are known to have been caused by ship strikes, and two additional collisions were possibly fatal (Knowlton and Kraus, 1998). There were two known ship strike right whale deaths in 2001, one in both 2002 and 2003, and two in 2004. The low incidence (7 percent) of photographically identified whales showing scars and wounds from ship propellers compared to the high rate of ship propeller wounds on stranded carcasses indicates that a high proportion of interactions between ships and whales are fatal to the whale (Kraus, 1990). It should be noted that with improved reporting and more thorough necropsies in recent years, the rate of detection and confirmation of ship-strike deaths has probably increased. This may confound efforts to determine trends in the frequency of collisions.

Concern has been raised over the possible adverse effects of whale watching and scientific research activities on right whale aggregations, particularly in the western North Atlantic (e.g., Cape Cod Bay and lower Bay of Fundy). On February 13, 1997, we published an interim final rule (62 FR 6729) to prohibit both boats and aircraft from approaching any right whale closer than 500 yards (457.2 m). These minimum distance regulations are designed to reduce the potential to disturb right whales or disrupt their activities and to reduce the adverse effect of vessel collisions. However, collisions between whale-watching boats and a humpback (2001) and a minke whale (1998) indicate that much more serious consequences (e.g., death or serious injury) are also possible. In addition, the number of high-speed (capable of speeds ≤ 28 knots) whale watching vessels, ferries, and other craft has increased recently in areas where right whales occur. Consequently, the threat of collisions has potentially grown. It may be necessary to examine the effects of whale watching in the vicinity of right whales and issue additional regulations and/or guidelines regarding the number of vessels, and their speed, manner, and distances of approaches near whales.

Scientific research on right whales frequently involves close approaches to the animals for the purpose of photographic, genetic, or behavioral sampling. These activities are controlled by permits in both U.S. and Canadian waters, and the potential adverse impact on the animals is considered during the permitting process. Efforts are needed to ensure coordination of research activities between the U.S. and Canada, as well as among U.S. researchers themselves to minimize any potential adverse impact to right whales.

Fishing Gear Interactions - The exact magnitude and nature of fisheries interactions with right whales is not known. Kraus (1990) estimated that 57 percent of right whales in the western North Atlantic bear scars and injuries indicating fishing gear interactions. More recent analysis estimated that 61.6 percent of right whales exhibit evidence of fishing gear entanglement (Hamilton *et al.*, 1998b). The 1998 North Atlantic Stock Assessment Report (Waring *et al.*, 1999) indicated NMFS-monitored fisheries showed a mean annual mortality of 1.0 right whale from 1992 through 1996. Sources of interaction are mainly gillnets, lobster pots, seine nets, and fish weirs (NMFS, 1991), which, with the exception of gillnet fisheries, are largely not monitored. Gear entanglement was estimated to account for 7 percent of the known mortality in right whales in the western North Atlantic from 1970 through early 1993 (Kenney and Kraus, 1993). There were at least two additional entanglement deaths between late 1993 and 1999 (Knowlton and Kraus, 2001). Since 2001 there has been at least one additional mortality due to entanglement. These mortalities involved entanglements with fixed fishing gear. Of 45 known deaths between 1970 and 1999, three were

directly linked to entanglements, and eight were suspected to have been linked to entanglements (NMFS, 2005). Entanglements may be responsible for more deaths than indicated by the stranding and necropsy data. It is possible that fishing gear was responsible for some of the deaths for which a cause could not be determined. In addition, some whales may become entangled, drown, and fail to resurface. Injuries and entanglements that are not initially lethal may result in a gradual weakening of entangled individuals, making them more vulnerable to some other direct cause of mortality (Kenney and Kraus, 1993). For example, entanglement may reduce a whale's ability to maneuver, making it more susceptible to ship strikes. Entanglement-related stress may decrease an individual's reproductive success or reduce its life span. This may in turn depress population growth.

Noise - The effect on behavior (e.g., foraging, mating, nursing) of noise pollution from shipping or oil and gas development is unclear, though various observations suggest that marine mammals can habituate well to even quite high levels of sound (Geraci and St. Aubin, 1980; Richardson *et al.*, 1995). Playback experiments on gray and bowhead whales indicate that whales will actively avoid a very loud sound source (Malme *et al.*, 1983), but whether real-life sources (such as drilling platforms) negatively impact behavior to the point that it diminishes reproductive success and population productivity is unclear. It appears that right whale sensitivity to noise disturbance and vessel activity is related to the behavior and activity in which they are engaged in at the time (Watkins, 1986; Perry *et al.*, 1999).

Recreational boat traffic - Some studies suggest increased recreational boat traffic can disrupt whale behavior (Glockner-Ferrari and Ferrari, 1990). Pleasure boat traffic occurs in various coastal areas with little regulation or enforcement; however, its impact on right whales is unknown.

Conservation Measures

Section 4(b)(1)(a) of the ESA requires that determinations of whether a species is threatened or endangered be based solely on the best scientific and commercial data available and after taking into account those efforts, if any, being made to protect the species. Right whales have been listed under the ESA for many years and numerous conservation measures have been implemented in order to protect and conserve the species. On March 28, 2003, we and the USFWS (the Services) published the final policy for evaluating conservation efforts (PECE)(68 FR 15100). The PECE provides guidance on evaluating current 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 PECE establishes two basic criteria for evaluating current conservation efforts: (1) the certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. The PECE provides specific factors under these two basic criteria that direct the analysis of adequacy and efficacy of existing conservation efforts.

Right whales were protected by the 1931 Convention for the Regulation of Whaling, which took effect in 1935. Since 1949, right whales have been protected from commercial whaling by the IWC and its implementing convention. In U.S. waters, right whales are protected by the MMPA and the ESA.

Current North Atlantic right whale conservation efforts in the North Atlantic are extensive. These efforts reflect a cooperative collaboration between numerous state and Federal agencies, industry groups, conservation organizations, academic institutions, and other interested parties and individuals. These efforts are vital to the survival and recovery of the North Atlantic right whale.

Current conservation efforts have resulted in the implementation of a number of regulatory and non-regulatory measures intended to enhance the survival and recovery of the species, particularly fishing gear modifications and ship strike reduction strategies. Moreover, a number of conservation measures being developed and/or considered will further reduce the adverse affect of fishing gear interactions and ship strikes. However, despite these ongoing efforts to mitigate factors affecting the species, right whales have continued to suffer serious injury and mortalities due to ship strikes and fishing gear interactions.

As discussed, direct and indirect impacts from human activities, particularly vessel collisions and fishing gear entanglements, place the species in danger of extinction throughout its range and have contributed to a lack of recovery. Currently, we are working with state, Federal, private, and industry groups to address these two factors affecting the survival and recovery of the species.

Vessel Interactions

As discussed, ship strikes are responsible for the majority of human-caused right whale mortalities (Jensen and Silber, 2003). The ESA provides authority to the Secretary to establish implementation teams to, among other things, review recovery activities and provide recommendations to NMFS on actions necessary for the survival and recovery of the species. Two such teams have been formed: one in the southeastern U.S., the second in the northeastern U.S. Although both teams have addressed a variety of right whale conservation issues over the years, they have evolved over time to focus on issues related primarily to the reduction of ship strikes of right whales.

Southeastern U.S. Implementation Team (SEIT) - In August 1993, the SEIT was formed. The team consists of representatives from Federal, state, and local agencies, as well as other private organizations. Since its inception, the SEIT has met regularly and has been active in a number of areas related to ship strike mitigation. Among other things, the SEIT was instrumental in developing a system of aircraft surveys and communication systems that alert mariners to the presence of right whales in the southeast United States (SEUS) in real time. Two agencies represented on the SEIT, the Georgia Department of Natural Resources (GDNR) and the United States Coast Guard (USCG), implemented a local Notice to Mariners broadcast about right whale calving grounds. Additionally, the USCG and the GDNR have developed and implemented procedures for broadcasting right whale locations over NAVTEX (the USCG international communication system). The SEIT has also coordinated a number of efforts to educate mariners about the threat of ship strikes, including development and distribution of brochures, pamphlets, and posters. In addition, the SEIT provides us with recommendations regarding measures to reduce the possibility of ship strikes, development of safe operating procedures for large vessels transiting right whale habitat, minimum vessel approach distances, research needs, and measures necessary to reduce fishing gear interactions in right whale calving areas.

Northeast U.S. Implementation Team (NEIT) - The NEIT was established in 1994 and is coordinated by our Northeast Regional Office. The NEIT was originally created to implement recovery tasks for both the North

Atlantic right whale and the humpback whale.

The NEIT's responsibilities have evolved since its inception in 1994. Initially, the NEIT's focus was the mitigation of the threat to right whales of fishing gear interactions. More recently the NEIT's charge has shifted to focus primarily on issues related to ship strike reduction. The NEIT Ship Strike Subcommittee assisted in the development of NOAA's SSRS. The NEIT most recently has been reorganized to function as a continuation of the former Northeast Large Whale Recovery Plan Implementation Team's Ship Strike Committee. The goal is for the NEIT to assist, where possible, with various ship-strike reduction-related strategies.

SSRS

We, in cooperation with other state, Federal, industry, and private groups and organizations, have developed a broad SSRS designed to reduce the danger posed by vessel interactions to the survival of the North Atlantic right whale. The SSRS is an Atlantic coast initiative consisting of both regulatory and non-regulatory components. The ship strike reduction conservation efforts have been implemented, in large part, under the statutory authority of the ESA and the MMPA. Certain details of the SSRS are still under development. The SSRS consists of five elements: (1) Establishment of new operational measures for the shipping industry, including consideration of routing measures and speed restrictions; (2) negotiation of a Right Whale Conservation Agreement with the Canadian Government to address the issue of ship strikes; (3) development and implementation of ship strike education and outreach programs; (4) initiation of Section 7 consultations under the ESA with all Federal agencies that have vessels operating in waters inhabited by right whales; and (5) continuation of ongoing research and conservation activities.

Ship Strike Reduction Strategy Proposed Rule - We published an advanced notice of proposed rulemaking (ANPR) on June 1, 2004 (69 FR 30857), and proposed regulations on June 26, 2006 (71 FR 36299). The proposed regulations would establish speed restrictions and routing measures to reduce the likelihood of collisions between vessels and endangered North Atlantic right whales.

Mandatory Ship Reporting System - In 1998, the USCG, on behalf of the U.S. Government, submitted a proposal developed by NOAA with the assistance of the Marine Mammal Commission and the International Fund for Animal Welfare to the International Maritime Organization (IMO). The proposal requested approval of two mandatory ship reporting systems. The proposal received IMO endorsement and systems became operational in 1999. The systems obligate all commercial ships 300 gross tons (272 metric tons) and greater entering areas designated as right whale critical habitat to call into a shore-based station. The systems provide information on right whales directly to mariners as they enter right whale habitat, the right whales' vulnerability to ship strikes, and steps that can be taken to reduce the chance of collision. They also provide a means to obtain information on ship traffic volume and routes to assist in identifying measures to reduce future ship strikes. The systems are administered primarily by the USCG.

Aerial Surveys - In 1993, the SEIT developed a system to help alert area ship traffic to the presence of right whales, thereby reducing the possibility of ship strikes. The central feature of the system has been an aerial survey program designed to obtain accurate, current information on the locations of whales. Aerial surveys were initiated in 1993 in the waters off the SEUS and have continued each year since. Continuously updated right whale sighting information from survey teams is immediately relayed to area mariners via centralized communication systems operated by the USCG and the U.S. Navy. Information is provided through a number of real time media, including USCG Broadcast Notices to Mariners, NAVTEX and NOAA Weather Radio. Among other measures, vessels are advised to proceed at reduced speeds to reduce the likelihood of serious injury or death if a collision occurs. However, even in very good sighting conditions, not all whales are detected. Therefore, whales may be present but not always reported to mariners.

In 1997, an aerial survey program was initiated in waters off the northeastern United States. These efforts focused on Cape Cod Bay (CCB) and the Great South Channel (GSC) in late winter and early spring. From 1997 to present, aerial surveys supported by NMFS and the State of Massachusetts have been conducted to cover peak abundance periods, principally between January and March in CCB, and between March and early July in the GSC . Aerial surveys have been recently expanded in the Gulf of Maine and waters of Rhode Island, New York, and New Jersey.

Sightings from aerial survey platforms, right whale researchers, and multiple other sources are reported to our NEFSC. These data are plotted using a Geographic Information System with sightings grouped and 'circled' with a buffer zone. Right whale sighting advisories, or 'alerts,' are disseminated to notify mariners of the presence of right whales via a number of mechanisms. The USCG issues Broadcast Notices to Mariners and via NAVTEX. NOAA Weather Radio provides geographic and positional data on the sightings periodically. The Cape Cod Canal Traffic Controllers contact ships and provide positions and a radius for each sighting.

Notifications to individual ships, commercial fishing vessels, and military vessels are made directly from the aircraft when observed vessels are transiting close to a whale. In addition, these surveys have provided sightings of entangled and floating right whales, and provide photo identification data for numerous studies. Current plans are to continue the surveys into the foreseeable future. While dedicated aircraft surveys may be the best available means to attempt to alert mariners about the presence of right whales, these programs have a number of limitations. For example, aerial surveys are costly to implement. Also, the surveys are limited by weather and can be conducted only in daylight and under the best of survey conditions. In addition, it is likely that, even under good conditions, many whales are missed by observers, especially since only those whales at or near the surface can be seen. Nonetheless, until effective alternatives are identified, the surveys are expected to continue.

Vessel Approach Regulations - As discussed, on February 13, 1997, an interim final rule (62 FR 6729) was published that prohibits both boats and aircraft from approaching any right whale closer than 500 yards (457.2 m). Exceptions for closer approach are provided for emergency situations and where certain authorizations are provided.

Updating Navigational Publications - The National Ocean Service publishes and periodically updates nautical charts and a series of regional books called U.S. Coast Pilots. These are basic references on regional environmental conditions, navigation hazards, and rules. In U.S. waters, captains of ships greater than 1,200 gross tons (1,088 metric tons) are required to carry Coast Pilots. Information contained in the Coast Pilots covering the entire eastern United States has been updated to include information on the status of right whales, the times and areas where they occur, the threats posed to whales by ships, and advice on measures

mariners might take to avoid hitting right whales. Also, updated information regarding right whale critical habitat and regulations about approaching right whales are published on nautical charts when they are re-printed.

Educational Materials and Outreach - A number of agencies and organizations have collaborated on developing brochures, pamphlets, and informational papers to educate mariners about the vulnerability of right whales to ship strikes. We have published magazine articles directed to the shipping industry. Also, as noted above, a video on this subject was prepared and is being distributed to the shipping industry. The SEIT and NEIT are developing a comprehensive education and outreach strategy and have played a key role in past education and outreach efforts. These efforts include providing training at mariner academies and local marinas.

Boston Harbor Ship Routing Measures - Part of NOAA's SSRS includes consideration of ship traffic routing measures, including shifting the port of Boston's Traffic Separation Scheme (TSS). In 2006, NOAA developed a proposal that was submitted by the USCG on behalf of the U.S. Government to the IMO to narrow and re-align the northern leg of the Boston TSS 12 degrees to the north to redirect shipping traffic through areas with lower densities of right whales and other baleen species. The shift is expected to significantly reduce the risk of ship strikes for both right whales and other baleen whale species. The IMO endorsed the proposal in December 2006. The United States expects to implement the change by July 2007.

Canadian Ship Routing Measures - In July 2003, with approval from the IMO, Canada moved shipping lanes in the Bay of Fundy four nautical miles (7.4 km) to the east to protect the feeding whales from ship collisions. During summer and early fall, right whales aggregate to feed in the Bay of Fundy, between New Brunswick and Nova Scotia, Canada. During this time the whales are exposed to heavy vessel traffic in major shipping channels that pass through the area.

Fishing Gear Entanglement

Death and serious injury resulting from entanglement in fishing gear are significant factors causing the North Atlantic right whale to be in danger of extinction throughout its range. Under the MMPA, we are required to develop a List of Fisheries (LOF) that classifies all U.S. commercial fisheries into one of three categories based on the level of marine mammal deaths and serious injuries that occur incidental to the fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

The Atlantic Large Whale Take Reduction Plan - Numerous actions and activities have been implemented to reduce the danger posed by gear entanglement to the survival and recovery of the North Atlantic right whale. Under the 1994 amendments to the MMPA, we are required to establish take reduction teams (TRT) to develop and implement take reduction plans (TRP). The principle goal of the TRT process is to reduce the levels of mortality and serious injury of strategic stocks of marine mammals in Category I and II fisheries (i.e., those with frequent or occasional mortality and serious injury of marine mammals). In general, the purpose of the TRT is to provide recommendations and assist us in developing management measures as part of the take reduction planning process. Take reduction teams are composed of representatives from the fishing industry, fishery management councils, state and Federal resource management agencies, the scientific community, and conservation organizations. After a plan is implemented, the TRT provides us with recommendations on implementation activities, feedback on the effectiveness of current management measures, and strategies for modifying the plan as necessary.

We, with the assistance of the ALWTRT, developed the ALWTRP to reduce the level of serious injury and mortality of three strategic stocks of large whales, including North Atlantic right whales in commercial gillnet and trap/pot fisheries. In general, the ALWTRP consists of a combination of regulatory and non-regulatory programs, including broad gear modifications, time-area closures, expanded disentanglement efforts, extensive outreach efforts in key areas, gear research, and an expanded right whale surveillance program to supplement the Mandatory Ship Reporting System.

Since its implementation in 1997, the ALWTRP has been modified on several occasions to address the serious injury and mortality of large whales in gillnet and lobster trap/pot gear. Recent amendments to the ALWTRP include restrictions to the Southeast Atlantic gillnet fishery (67 FR 59471, September 23, 2002; 68 FR 19464, April 21, 2003). Other amendments to the ALWTRP include additional gear modifications for lobster trap/pot gear in particular management areas and changes to the lobster trap/pot and gillnet take reduction technology lists (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002).

In addition, a Seasonal Area Management (SAM) program was implemented (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), which identified two management areas based on annual predictable aggregations of right whales. The SAM program also requires gear modifications for lobster trap/pot and anchored gillnet gear in these areas on a seasonal basis.

A Dynamic Area Management (DAM) program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002) was also implemented to protect unexpected aggregations of right whales that met an appropriate trigger by temporarily restricting lobster trap/pot and anchored gillnet fishing in a designated DAM area. Subsequent to the introduction of the DAM program, gear modifications determined to sufficiently reduce the risk of entanglement to right whales and, therefore, deemed acceptable for fishing in DAM zones were implemented (68 FR 10195, March 4, 2003; 68 FR 51195, August 26, 2003).

We reconvened the ALWTRT in 2003 to help evaluate the ALWTRP and discuss additional modifications necessary to meet the goals of the MMPA and the ESA. Particular emphasis was placed on those options designed to reduce the potential for entanglements and minimize adverse impacts if entanglements occur. On June 30, 2003, we published a NOI to prepare an Environmental Impact Statement (EIS) that would analyze the impacts of alternatives for amending the ALWTRP (68 FR 38676). On June 21, 2005, we also published a proposed rule (70 FR 35894) that discussed how modifications to the ALWTRP would be implemented.

Disentanglement Efforts - The 1991 right whale recovery plan called for establishment of a marine mammal disentanglement program. We established a team of scientists from the Center for Coastal Studies and the New England Aquarium to respond to all marine mammal entanglements, with an emphasis on right whale and humpback whale entanglements. The current disentanglement effort consists of one primary team and basic field support in the Bay of Fundy, Gulf of Maine, the mid-Atlantic, and Georgia/Florida. The program covers nearshore disentanglement events along the eastern seaboard, though the team can be deployed in some offshore locations.

There are, however, limitations; for example, the northern Gulf of Maine/Bay of Fundy field stations are operational only when biologists are conducting seasonal whale research, and, even then, disentanglement response relies on the timely transfer of the team and its equipment to the entanglement site. In the southeast United States, trained biologists are available to assist, and disentanglement equipment caches have been established at key locations.

Coordination of Federal Agency Recovery Activities under the ESA

Under section 7(a)(1) of the ESA all Federal agencies, in consultation with and with the assistance of the Secretary, must use their authorities in the furtherance of the ESA by carrying out programs for the conservation of endangered and threatened species listed pursuant to section 4 of the ESA. Under Section 7(a)(2) of the ESA, all Federal agencies must ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of endangered or threatened species or destroy or adversely modify designated critical habitat. These agencies must consult with us on any action that may affect listed species or critical habitat for species under our jurisdiction (including right whales). As a result of these consultations, we issue either a letter of concurrence that the activity is not likely to adversely affect a species or critical habitat, or a Biological Opinion for activities likely to adversely affect a species or critical habitat. A Biological Opinion evaluates whether the activity is likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat and, if so, provides reasonable and prudent alternatives to the activity. In those cases where we conclude that an action (or implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species is not likely to jeopardize the continued existence of listed species, we specify reasonable and prudent measures necessary and appropriate to minimize effects of the action on the species of concern.

We have consulted under section 7(a)(2) of the ESA with the ACOE, USCG, and the U.S. Navy on several occasions for a variety of activities. We have also conducted consultations on our fishery management plans.

Canadian Recovery Efforts

In 2000, the Canadian Department of Fisheries and Oceans published a recovery plan for the North Atlantic right whale (*E. glacialis*). The recovery plan proposes five broad recovery strategies for the North Atlantic right whale: (1) reduction of vessel collisions; (2) reduction of the impacts of encounters with fishing gear; (3) reduction of disturbance from human activities; (4) reduction of exposure to contaminants and habitat degradation; and (5) population monitoring and research.

Despite ongoing conservation efforts, the North Atlantic right whale remains in danger of extinction throughout its range.

Proposed Listing Determination

The best available scientific and commercial data supports the classification of right whales in the North Atlantic as a separate species under the ESA. Based on the review of the status of this species and the section 4(a)(1) factors (see above), and after taking into account any ongoing conservation efforts to protect the species, we conclude that the North Atlantic right whale is in danger of extinction throughout its range because of the following factors:

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, North Atlantic right whale populations were severely depleted by commercial whaling. While North Atlantic right whales have been protected since 1931 under the Convention for the Regulation of Whaling and more recently by the IWC (circa 1949) and in U.S. waters under the MMPA (1972) and the ESA (1973), the North Atlantic right whale is in danger of extinction throughout its range because of past whaling and has not exhibited signs of recovery from the effects of commercial whaling.

The Inadequacy of Existing Regulatory Mechanisms

While regulatory mechanisms have provided increased protection to right whales in the North Atlantic, human activities still result in serious injuries and mortalities of right whales. The inadequacy of existing regulatory mechanisms is a factor that places the North Atlantic right whale in danger of extinction throughout its range.

Other Natural or Manmade Factors Affecting Its Continued Existence

The most significant factor currently placing the North Atlantic right whale in danger of extinction remains human-related mortality, most notably, ship collisions and entanglement in fishing gear. The available evidence strongly suggests that the western population of North Atlantic right whale cannot sustain the number of deaths that result from ship strikes and fishing gear interactions. If the impact of these activities continue at current rates, it is likely to result in the extirpation of the western population of North Atlantic right whales. Given the low population size of North Atlantic right whales in the eastern Atlantic Ocean, the extirpation of right whales in the western Atlantic Ocean would render the entire species effectively extinct. No natural factors are known to be threatening the continued existence of the North Atlantic right whale at this time.

Conclusion

Based on an analysis of the best scientific and commercial data available, the North Atlantic right whale is a separate species, *E. glacialis*. There is reason for serious concern about the future of the North Atlantic right whale. Due to the continued anthropogenic factors affecting the survival of the species, and the whale's life history, the North Atlantic right whale is in danger of extinction throughout its range. Because the right whale is a long-lived species, extinction may not occur in the immediate future, but the possibility of biological extinction in the next century is very real. Based on an analysis of the best scientific and commercial data available and after taking into consideration current population trends and abundance, demographic risk factors affecting the continued survival of the species, and ongoing conservation efforts, it is clear that the North Atlantic right whale is in danger of extinction throughout its range and because of: (1) overutilization for commercial, recreational scientific, or educational purposes; (2) the inadequacy of existing regulatory mechanisms; and (3) other natural and manmade factors affecting it continued existence.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Sections 7(a)(2) and (4) of the ESA require Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to destroy or adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its

critical habitat, the responsible Federal agency must enter into consultation with us. Examples of Federal actions that may affect the North Atlantic right whale include coastal development, oil and gas development, seismic exploration, point and non-point source discharge of contaminants, contaminated waste disposal, water quality standards, emerging chemical contaminant practices, vessel operations and noise level standards, and fishery management practices.

Sections 10(a)(1)(A) and (B) of the ESA authorize us to grant exceptions to the ESA's Section 9 ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets North Atlantic right whales. Under section 10(a)(1)(B), the Secretary may permit takings otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, we and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of our ESA listing on proposed and ongoing activities within the species' range. We will identify, to the extent known at the time of the final rule, specific activities that will be considered likely to result in violation of section 9, as well as activities that will not be considered likely to result in violation. Activities that we believe could result in violation of section 9 prohibitions against ''take'' of the North Atlantic right whale include, but are not limited to, the following: (1) Operating vessels in a manner that results in ship strikes or disrupts foraging, resting, or care for young or results in noise levels that disrupt foraging, communication, resting, or care for young; (2) fishing practices that can result in entanglement when lines, nets, or other gear are placed in the water column; (3) coastal development that adversely affects North Atlantic right whales (e.g., dredging, waste treatment); (4) discharging or dumping toxic chemicals or other pollutants into areas used by North Atlantic right whales; (5) scientific research activities; (6) Land/water use or fishing practices that result in reduced availability of prey species during periods when North Atlantic right whales are present.

We believe, based on the best available information, the following actions will not result in a violation of ESA Section 9: (1) federally funded or approved projects for which ESA section 7 consultation has been completed, and that are conducted in accordance with any terms and conditions we provide in an incidental take statement accompanying a biological opinion; and (2) takes of North Atlantic right whales that have been authorized by NMFS pursuant to section 10 of the ESA.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that we might or might not consider as constituting a take of North Atlantic right whales.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: ''(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of [section 4 of this Act], on which are found those physical or biological features (I) essential to conservation of the species and (II) which 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 in accordance with the provisions of [section 4 of this Act], upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Conservation means to use and the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the maximum extent prudent and determinable, critical habitat shall be designated concurrent with making a determination that a species is an endangered species or threatened species, unless some limited exceptions apply.

In July 2002, we received a petition to revise the current critical habitat designation for right whales in the North Atlantic. On August 28, 2003, we published a determination that the petitioned action was not warranted at that time (68 FR 51758). This notice stated that we would continue to analyze the physical and biological habitat features (PCEs) essential to the conservation of the species. Our Northeast Region and Southeast Region are developing a proposed rule to designate critical habitat for the North Atlantic right whale.

Public Comments Solicited

We are soliciting public comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties on this proposed listing of the North Atlantic right whale (*E. glacialis*) under the ESA as an endangered species throughout its range.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the requirements of the National Environmental Policy Act. (See NOAA Administrative Order 216 6.)

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 proposed 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. 13132 - Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed listing determination. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, we intend to provide this proposed rule to relevant state agencies and invite their comments on it.

References Cited

The status review report of the right whales in the North Atlantic and North Pacific forms the basis for the proposed listing determinations for both the North Atlantic and the North Pacific right whales. This status review report and a complete list of references used in its preparation is available online on our website at *http://www.nero.noaa.gov/* and is available upon request from our Northeast Regional Office in Gloucester, Massachusetts (see **ADDRESSES**).

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 20, 2006.

Samuel D. Rauch III.,

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

For the reasons set out in the preamble, we propose to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. Revise § 224.101(b) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

(b) Marine mammals. Blue whale (*Balaenoptera musculus*); Bowhead whale (*Balaena mysticetus*); Caribbean monk seal (*Monachus tropicalis*); Chinese river dolphin (*Lipotes vexillifer*); Cochito (*Phocoena sinus*); Fin or finback whale (*Balaenoptera physalus*); Hawaiian monk seal (*Monachus schauinslandi*); Humpback whale (*Megaptera novaeangliae*); Indus River dolphin (*Platanista minor*); Mediterranean monk seal (*Monachus monachus*); North Atlantic right whale (*Eubalaena glacialis*); Saimaa seal (*Phoca hispida saimensis*); Sei whale (*Balaenoptera borealis*); Sperm whale (*Physeter catodon*); Western North Pacific (Korean) gray whale (*Eschrichtius robustus*); Steller sea lion, western population, (*Eumetopias jubatus*), which consists of Stellar sea lions from breeding colonies located west of 144[deg] W. longitude.

[FR Doc. E6–22182 Filed 12–26–06; 8:45 am]

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Notices

Federal Register

Vol. 71, No. 248

Wednesday, December 27, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 20, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Performance Reporting System, Management Evaluation.

OMB Control Number: 0584–0010.

Summary of Collection: The purpose of the Performance Reporting System is to ensure that each State agency and project area is operating the Food Stamp Program in accordance with the Act, regulations, and the State agency's Plan of Operation. Section 11 of the Food Stamp Act of 1977, amended, requires State agencies to maintain necessary records to ascertain that the Food Stamp Program is operating in compliance with the Act and regulations and must make these records available to the Food and Nutrition Service (FNS) for inspection.

Need and Use of the Information: FNS will use the information to evaluate state agency operations and to collect information that is necessary to develop solutions to improve the State's administration of Program policy and procedures. Each State agency is required to submit one review schedule every one, two, or three years, depending on the project areas make-up of the state.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 54.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 492,356.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–22095 Filed 12–26–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Kupreanof Timber Harvest Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber and to develop a road management plan for the Central Kupreanof Timber Harvest on the northwest and central part of Kupreanof Island, on the Petersburg Ranger Districts, Tongass National Forest. The proposed action provides for multiple timber sale opportunities and will result in the production of approximately 40 million board feet (mmbf) of timber from approximately 2,025 acres of forested land. Up to 11.1 miles of new forest system road and up to 7.0 miles of temporary road may be necessary for timber harvest. A range of alternatives, responsive to significant issues, will be developed and will include a no action alternative. The existing log transfer facility (LTF) at Little Hamilton in Hamilton Bay would be used. This project is within the Mitkof/Kupreanof biogeographic province. The Record of Decision will disclose whether and where the Forest Supervisor has decided to provide timber harvest units, roads and associated timber harvesting facilities.

DATES: A scoping letter was mailed out in October 2006. Individuals who want to receive a copy of this mailing or who want to be on the project mailing list should contact the Petersburg Ranger District at the address below. The Draft Environmental Impact Statement is projected to be filed with the Environmental Protection Agency (EPA) in the summer of 2007 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are scheduled to be published in late 2007.

ADDRESSES: You may comment on the project in the following ways: Send written comments to the Petersburg Ranger District, Tongass National Forest, Attn: Central Kupreanof Timber Harvest EIS, PO Box 1328, Petersburg, AK 99833, or hand deliver them to the Petersburg Ranger District, 12 N Nordic Drive, Petersburg, Alaska. The FAX number is (907) 772–5995. Send e-mail comments to: *comments-alaska-tongass-petersburg@fs.fed.us* with Central Kupreanof EIS on the subject line. Include your name, address and organization name if you are commenting as a representative.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Patricia Grantham, District Ranger, Petersburg Ranger District, Tongass National Forest, PO Box 1328, Petersburg, AK 99833,

telephone (907) 772–3871, or Tiffany Benna, NEPA Coordinator, Petersburg Ranger District, PO Box 1328, Petersburg, AK 99833, telephone (907) 772–3871.

SUPPLEMENTARY INFORMATION:

Background: The 152,511-acre Central Kupreanof project area is located within Value Comparison Units 426, 427.1, 429, 436 and 438 on Kupreanof Island, on the Petersburg Ranger District of the Tongass National Forest. Portions of two roadless areas, North Kupreanof #211 and South Kupreanof #214, as identified by the Forest Plan and Supplemental Environmental Impact Statement, are located within the project area. The project area includes four small old-growth habitat reserves as designated in the Forest Plan.

There will be no proposed timber harvest in areas of old-growth reserve management prescriptions. However, roads may be proposed through old-growth reserves to access suitable and available forestland outside the reserves. A Forest Plan amendment would be required if a decision is made to modify the small old-growth habitat reserve boundaries associated with this project.

Purpose and Need for Action

The purpose and need for the proposed action responds to the goals and objectives identified by the Tongass Land Management Plan, as amended, and helps move the area toward the desired conditions as described in the Forest Plan. The Forest Supervisor is the Responsible Official for this action and will decide whether or not to harvest timber from the Central Kupreanof TImber Harvest project area, and if so, how this timber will be harvested. The decision will be based on the information that is disclosed in the environmental impact statement. The responsible official will consider comments, responses, the disclosure of environmental consequences, and applicable laws, regulations and policies in making the decision and will state that rationale in the Record of Decision.

The Forest Plan goals and objectives applicable to the Central Kupreanof Timber Harvest include:

- Manage the timber resource for production of saw timber and other wood products from suitable timber lands made available for timber harvest, on an even-flow, long-term sustained yield basis and in an economically efficient manner.
- Seek to provide a timber supply sufficient to meet the annual market demand for Tongass National Forest timber and the market demand for the planning cycle.
- Provide a diversity of opportunities for resource uses that contribute to the local and regional economies of Southeast Alaska.

Proposed Action: The Central Kupreanof Timber Harvest proposes harvest of approximately 40 million board feet (mmbf) of timber from approximately 2,025 acres of forested land. Up to 11.1 miles of new forest system road and up to 7.0 miles of temporary road may be necessary for timber harvest. The existing log transfer facility (LTF) at Little Hamilton in Hamilton Bay would be used.

Public Participation: This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Public participation has been an integral component of the study process and will continue to be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Tribal Governments and corporations, Federal, State, and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. Written scoping comments were solicited through an informal scoping package that was sent to the project mailing list on October 6, 2006. The scoping package will be available at open houses in Petersburg, Alaska and Kake, Alaska. The scoping process includes: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; (3) elimination of non-significant issues or those which have been covered by a previous environmental review.

Preliminary Issues: Preliminary issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: subsistence, road management, and timber sale economics.

Based on results of scoping and the resource capabilities within the project area, alternative, including a ''no action'' alternative, will be developed for the Draft Environmental Impact Statement. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will be conducted, if necessary, during the comment period on the Draft Environmental Impact Statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A Draft Environmental Impact Statement will be prepared for comment. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Comment submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by

showing how the Freedom of Information Act of (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation include the following:

1. U.S. Army Corps of Engineers.

—Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;

—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency.

—General National Pollutant Discharge Elimination System Permit for Log Transfer Facilities in Alaska;

—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources.

—Tideland Permit and Lease or Easement;

—Certification of Compliance with Alaska Water Quality Standards (401 Certification) Chapter 20.

4. Office of Project Management & Permitting (DNR).

—Coastal Zone Consistency Determination concurrence.

5. State of Alaska, Department of Environmental Conservation.

—Solid Waste Disposal Permit;

Responsible Official: Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901.

Nature of Decision To Be Made: The Forest Supervisor is the Responsible Official for this action and will decide whether or not to harvest timber from the Central Kupreanof Timber Harvest project area, and if so, the amount, location and method how this timber will be harvested. The decision will be based on the information that is disclosed in the environmental impact statement. The responsible official will consider comments, responses, the disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and will state that rationale in the Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 12, 2006.

Charley Streuli,

Acting Forest Supervisor.

[FR Doc. 06–9847 Filed 12–26–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for rade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD

[November 21, 2006 Through December 20, 2006]

Firm	Address	Date petition accepted	Product
E.F Young Jr. Manufacturing, Inc.	425 26th Avenue, Meridian, MS 39301.	11/22/2006	Ethnic hair care products and related toiletries
Elements/Jill Schwartz, Inc..	343 Main Street, ≤Great Barrington, MA 01230.	11/28/2006	Decorative home accessories
Woodcraft, Inc	105 Austin Road, Morristown, TN 37816.	11/28/2006	Edged glued panels, laminated wood squares and cut-to-specification blanks for the furniture industry
Reynolds & Reynolds, Inc.	521 E. Fourth Street, Bethlehem, PA 18015.	12/6/2006	Electronic emergency energy equipment for elevators
Sabel Engineering Corporation.	P.O. Box 1223–20366, E. 8th Street, Sonoma, CA 95476.	12/6/2006	Packaging machinery (case packaging): targeted to food, dairy, pharmaceutical, and printing and binding industries. Bottom, in line loading and carousel loading versions.
Anco International, Inc.	19851 Cajon Blvd., San Bernardino, CA 92407.	12/6/2006	Hose couplings and support equipment
Mid-Atlantic Finishing Corporation.	4656 Addison Road, Capitol Heights, MD 20743.	12/7/2006	Articles of copper and metal finishing products
Syracuse China Company.	208 Court Street, Syracuse, NY 13208.	12/11/2006	High quality china dinnerware

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD—Continued

[November 21, 2006 Through December 20, 2006]

Firm	Address	Date petition accepted	Product
St. Clair Plastics.	30855 Teton Place, Chesterfield Township, MI 40847.	12/13/2006	Plastic injection molded parts for the auto industry
Fotel, Inc	1125 E. St. Charles Rd., Suite 100, Lombard, IL 60148.	12/18/2006	Photographic masks, high precision plates containing microscopic images of electronic circuits

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 20, 2006.

William P. Kittredge, Program Officer for TAA.

[FR Doc. E6–22114 Filed 12–26–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 27, 2006.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2007.

Antidumping Duty Proceedings	Period to be Reviewed
MEXICO: Circular Welded Non–Alloy Steel Pipe and Tube.	
A–201–805	11/1/05 - 10/31/06
Mueller Comercial de Mexico, S. de R.L. de C.V..	
NETHERLANDS: Certain Hot–Rolled Carbon Steel Flat Products.	
A–421–807	11/1/05 - 10/31/06
Corus Staal B.V..	
ROMANIA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–485–806	11/1/05 - 10/31/06
Mittal Steel Galati S.A. (formerly known as S.C. Sidex S.A., including Sidex O.O. Trading S.A.).	
THAILAND: Certain Hot–Rolled Carbon Steel Flat Products.	
A–549–817	11/1/05 - 10/31/06
Nakornthai Strip Mill Public Company Ltd..	
G Steel Public Company Limited.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hot–Rolled Carbon Steel Flat Products[1].	
A–570–865	11/1/05 - 10/31/06
Anshan Iron & Steel Group Corp..	
Angang Group International Trade Corp..	
Angang New Iron and Steel Co..	
Angang New Steel Co., Ltd..	
Angang Group Hong Kong Co., Ltd.	
Shanghai Baosteel International Economic & Trading Co., Ltd..	
Baoshan Iron and Steel Co., Ltd..	
Baosteel Group Corporation.	
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic[2].	
A–570–831	11/1/05 - 10/31/06
Anqiu Friend Food Co., Ltd..	
APS Qindao.	
Fujian Meitan Import & Export Xiamen Corporation.	
Golden Bridge International, Inc..	
Henan Weite Industrial Co., Ltd..	

Antidumping Duty Proceedings	Period to be Reviewed
Heze Ever–Best International Trade Co., Ltd. (f/k/a Shandong Heze. International Trade and Developing Company).	
Hongchang Fruits & Vegetable Products.	
Huaiyang Hongda Dehydrated Vegetable Company.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company.	
Jining Haijiang Trading Co., Ltd..	
Jining Solar Summit Trade Co., Ltd..	
Jinxiang Shanyang Freezing Storage Co., Ltd..	
Jinan Farmlady Trading Co., Ltd..	
Jinan Yipin Corporation, Ltd..	
Jining Trans–High Trading Co., Ltd..	
Jinxian County Huaguang Food Import & Export Co., Ltd..	
Laiwu Hongyang Trading Company Ltd..	
Linshu Dading Private Agricultural Products Co., Ltd..	
Omni Decor China Ltd..	
Pizhou Guangda Import and Export Co., Ltd..	
Qingdao Bedow Foodstuffs Co., Ltd..	
Qingdao Camel Trading Co., Ltd..	
Qingdao H&T Food Co., Ltd..	
Qingdao Potenza Import & Export Co., Ltd..	
Qingdao Xintianfeng Foods Co., Ltd. (QXF).	
Qingdao Tiantaixing Foods Co., Ltd. (QTF).	
Qingdao Titan Shipping LLC.	
Qingdao Saturn International Trade Co., Ltd..	
Qingdao Shiboliang Food Co., Ltd..	
Qufu Dongbao Import & Export Trade Co., Ltd..	
Rizhao Xingda Foodstuffs Co., Ltd..	
Shandong Chengshun Farm Produce Trading Co., Ltd..	
Shandong Dongsheng Eastsun Foods Co., Ltd..	
Shandong Garlic Company.	
Shandong Longtai Fruits and Vegetables Co., Ltd..	
Shandong Wonderland Organic Food Co., Ltd..	
Shanghai Ba–Shi Yuexin Logistics Development.	
Shanghai Ever Rich Trade Company.	
Shanghai LJ International Trading Co., Ltd..	
Shanghai McCormick Foods Co., Ltd..	
Shenzhen Fanhui Import & Export Co., Ltd..	
Shenzhen Xinboda Industrial Co., Ltd..	
Sunny Import & Export Limited.	
T&S International, LLC.	
Taian Fook Huat Tong Kee Pte. Ltd..	
Taiyan Ziyang Food Co., Ltd..	
Weifang Hongqiao International Logistic Co., Ltd..	
Weifang Shennong Foodstuff Co., Ltd..	
Xiang Cheng Sunny Foodstuff Factory.	
XuZhou Simple Garlic Industry Co., Ltd..	
Zhangqui Qingyuan Vegetable Co., Ltd..	
Zhengzhou Harmoni Spice Co., Ltd..	
Countervailing Duty Proceedings.	
None..	
Suspension Agreements.	
None..	

[1] If one of the above-named companies does not qualify for a separate rate, all other exporters of certain hot-rolled carbon steel flat products from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part

[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of Fresh Garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 19, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–22177 Filed 12–26–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation; Final Modification

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Modification; Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation.

SUMMARY: The Department of Commerce is modifying its methodology in antidumping investigations with respect to the calculation of the weighted–average dumping margin. This final modification is necessary to implement the recommendations of the World Trade Organization Dispute Settlement Body. Under this final modification, the Department will no longer make average–to-average comparisons in investigations without providing offsets for non–dumped comparisons. The schedule for implementing this change is set forth in the ''Timetable'' section, below.

DATES: The effective date of this final modification is January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Barnett (202) 482–2866, William Kovatch (202) 482–5052, or Michael Rill at (202) 482–3058.

SUPPLEMENTARY INFORMATION:

Background

This change in methodology concerns the calculation of the weighted–average dumping margin in investigations using the average–to-average comparison methodology.

Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) provides:

> Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction to transaction basis.

Section 777A(d)(1)(A) of the Tariff Act of 1930, as amended (the Act), implements this provision of the Antidumping Agreement, providing that normally in an antidumping investigation, the Department may determine whether the subject merchandise is being sold at less than fair value through one of two options. The Department may compare a weighted–average of normal value to a weighted–average of the export or constructed export prices of comparable merchandise, known as the average–to-average comparison methodology. The Department also may compare normal values of individual transactions to the export prices or constructed export prices of individual transactions for comparable merchandise, known as the transaction–to-transaction comparison methodology.[1] The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103–316, Vol. 1 at 842–43 (1994), reprinted in U.S.C.C.A.N. 3773 (SAA), and the Department's regulations state that the Department normally will use the average–to-average comparison methodology in an investigation. 19 CFR 351.414(c)(1).

When the Department applies the average–to-average methodology during an investigation, the Department usually divides the export transactions into groups by model and level of trade (''averaging groups''). 19 CFR 351.414(d)(2). The Department then compares an average of the export prices or constructed export price of the transactions within one averaging group to the weighted–average of normal values of such sales. 19 CFR 351.414(d)(1).

Prior to this modification, when aggregating the results of the averaging groups in order to determine the weighted–average dumping margin, the Department did not permit the results of averaging groups for which the weighted–average export price or constructed export price exceeds the normal value to offset the results of averaging groups for which the weighted–average export price or constructed export price is less than the weighted–average normal value.

In October 2005, a World Trade Organization (WTO) dispute settlement panel issued a report in *United States - Laws, Regulations and Methodology for Calculating Dumping Margins (''Zeroing'') (WT/DS294) (''US Zeroing (EC)'')*. The panel found, among other things, that the Department's denial of offsets when using the average–to-average comparison methodology in certain antidumping investigations challenged by the European Communities (''EC'') was inconsistent with Article 2.4.2 of the Antidumping Agreement.[2] The United States did not appeal this aspect of the panel's report.

On March 6, 2006, the Department published a notice in the **Federal Register** (71 FR 11189) proposing that it would no longer make average–to-average comparisons in investigations without providing offsets for non–dumped comparisons. In that notice, the Department solicited comments and rebuttal comments on its proposal and appropriate methodologies to be applied in future antidumping investigations in light of the panel's report in *US - Zeroing (EC)*. On April 25, 2006, the Department extended the period of time for the submission of rebuttal comments (71 FR 23898). The Department received numerous comments and rebuttal comments submitted pursuant to these notices, as discussed below.

Final Modification Concerning the Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation

After considering all of the comments submitted, the Department is adopting this final modification concerning the calculation of the weighted–average dumping margin. The Department will no longer make average–to-average comparisons in investigations without providing offsets for non–dumped comparisons.

Analysis of Public Comments

Numerous comments and rebuttal comments were submitted in response to the Proposed Modification. We have carefully considered each of the comments submitted. We have grouped and summarized the comments below according to common themes and responded accordingly.

[1] Section 777A(d)(1)(B) of the Act also provides for an exceptional methodology to be used in antidumping investigations. The Department may compare a weighted-average normal value to the export prices or constructed export prices of individual transactions if there is a pattern of export prices or constructed export prices that differs significantly among purchasers, regions or periods of time, and the Department explains why such differences cannot be taken into account using one of the methods described in section 777A(d)(1)(A). This is known as the targeted dumping or average-to-transaction methodology.

[2] Panel Report, *United States - Laws, Regulations and Methodology for Calculating Dumping Margins (''Zeroing'')*, WT/DS294/R, para. 7.32, circulated October 31, 2005.

Whether to Adopt the Department's Proposal

Some commentors welcomed the Department's proposal to permit offsets when making average–to-average comparisons, which would bring the Department's methodology into conformity with U.S. international obligations.

Other commentors argue that the denial of offsets creates more accurate results, because it combats the phenomenon of masked dumping. According to these commentors, masked dumping occurs when import transactions which are sold at less than normal value are masked by those sold at prices greater than normal value. The U.S. Court of Appeals for the Federal Circuit, these commentors note, has upheld the denial of offsets on these grounds. These commentors argue that if the Department is to grant offsets, it should do so on the narrowest grounds possible.

A few commentors argue that the Department cannot provide offsets without a statutory change. These commentors contend that the denial of offsets is required by the statute, because otherwise one of the permitted comparison methodologies would become redundant. According to these commentors, the statute permits the use of the average–to-average comparison methodology, the transaction–to-transaction comparison methodology, and, in some circumstances, the average–to-transaction comparison methodology. If offsets were for non–dumped sales are provided, the results of the average–to-average and the average–to-transaction comparison methodologies would be mathematically equivalent. To avoid this outcome, the Department must interpret the statute to require the denial of offsets.

Other commentors rebut this argument, contending that the use of the average–to-transaction comparison methodology will not necessarily be mathematically equivalent to the use of the average–to-average comparison methodology.

Department's Position: The Department is adopting as its final modification its proposal that it will no longer make average–to-average comparisons in investigations without providing offsets for non–dumped comparisons. The Department is doing so in response to the panel's report in *US - Zeroing (EC)*, following the procedures set forth in section 123 of the URAA.

While some commentors argue that this modification requires a change in statute, the Department disagrees. Specifically, the courts have consistently held that the denial of offsets is not required by statute, but rather is a result of an interpretation of the statute. *See Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347 (Fed. Cir. 2005), *cert. denied*, 126 S. Ct. 1023 (2006); *Timken Co. v. United States*, 354 F.3d 1334, 1341–42 (Fed. Cir.), *cert. denied sub nom., Koyo Seiko Co. v. United States*, 543 U.S. 976 (2004). *See also Paul Muller Industrie GmbH v. United States*, 435 F. Supp. 2d 1241, 1245 (CIT 2006) (stating new argument alone does not defeat binding precedent).

While we recognize that the Department may not interpret or apply the statute in a way so as to nullify a statutory provision, the Department is not making such an interpretation. This final modification is addressing only the calculation of the weighted–average dumping margin in an investigation using the average–to-average comparison methodology and not the average–to-transaction comparison methodology. The argument that the targeted dumping methodology would be nullified presumes that offsets would be provided under that methodology and that certain other methodological choices would be made. To date, the Department has not used the targeted dumping comparison methodology, nor made any determination as to the issue of offsets pursuant to that methodology. Consequently, to the extent appropriate, the Department will consider the nullification argument when it applies the targeted dumping methodology.

Whether the Average–to-Average Comparison Methodology Should Continue to be the Department's Preferred Methodology in Investigations

Some commentors argue that the average–to-average comparison methodology should continue to be the preferred methodology for use in an antidumping investigation. This would be consistent with the SAA and the Department's own regulations. The use of the average–to-average comparison methodology simplifies the calculation of the weighted–average dumping margin, because it involves much simpler matching of export prices and normal values than would be involved if the transaction–to-transaction comparison methodology were used. According to these commentors, the average–to-average comparison methodology yields more predictable results because it is less sensitive to aberrational sales and price fluctuations due to market forces. The average–to-average comparison methodology is appropriate to use when there are a large number of sales, whereas 19 CFR 351.414(c)(1) states that the transaction–to-transaction comparison methodology is more appropriate for investigations involving few sales and the merchandise sold in both markets is identical, very similar, or custom–made.

Some of these commentors argued that even if the Department were to use the transaction–to-transaction comparison methodology, the application of that methodology should include the provisions of offsets. According to these commentors, the denial of offsets when using transaction–to-transaction comparison methodology results in an even more unbalanced calculation than the denial of offsets when using the average–to-average comparison methodology because the transaction–to-transaction comparisons would eliminate any impact of non–dumped sales.

Other commentors argue that the transaction–to-transaction comparison methodology with the denial of offsets should become the Department's standard methodology in antidumping investigations. These commentors note that the use of the transaction–to-transaction comparison methodology is permitted by statute. The Department has used this methodology recently in the Section 129 determination in *Certain Softwood Lumber Products from Canada*, and a WTO panel upheld its application. Any concerns over the complexity of applying the transaction–to-transaction comparison methodology are alleviated by technological advances that ease the burden of matching a single normal value transaction to a single export transaction.

Some commentors argue that the Department itself has not proposed any change in methodology other than providing for offsets when engaging in average–to-average comparisons. According to these commentors, the Department cannot adopt a new comparison methodology without fulfilling the applicable notice and comment requirements of both section 123(g) of the URAA and the Administrative Procedures Act.

Department's Position: While the statute itself does not provide for a preference between the use of the average–to-average and transaction–to-transaction comparison methodologies in an antidumping investigation, the Department is mindful of the preference expressed in the SAA and in the Department's regulations for the use of average–to-average comparisons in investigations. *See* SAA at 842–43; 19 CFR 351.414(c)(1). Thus, we agree with those commentors that indicated that altering this preference would, at a

minimum, require a change in regulation. Although the Department is not proposing a change of regulation at this time, the transaction–to-transaction methodology remains available to be used in appropriate situations.

Providing Offsets in All Types of Proceedings

Several commentors argue that the Department should provide offsets, not only when using the average–to-average comparison methodology in an antidumping investigation, but in all types of antidumping proceedings. These commentors contend that the denial of offsets violates overarching principles of fairness embodied in the WTO agreements. The distortion and inherent bias stemming from the denial of offsets apply equally to administrative reviews as they do to investigations. Moreover, this change would be simple to execute, as it would only require the deletion of a single line from the Department's standard computer programs.

Other commentors note that the finding of the WTO panel was narrow. The panel did not find that the denial of offsets in administrative reviews was inconsistent with the Antidumping Agreement, only that the Department's denial of offsets in certain investigations, when using the average–to-average comparison methodology, was inconsistent with the Antidumping Agreement. Moreover, if the Department were to provide offsets in other proceedings, it would need to provide a specific proposal and solicit further comments.

One commentor urges the Department to propose regulations to implement the targeted dumping provision of the Act. These regulations should specify that the Department will act whenever an interested party has demonstrated that targeted dumping is occurring, and should establish a threshold of when the price differences are significant enough to trigger the targeted dumping analysis.

Department's Position: In its March 6, 2006 **Federal Register** notice, the Department proposed only that it would no longer make average–to-average comparisons in investigations without providing offsets for non–dumped comparisons. The Department made no proposals with respect to any other comparison methodology or any other segment of an antidumping proceeding, and thus declines to adopt any such modifications concerning those other methodologies in this proceeding.

Adopting a Change During the Negotiation of the Doha Round

Several commentors argue that the Department should not adopt a change with respect to offsets while the Doha Round of negotiations is still underway. According to these commentors, Congress gave explicit negotiation instructions to defend the denial of offsets. Thus, the Department should not adopt a change and provide for offsets while the issue is still being negotiated.

Department's Position: The Department is conducting this exercise pursuant to the procedures specifically established by section 123 of the URAA. This exercise is necessary to implement the panel report in *US - Zeroing (EC)* within the reasonable period of time negotiated by the United States. Notwithstanding this determination, the Department will continue to work closely with United States Trade Representative to pursue the negotiating objectives of the United States in the Doha Round.

Whether the Department Should Change Its Methodology as it Applies to Constructed Value and Non–Market Economies

One commentor argues that the WTO panel report did not address the denial of offsets when the Department compares constructed value to export price, or when the Department engages in a non–market economy analysis. Accordingly, the Department should continue to deny offsets in these two situations.

Department's Position: The Department has declined to adopt this suggestion. As stated above, when the Department engages in an average–to-average comparison, it divides the sales of the subject merchandise into ''averaging groups.'' These averaging groups usually consist of identical or virtually identical merchandise sold at the same level of trade. 19 CFR 351.414(d)(2). The Department then calculates a weighted–average of the export prices or constructed export prices of the sales included in the averaging group, and compares that to the weighted–average of the normal values of such sales. 19 CFR 351.414(d)(1).

The use of constructed value and the factors of production methodology concerns the manner by which the Department calculates the average normal value in the average–to-average comparisons.

For example, the Department bases its calculation of normal value on constructed value ''where home market sales of the merchandise in question are either nonexistent, in inadequate numbers, or inappropriate to serve as a benchmark for a fair price, such as where sales are disregarded because they are sold at below–cost prices.'' SAA at 839. Constructed value is calculated on a control number–specific basis, and compared to the average export price of the corresponding averaging group.

Similarly, pursuant to section 773(c) of the Act, when an investigation involves a non–market economy country, the Department calculates normal value based on the factors of production methodology. Under this methodology, in an investigation the Department calculates a control number–specific normal value and compares it to the average export price for the corresponding averaging group.

Whether normal value is based on home market sales, third country sales, constructed value, or the factors of production methodology does not alter the manner in which the comparison is made between the weighted–average export price and the weighted–average normal value or the manner in which those results are aggregated in an investigation. Thus, if the Department is to provide offsets for non–dumped sales when utilizing the average–to-average comparison methodology in an antidumping investigation, there is no basis for treating investigations involving constructed value or the factors of production methodology that also utilize the average–to-average comparison methodology in a different manner.

Whether Implementation Should Apply to On–Going Investigations

Some commentors argue that if the Department provides offsets when using the average–to-average comparison methodology during an antidumping investigation, this change should apply to all pending proceedings. These commentors argue that when a U.S. court announces a new interpretation of a statute it would apply to all pending cases. Failing to do so would create unequal justice, and, according to these commentors, would be a deliberate and purposeful violation of the WTO Antidumping Agreement.

Other commentors note that there is no precedent for a retroactive implementation of a WTO dispute settlement report. Rather, sections 123 and 129 of the URAA, which govern implementation, set forth a specific effective date.

Department's Position: In the March 6, 2006 **Federal Register** notice, the Department stated:

Any changes in methodology will be applied in all investigations initiated on the basis of petitions received on or after the first day of the month following the date of publication of the Department's final notice of the new weighted average dumping margin calculation methodology.

71 FR at 11189.

Section 123(g)(2) of the URAA provides that a final modification may not go into effect before the end of the 60-day period after the consultations described in section 123(g)(1)(E) begin, unless the President determines that an earlier effective date is in the national interest. While the statute establishes the manner of determining the effective date of any final modification adopted pursuant to section 123, the statute does not specify whether the final modification must apply only to new segments of proceedings initiated after the effective date, or may apply to any segments pending as of the effective date.

The SAA does not provide any more specific guidance regarding the application of any final modification adopted pursuant to section 123. The SAA states that section 129 determinations will apply only with respect to entries occurring on or after the effective date. SAA at 1026. However, the SAA makes no such statement with respect to section 123 modifications. The SAA merely states, ''A final rule may not go into effect before the end of the 60-day consultation period unless the President determines that an earlier date is in the national interest.'' SAA at 1021.

In the prior four section 123 proceedings, the Department has applied the final modification or final rule to segments initiated after the effective date. *See, e.g., Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (applying amended regulations to sunset reviews initiated on or after the effective date); *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125, 37138 (June 23, 2003) (applying new privatization methodology to investigations and reviews initiated on or after the effective date); *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69197 (November 15, 2002) (''*Arm's Length Test*'') (applying new methodology to investigations and reviews initiated on or after the effective date); *Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236 (September 22, 1999). However, on occasion the Department has adopted and applied a change in policy involving a statutory interpretation to all segments pending as of the date of the change. *See, e.g., Basis for Normal Value When Foreign Market Sales Are Below Cost*, Policy Bulletin 98.1 (February 23, 1998); *Treatment of Inventory Carrying Cost in Constructed Value*, Policy Bulletin 94.1 (March 25, 1994).

In the section 123 proceeding concerning the *Arm's Length Test*, the Department found it significant that section 123 uses the term ''go into effect.'' 67 FR at 69196. Thus, the Department noted that section 123 does not preclude applying the change so as to affect entries made prior to the announcement of the change. *Id.*

After careful consideration of the arguments presented by the commentors and of the information needed to implement this change, and weighing the administrative burdens, the Department has determined to apply the final modification adopted through this proceeding to all investigations pending before the Department as of the effective date.

First, in this particular instance, applying this final modification to all investigations pending before the Department will not create any undue administrative burden on the Department. The number of pending antidumping investigations is few (*i.e.* there are seven ongoing antidumping investigations).

Second, applying this change will not require the Department to gather any new information in those investigations.

Third, this announcement of the Department's intention to apply this modification to all pending investigations will not prejudice any of the parties to those proceedings. All of the currently pending investigations were initiated as a result of petitions filed after the date of publication of the Department's proposed modification. Thus, all of the interested parties in each of these investigations had notice of the Department's intention to modify the manner in which it calculates the weighted–average dumping margin when using the average–to-average comparison methodology in investigations. Moreover, even in the most advanced of the on–going investigations, there is sufficient time to permit the parties to comment on the application of this approach prior to the final determination in the investigation. In those investigations in which the Department will have reached a preliminary determination prior to the effective date of this notice, the Department will provide parties with notice and an opportunity to comment on the application of this methodology on the record of the investigation.

Timetable

The effective date of this notice is January 16, 2007, which is sixty days after the date on which the United States Trade Representative and the Department began consultations with the appropriate congressional committees, consistent with section 123(g)(1)(E) of the URAA. This methodology will be used in implementing the findings of the WTO panel in *US - Zeroing (EC)* pursuant to section 129 of the URAA concerning the specific antidumping investigations challenged by the EC in that dispute. The Department will apply this final modification in all current and future antidumping investigations as of the effective date.

Dated: December 20, 2006.

David Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–22178 Filed 12–26–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Restoring America's Travel Brand: A National Strategy to Compete for International Visitors; Request for Information

General Information

Document Type: Special Notice.

Solicitation Number: Reference-Number.

Posted Date: December 27, 2006.

Original Response Date: January 24, 2007.

Requesting Office Address

Department of Commerce, Office of Travel and Tourism Industries (OTTI), 14th & Constitution Avenue, NW, Room 1003, Washington, DC 20230.

Description/Background

In support of competitive goals established by the President of the United States, and in response to the white paper entitled Restoring America's Brand, A National Strategy to Compete for International Visitors, that was recently submitted to the Secretary of Commerce by the U.S. Travel and Tourism Advisory Board (TTAB), the U.S. Department of Commerce (DOC), International Trade Administration (ITA), Office of Travel & Tourism Industries (OTTI), is issuing this

Request for Information (RFI) for assistance by interested government agencies, organizations, and industry businesses. The information requested may include:

- An assessment of, or comment on, the white paper presented by the Travel and Tourism Advisory Board, which can be found at: *http://tinet.ita.doc.gov/TTAB/docs/2006_FINALTTAB_National_Tourism_Strategy.pdf.*
- Respondents are highly encouraged to provide specific comments on the recommendations that are covered in the white paper, organized by the sections:
  - making it easier for people to visit by balancing hospitality with security,
  - asking people to visit the United States through a nationally coordinated marketing program, and
  - demonstrating the value of travel and tourism to the nation's economy.
- In addition, respondents are encouraged to provide comments/observations related to other areas of concern or issues that are not addressed in the white paper, such as:
  - sustainable tourism development,
  - medical tourism,
  - cultural heritage tourism development,
  - technical training/tours for business-to-business development,
  - education exchanges or attendance,
  - public-private partnerships, or
  - infrastructure challenges, to name a few.

Comments will serve in the development of policies and programs to be implemented by the federal government concerning the tourism sector.

The Government encourages both rigorous and creative solutions in response to this RFI.

How to Respond

The Department of Commerce is asking respondents to provide written input concerning any and all recommendations contained within the white paper submitted by the Travel and Tourism Advisory Board and other aspects of travel and tourism that may not be addressed in the white paper.

All responses should be *e-mailed* to either of the following members of the Office of Travel and Tourism Industries: *julie.heizer@mail.doc.gov* or *Cynthia.warshaw@mail.doc.gov*.

Please use reference: 2006 RFI Restoring America's Travel Brand, A National Strategy to Compete for International Visitors in the subject line of all correspondence. Please submit responses by January 19, 2007.

Input provided through this RFI may be representative of the collective opinion from a membership-wide survey of a travel and tourism industry trade association, or it can be submitted as the opinion of a single person. Any opinions or information received that are not specific to travel and tourism related issues will not be considered.

This RFI is issued solely for information and planning purposes and does not constitute a solicitation. All information received in response to this RFI that is marked ''Proprietary'' will be handled accordingly. Responses to the RFI will not be returned. In accordance with FAR 15.201(e), responses to this notice will not be considered an offer and cannot be accepted by the Government to form a binding contract. Interested parties are solely responsible for all expenses associated with responding to this RFI.

Additional information on the Travel and Tourism Advisory Board and the white paper submission may also be found at the Office of Travel & Tourism Industries Web site at: *http://www.tinet.ita.doc.gov*.

Points of Contact

Julie Heizer, Deputy Director, Industry Relations, Phone 202.482.4904, Fax 202.482.2887, E-mail *julie.heizer@mail.doc.gov*

Cynthia Warshaw, International Trade Specialist, Phone 202.482.4601, Fax 202.482.2887, E-mail *Cynthia.warshaw@mail.doc.gov*.

Place of Performance

Address: Washington, DC.
Postal Code: 20230.
Country: United States.

You will find the RFI on the OTTI Web site at: *http://www.tinet.ita.doc.gov/*.

Dated: December 20, 2006.

Helen N. Marano,

Director, Office of Travel & Tourism Industries.

[FR Doc. E6–22098 Filed 12–26–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–6326–45; I.D. 051906D]

RIN 0648–ZB55

Availability of Grant Funds for Fiscal Year 2007

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The NOAA publishes this notice to provide the general public with a consolidated source of program and application information related to its competitive grant and cooperative agreement (CA) award offerings for fiscal year (FY) 2007. This Omnibus notice is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of NOAA''s discretionary funds for its various programs. It should be noted that additional program initiatives unanticipated at the time of the publication of this notice may be announced through subsequent **Federal Register** notices. All announcements will also be available through the Grants.gov website.

DATES: Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section of this notice for each program. The **Federal Register** and Full Funding Opportunity (FFO) notices may be found on the Grants.gov website. The URL for Grants.gov is *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Please contact the person listed within this notice as the information contact under each program.

SUPPLEMENTARY INFORMATION: Applicants must comply with all requirements contained in the FFO announcements for each of the programs listed in this omnibus notice. These FFOs are available at *http://www.grants.gov*.

The list of entries below describe the basic information and requirements for competitive grant/cooperative agreement programs offered by NOAA. These programs are open to any applicant who meets the eligibility criteria provided in each entry. To be considered for an award in a competitive grant/cooperative agreement program, an eligible applicant must submit a complete and responsive application to the appropriate program office. An award is made upon conclusion of the evaluation and selection process for the respective program.

NOAA Project Competitions

This omnibus notice describes funding opportunities for the following NOAA discretionary grant programs:

National Marine Fisheries Service

1. 2007 Hawaii Seafood Program

2. Chesapeake Bay Cooperative Science Program
3. Chesapeake Bay Fisheries Research Program
4. Chesapeake Bay Submerged Aquatic Vegetation Restoration Program
5. Mid-Atlantic Research Set-Aside
6. Proactive Species Conservation Program

National Ocean Service

1. FY 2007 Regional Integrated Ocean Observing System
2. California Bay Watershed Education and Training (B-WET) Program, Adult and Community Watershed Education in the Monterey Bay

National Weather Service

1. Hydrologic Research and Social Science Research in Hydrologic Applications.

Oceanic and Atmospheric Research

1. NOAA's Great Lakes Ecosystem Research

Under Secretary's Associated Office

1. National Ocean Sciences Competition for High School Students
2. Administrative Services for NOAA's Ernest F. Hollings Undergraduate Scholarship Program

NOAA Mission Goals

The mission of the agency is to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. Below is a listing of the program solicitations that generally fall under one or more areas of NOAA's strategic plan, i.e., mission goals. It is imperative that potential applicants tie their proposals to one of the mission goals. Program solicitations are provided from each of the five operating units within NOAA.

NOAA Project Competitions Listed by NOAA Mission Goals

1. Protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

SUMMARY DESCRIPTION: Coastal areas are among the most developed in the Nation. More than half the population lives on less than one-fifth of the land in the contiguous United States. Furthermore, employment in near shore areas is growing three times faster than population. Coastal and marine waters support over 28 million jobs and provide a tourism destination for nearly 90 million Americans a year. The value of the ocean economy to the United States is over $115 billion. The value added annually to the national economy by the commercial and recreational fishing industry alone is over $48 billion. U.S. aquaculture sales total almost $1 billion annually. With its Exclusive Economic Zone of 3.4 million square miles, the United States manages the largest marine territory of any nation in the world. Funded proposals should help achieve the following outcomes:

A. Healthy and productive coastal and marine ecosystems that benefit society; and

B. A well-informed public that acts as a steward of coastal and marine ecosystems.

Program Names:
1. 2007 Hawaii Seafood Program
2. California Bay Watershed Education and Training (B-WET) Program, Adult and Community Watershed Education in the Monterey Bay
3. Chesapeake Bay Fisheries Research Program
4. Chesapeake Bay Cooperative Science Program
5. Chesapeake Bay Submerged Aquatic Vegetation Restoration Program
6. Mid-Atlantic Research Set-Aside
7. NOAA's Great Lakes Ecosystem Research
8. Proactive Species Conservation Program

2. Understand climate variability and change to enhance society's ability to plan and respond.

SUMMARY DESCRIPTION: Climate shapes the environment, natural resources, economies, and social systems that people depend upon worldwide. While humanity has learned to contend with some aspects of climate's natural variability, major climatic events, combined with the stresses of population growth, economic growth, public health concerns, and land-use practices, can impose serious consequences on society. The 1997–98 El Nino, for example, had a $25 billion impact on the U.S. economy — property losses were $2.6 billion and crop losses approached $2 billion. Long-term drought leads to increased and competing demands for fresh water with related effects on terrestrial and marine ecosystems, agricultural productivity, and even the spread of infectious diseases. Decisions about mitigating climate change also can alter economic and social structures on a global scale. We can deliver reliable climate information in useful ways to help minimize risks and maximize opportunities for decisions in agriculture, public policy, natural resources, water and energy use, and public health. We continue to move toward developing a seamless suite of weather and climate products. The Climate Goal addresses predictions on time scales of up to decades or longer.

Funded proposals should help achieve the following outcomes:

A. A predictive understanding of the global climate system on time scales of weeks to decades with quantified uncertainties sufficient for making informed and reasoned decisions; and

B. Climate-sensitive sectors and the climate-literate public effectively incorporating NOAA's climate products into their plans and decisions.

Program Names: None

3. Serve society's needs for weather and water information.

SUMMARY DESCRIPTION: Floods, droughts, hurricanes, tornadoes, tsunamis, wildfires, and other severe weather events cause $11 billion in damages each year in the United States. Weather is directly linked to public health and safety, and nearly one-third of the U.S. economy (about $3 trillion) is sensitive to weather and climate. With so much at stake, NOAA's role in understanding, observing, forecasting, and warning of environmental events is expanding. With our partners, we seek to provide decision makers with key observations, analyses, predictions, and warnings for a range of weather and water conditions, including those related to water supply, air quality, space weather, and wildfires. Businesses, governments, and non-governmental organizations are getting more sophisticated about how to use this weather and water information to improve operational efficiencies, to manage environmental resources, and to create a better quality of life. On average, hurricanes, tornadoes, tsunamis, and other severe weather events cause $11 billion in damages per year. Weather, including space weather, is directly linked to public safety and about one-third of the U.S. economy (about $3 trillion) is weather sensitive. With so much at stake, NOAA's role in observing, forecasting, and warning of environmental events is expanding, while economic sectors and its public are becoming increasingly sophisticated at using NOAA's weather, air quality, and water information to improve their operational efficiencies and their management of environmental resources, and quality of life.

Funded proposals should help achieve the following outcomes:

A. Reduced loss of life, injury, and damage to the economy;

B. Better, quicker, and more valuable weather and water information to support improved decisions; and

C. Increased customer satisfaction with weather and water information and services.

Program Names:

1. FY 2007 Regional Integrated Ocean Observing System

2. Hydrologic Research and Social Science Research in Hydrologic Applications.

4. Support the Nation's commerce with information for safe, efficient, and environmentally sound transportation.

SUMMARY DESCRIPTION: Safe and efficient transportation systems are crucial to the U.S. economy. The U.S. marine transportation system ships over 95 percent of the tonnage and more than 20 percent by value of foreign trade through U.S. ports, including 48 percent of the oil needed to meet America's energy demands. At least $4 billion is lost annually due to economic inefficiencies resulting from weather-related air-traffic delays. Improved surface weather forecasts and specific user warnings would reduce the 7,000 weather related fatalities and 800,000 injuries that occur annually from crashes on roads and highways. The injuries, loss of life, and property damage from weather-related crashes cost an average of $42 billion annually.

We provide information, services, and products for transportation safety and for increased commerce on roads, rails, and waterways. We will improve the accuracy of our information for marine, aviation, and surface weather forecasts, the availability of accurate and advanced electronic navigational charts, and the delivery of real-time oceanographic information. We seek to provide consistent, accurate, and timely positioning information that is critical for air, sea, and surface transportation. We will respond to hazardous material spills and provide search and rescue routinely to save lives and money and to protect the coastal environment. We will work with port and coastal communities and with Federal and state partners to ensure that port operations and development proceed efficiently and in an environmentally sound manner. We will work with the Federal Aviation Administration and the private sector to reduce the negative impacts of weather on aviation without compromising safety. Because of increased interest by the public and private sectors, we also will expand weather information for marine and surface transportation to enhance safety and efficiency.

Funded proposals should help achieve the following outcomes:

A. Safe, secure, efficient, and seamless movement of goods and people in the U.S. transportation system; and

B. Environmentally sound development and use of the U.S. transportation system.

Program Names: None

5. Provide critical support for NOAA's mission.

SUMMARY DESCRIPTION: Strong, effective, and efficient support activities are necessary for us to achieve our Mission Goals. Our facilities, ships, aircraft, environmental satellites, data-processing systems, computing and communication systems, and our approach to management provide the foundation of support for all of our programs. This critical foundation must adapt to evolving mission needs and, therefore, is an integral part of our strategic planning. It also must support U.S. homeland security by maintaining continuity of operations and by providing NOAA services, such as civil alert relays through NOAA Weather Radio and air dispersion forecasts, in response to national emergencies.

NOAA ships, aircraft, and environmental satellites are the backbone of the global Earth observing system and provide many critical mission support services. To keep this capability strong and current with our Mission Goals, we will ensure that NOAA has adequate access to safe and efficient ships and aircraft through the use of both NOAA platforms and those of other agency, academic, and commercial partners. We will work with academia and partners in the public and private sectors to ensure that future satellite systems are designed, developed, and operated with the latest technology.

Leadership development and program support are essential for achieving our Mission Goals. We must also commit to organizational excellence through management and leadership across a ''corporate'' NOAA. We must continue our commitment to valuing NOAA's diverse workforce, including effective workforce planning strategies designed to attract, retain and develop competencies at all levels of our workforce. Through the use of business process reengineering, we will strive for state-of-the-art, value-added financial and administrative processes. NOAA will ensure state-of-the-art and secure information technology and systems. By developing long-range, comprehensive facility planning processes NOAA will be able to ensure right-sized, cost-effective, and safe facilities.

Funded proposals should help achieve the following outcomes:

A. A dynamic workforce with competencies that support NOAA's mission today and in the future.

Program Names:

1. Administrative Services for NOAA's Ernest F. Hollings Undergraduate Scholarship Program

Non-Competitive Projects Announcement

1. Protect, restore and manage the use of coastal and ocean resources through ecosystem-based management. See SUMMARY DESCRIPTION above.

1. NOAA Northeast Pacific Expedition Grant Program

Electronic Access

The full funding announcement for each program is available via the Grants.gov web site: *http://www.grants.gov*. These announcements will also be available by contacting the program official identified below. You will be able to access, download and submit electronic grant applications for NOAA Programs in this announcement at *http://www.grants.gov*. The closing dates will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Getting started with Grants.gov is easy! Go to *http://www.grants.gov*. There are two key features on the site: Find Grant Opportunities and Apply for Grants. Everything else on the site is designed to support these two features and your use of them. While you can begin searching for grant opportunities for which you would like to apply immediately, it is recommended that you complete the remaining Get Started steps sooner rather than later, so that when you find an opportunity for which you would like to apply, you are ready to go.

Get Started Step 1 Find Grant Opportunity for Which You Would Like to Apply

Start your search for Federal government-wide grant opportunities and register to receive automatic email notifications of new grant opportunities or any modifications to grant opportunities as they are posted to the site by clicking the Find Grant Opportunities tab at the top of the page.

Get Started Step 2 Register with Central Contractor Registry (CCR)

Your organization will also need to be registered with Central Contractor Registry. You can register with them online. This will take about 30 minutes. You should receive your CCR registration within 3 business days. Important: You must have a DUNS number from Dun & Bradstreet before

you register with CCR. Many organizations already have a DUNS number. To determine if your organization already has a DUNS number or to obtain a DUNS number, contact Dun & Bradstreet at 1–866–705–5711. This will take about 10 minutes and is free of charge. Be sure to complete the Marketing Partner ID (MPIN) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when submitting grant applications through Grants.gov.

Get Started Step 3 Register with the Credential Provider

You must register with a Credential Provider to receive a username and password. This will be required to securely submit your grant application.

Get Started Step 4 Register with Grants.gov

The final step in the Get Started process is to register with Grants.gov. This will be required to submit grant applications on behalf of your organization. After you have completed the registration process, you will receive email notification confirming that you are able to submit applications through Grants.gov.

Get Started Step 5 Log on to Grants.gov

After you have registered with Grants.gov, you can log on to Grants.gov to verify if you have registered successfully, to check application status, and to update information in your applicant profile, such as your name, telephone number, email address, and title. In the future, you will have the ability to determine if you are authorized to submit applications through Grants.gov on behalf of your organization.

Electronic Application File Format and Naming Conventions

After the initial grant application package has been submitted to NOAA (e.g., via Grants.gov), requests for additional or modified forms may be requested by NOAA. Applicants should resubmit forms in Portable Document File Format (PDF) and follow the following file naming convention to name resubmitted forms. For example: 98042__SF–424__mmddyy__v2.pdf.

(1) 98042 = Proposal # (provided to applicant by Grants.gov and NOAA)

(2) SF–424 = Form Number

(3) mmddyy = Date

(4) v2 = Version Number

To learn how to convert documents to PDF go to: *http://www.grants.gov/assets/PDFConversion.pdf*.

Evaluation Criteria and Selection Procedures

NOAA standardized the evaluation and selection process for its competitive assistance programs. All proposals submitted in response to this notice shall be evaluated and selected in accordance with the following procedures. There are two sets of evaluation criteria and selection procedures, one for project proposals, and the other for fellowship, scholarship, and internship programs. These evaluation criteria and selection procedures apply to all of the programs included below.

Proposal Review and Selection Process for Projects

Some programs may include a pre-application process which provides an initial review and feedback to the applicants that have responded to a call for letters of intent or pre-proposals; however, not all programs will include such a process. If a pre-application process is used by a program, it shall be described in the Summary Description and the deadline shall be provided in the Application Deadline section. Upon receipt of a full application by NOAA, an initial administrative review is conducted to determine compliance with requirements and completeness of the application. A merit review is conducted to individually evaluate, score, and rank applications using the evaluation criteria. A second merit review may be conducted on the applicants that meet the program's threshold (based on scores from the first merit review) to make selections using the selection factors provided below. Merit review is conducted by mail reviewers and/or peer panel reviewers. Each reviewer will individually evaluate and rank proposals using the evaluation criteria provided below. No consensus advice shall be provided by either merit review group if there are any non-Federal members. A minimum of three merit reviewers per proposal at each stage is required. The merit reviewer's ratings are used to produce a rank order of the proposals. The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the mail and/or panel review(s) and selection factors listed below. The Selecting Official selects proposals after considering the mail and/or peer panel review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final recommendations for award to the Grants Officer who is authorized to obligate the funds.

Evaluation Criteria for Projects

1. Importance and/or relevance and applicability of proposed project to the program goals: This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, state, or local activities.

2. Technical/scientific merit: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

3. Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

4. Project costs: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Selection Factors for Projects

The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. A program officer may first make recommendations to the Selecting Official applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.

2. Balance/distribution of funds:

a. Geographically

b. By type of institutions

c. By type of partners

d. By research areas

e. By project types

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other federal agencies.

4. Program priorities and policy factors.

5. Applicant's prior award performance.

6. Partnerships and/or Participation of targeted groups.

7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Proposal Review and Selection Process for NOAA Fellowship, Scholarship and Internship Programs

Some programs may include a pre-application process which provides an initial review and feedback to the applicants that have responded to a call for letters of intent or pre-proposals; however, not all programs will include such a process. If a pre-application process is used by a program, it shall be described in the Summary Description and the deadline shall be provided in the Application Deadline section. An initial administrative review of full applications is conducted to determine compliance with requirements and completeness of applications. A merit review is conducted to individually evaluate, score, and rank applications using the evaluation criteria. A second merit review may be conducted on the applicants that meet the program's threshold (based on scores from the first merit review) to make selections using the selection factors provided below. The Program Officer may conduct a review of the rank order and make recommendations to the Selecting Official based on the panel ratings and the selection factors listed below. The Selecting Official considers merit reviews and recommendations. The Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Selecting Official makes final recommendations for awards to the Grants Officer who is authorized to obligate the funds.

Evaluation Criteria for Fellowship/ Scholarships/Internships

1. Academic record and statement of career goals and objectives of student
2. Quality of project and applicability to program priorities
3. Recommendations and/or endorsements of student
4. Additional relevant experience related to diversity of education; extra-curricular activities; honors and awards; interpersonal, written, and oral communications skills
5. Financial need of student

Selection Factors for Fellowship/ Scholarships/Internships

1. Balance/Distribution of funds:
a. Across academic disciplines
b. By types of institutions
c. Geographically
2. Availability of funds
3. Program-specific objectives
4. Degree in scientific area and type of degree sought

NOAA Project Competitions

National Marine Fisheries Service (NMFS)

1. 2007 Hawaii Seafood Program

SUMMARY DESCRIPTION: NMFS is soliciting applications for financial assistance for the 2007 Hawaii Seafood Program. The Hawaii Seafood Program is proposed for an effort to help strengthen and sustain the economic viability of Hawaii's fishing and seafood industry through activities that promote Hawaii fisheries products as high quality and safe domestic seafood produced by a responsible and well-managed fishery. Projects may request support for cooperative seafood safety research, technical assistance, and/or seafood education. This program will support NOAA's mission to protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

FUNDING AVAILABILITY: Approximately $1,000,000 may be available. Actual funding availability for this program is contingent upon FY07 Congressional appropriations.

STATUTORY AUTHORITY: 15 U.S.C. 713c–3(d).

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.452, Unallied Industry Projects.

APPLICATION DEADLINE: Applications must be received by 5 p.m. Hawaii standard time on February 28, 2007.

ADDRESS FOR SUBMITTING APPLICATIONS: Applications are available through the Grants.Gov website at *http://www.grants.gov*. For those organizations without internet access, application materials and instructions may be obtained from Scott W.S. Bloom, NOAA Federal Program Officer, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814.

INFORMATION CONTACT: Scott W.S. Bloom (NOAA Fisheries) at 808–944–2218, or by e-mail at *Scott.Bloom@noaa.gov*.

ELIGIBILITY: Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, foreign governments, organizations under the jurisdiction of foreign governments, and state, local and Indian tribal governments. Federal agencies, or employees of Federal agencies are not eligible to apply.

COST SHARING REQUIREMENTS: None.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Chesapeake Bay Cooperative Science Program

SUMMARY DESCRIPTION: The National Marine Fisheries Service (NMFS) / NOAA Chesapeake Bay Office (NCBO) is soliciting applications for financial assistance to support Cooperative Science in Chesapeake Bay. The NCBO is developing a Cooperative Science Program in Chesapeake Bay to formalize and expand collaborative research among the Chesapeake Bay's commercial fishing industry, marine scientists, and fishery management communities. The goal of this initiative is to enhance the data upon which fishery management decisions are made as well as to facilitate communication and collaboration among commercial fishermen, scientists, and fishery managers. Through this initiative, the NCBO will develop a collaborative and cooperative program to set research priorities that meet management and fishing industry needs. This funding will provide a significant opportunity for the NOAA Chesapeake Bay Office to develop collaborative relationships with the fishing industry. This program will support NOAA's mission to protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

FUNDING AVAILABILITY: Funding availability for this program is contingent upon FY07 Congressional appropriations. Approximately $100,000 - $150,000 in funding may be available for awards in FY 2007; there are no restrictions on minimum or maximum funding requests. Award periods may be up to a maximum of 3 years, with annual funding contingent on the availability of Federal appropriations.

STATUTORY AUTHORITY: Fish and Wildlife Coordination Act, as amended, at 16 U.S.C. 661

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.457, Chesapeake Bay Studies.

APPLICATION DEADLINE: Letters of Intent must be received by 5 p.m. EST on February 7, 2007 to *Derek.orner@noaa.gov*. Full proposals must be received by 5 p.m. EST on March 12, 2007.

ADDRESS FOR SUBMITTING PROPOSALS: Applicants should submit proposals online through *www.grants.gov*. If online submission is

not possible, paper applications may be mailed to NOAA Chesapeake Bay Office, 410 Severn Ave., Suite 107A, Annapolis, MD 21403.

INFORMATION CONTACT: Derek Orner, NOAA Chesapeake Bay Office, 410 Severn Ave., Suite 107A, Annapolis, MD 21403; email: *Derek.orner@noaa.gov*; phone: 410–267–5676.

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

COST SHARING REQUIREMENTS: There are no cost-sharing or matching requirements under this solicitation.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

3. Chesapeake Bay Fisheries Research Program

SUMMARY DESCRIPTION: The National Marine Fisheries Service (NMFS), NOAA Chesapeake Bay Office (NCBO), is soliciting applications for financial assistance to support fisheries research, monitoring, modeling, or assessment that will facilitate effective ecosystem-based management in Chesapeake Bay. This management paradigm requires knowledge of the interactions among exploited species, and their habitats and stressors, to develop viable management plans. Applicants follow the Fisheries Ecosystem Plan (*http://noaa.chesapeakebay.net/docs/FEP_DRAFT.pdf*) in identifying the science necessary to support ecosystem-based fisheries management in the Bay. This program will support NOAA's mission to protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

FUNDING AVAILABILITY: Funding availability for this program is contingent upon FY07 Congressional appropriations. Approximately $1,000,000 was available in FY 2006 and similar levels may be available for awards in FY2007 (this includes continuation of multi-year awards); there are no restrictions on minimum or maximum funding requests. Award periods may be up to a maximum of 3 years, with annual funding contingent on the availability of Federal appropriations.

STATUTORY AUTHORITY: Fish and Wildlife Coordination Act, as amended, at 16 U.S.C. 661

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.457, Chesapeake Bay Studies.

APPLICATION DEADLINE: Letters of Intent must be received by 5 p.m. EST on February 7, 2007 to *Derek.orner@noaa.gov*. Full proposals must be received by 5 p.m. EST on March 12, 2007.

ADDRESS FOR SUBMITTING PROPOSALS: Applicants should submit proposals online through *www.grants.gov*. If online submission is not possible, paper applications may be mailed to NOAA Chesapeake Bay Office, 410 Severn Ave., Suite 107A, Annapolis, MD 21403. Information Contact: Derek Orner, NOAA Chesapeake Bay Office, 410 Severn Ave., Suite 107A, Annapolis, MD 21403; email: *derek.orner@noaa.gov*; phone: 410–267–5676.

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

COST SHARING REQUIREMENTS: There are no cost-sharing or matching requirements under this solicitation.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

4. Chesapeake Bay Submerged Aquatic Vegetation Restoration Program

SUMMARY DESCRIPTION: The National Marine Fisheries Service (NMFS) / NOAA Chesapeake Bay Office (NCBO) is soliciting applications for financial assistance to support submerged aquatic vegetation(SAV) Restoration projects in Chesapeake Bay. This program is a competitive program that supports vital restoration, research, monitoring, analysis, modeling and assessment of SAV activities that will assist the CBP, NOAA, and other program partners in reaching the goal of effective ecosystem-based management and integrated restoration. Projects follow and the guidance in the Chesapeake Bay Program's ''Strategy to Accelerate the Protection and Restoration of Submerged Aquatic Vegetation in the Chesapeake Bay'' which is available at *http://www.chesapeakebay.net/pubs/subcommittee/lrsc/thwg/Final_SAV_restoration.pdf*. This program will support NOAA's mission to protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

FUNDING AVAILABILITY: Funding availability for this program is contingent upon FY07 Congressional appropriations. Approximately $250,000 in funding may be available for awards in FY 2007; there are no restrictions on minimum or maximum funding requests. Award periods may be up to a maximum of 3 years, with annual funding contingent on the availability of Federal appropriations.

STATUTORY AUTHORITY: Fish and Wildlife Coordination Act, as amended, at 16 U.S.C. 661.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.457, Chesapeake Bay Studies.

APPLICATION DEADLINE: Letters of Intent must be received by 5 p.m. EST on February 7, 2007. Full proposals must be received by 5 p.m. EST on March 12, 2007. Address for Submitting Proposals: Applicants should submit proposals online through *www.grants.gov*. If online submission is not possible, paper applications may be mailed to NOAA Chesapeake Bay Office, 410 Severn Ave., Suite 107A, Annapolis, MD 21403. Information Contact: Peter Bergstrom, NOAA Chesapeake Bay Office, 410 Severn Ave., Suite 107A, Annapolis, MD 21403; email: *peter.bergstrom@noaa.gov*; phone: 410–267–5665.

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

COST SHARING REQUIREMENTS: There are no cost-sharing or matching requirements under this solicitation.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Mid-Atlantic Research Set-Aside

SUMMARY DESCRIPTION: The Research Set-Aside (RSA) Program provides a mechanism to fund research and compensate vessels through the sale of fish harvested under a research quota. For fishing year 2008 (January 1–December 31, 2008), NMFS announces that up to 3 percent of the total

allowable landings (TAL) in certain Mid-Atlantic fisheries may be dedicated to research endeavors under the RSA program. The setting of the actual RSA quotas will be the subject of future rulemaking. NMFS is soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, Loligo squid, Illex squid, Atlantic mackerel, butterfish, Atlantic bluefish, and tilefish fisheries. The set-asides may range between 0 and 3 percent of each species' TAL. The set-aside allocated for a given species is designated primarily for research involving that species. However, to promote research for species where it would otherwise be infeasible, individual research projects may request up to 25 percent of the set-aside allocations for other species listed in this notice that are not directly involved in a particular research project. No Federal funds are provided for research under this notification, but rather the opportunity to fish and sell the catch to generate income to offset research costs. Projects funded under an RSA allocation (or award) must enhance understanding of the fishery resource or contribute to the body of information on which management decisions are made. The program priorities for this opportunity support NOAA's Mission support goal of: Ecosystems - Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management.

FUNDING AVAILABILITY: No Federal funds are provided for research under this notification, but rather the opportunity to fish and sell the catch to generate income. The Federal Government may issue an Exempted Fishing Permit (EFP) or Letter of Acknowledgment (LOA), as applicable, which may provide special fishing privileges in response to research proposals selected under this program.

STATUTORY AUTHORITY: Issuing grants is consistent with sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881c(c), respectively. The award of a set-aside from the TAL of selected species resulted from the approval of Framework Adjustment 1 (Framework 1) to the Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scup, and Black Sea Bass; and Atlantic Bluefish Fishery Management Plans (FMPs); and the RSA provisions of the Tilefish FMP. Framework 1 established a procedure through which RSA amounts are set annually as part of the Mid-Atlantic Fishery Management Council's (Council) quota-setting process (66 FR 42156, August 10, 2001), and is codified in regulations at 50 CFR 648.21(g).

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 11.454, Unallied Management Projects.

APPLICATION DEADLINE: Applications must be received by NMFS on or before 5 p.m. EST on February 12, 2007.

ADDRESS FOR SUBMITTING APPLICATIONS: Applications should be submitted through *http://www.grants.gov*, and use the following funding opportunity # NMFS-NEFSC–2007–2000887 unless an applicant does not have Internet access. In that case, hard copies should be sent to NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543. Mark proposals ''Attention: Mid-Atlantic Research Set-Aside Program.''

INFORMATION CONTACT: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, by phone at 302–674–2331 ext. 19, or fax at 302–674–5399; Clay Heaton, Fishery Management Specialist, Mid-Atlantic Fishery Management Council, by phone at 302–674–2331 ext. 13, or via email at *cheaton@mafmc.org*; or Paul Perra, Fishery Policy Analyst, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, by phone at 978–281–9153, by fax at 978–281–9135, or via e-mail at *paul.perra@noaa.gov*.

ELIGIBILITY: Eligible applicants include institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, state, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application.

COST SHARING: None.

INTERGOVERNMENTAL REVIEW: Applicants under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

6. Proactive Species Conservation Program

SUMMARY DESCRIPTION: The National Marine Fisheries Service (NMFS) is soliciting applications for financial assistance to support the conservation of marine and anadromous species of concern. To raise awareness of potentially at-risk species and to foster their proactive conservation, the NMFS created a ''species of concern'' list in April 2004 (69 FR 19975). Under this solicitation, the NMFS is seeking to support conservation efforts for these species of concern. Any state, tribal, or local entity that has management or regulatory authority over one or more of these species or over activities that affect these species is eligible to apply. A current list of NMFS' species of concern can be found at *http://www.nmfs.noaa.gov/pr/species/concern/#list*. This program will support NOAA's mission to protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

FUNDING AVAILABILITY: Funding availability for this program is contingent upon FY07 Congressional appropriations. Approximately $500,000 was available in FY 2006 and similar levels may be available for awards in FY2007; there are no restrictions on minimum or maximum funding requests. Award periods may be up to a maximum of 5 years, with annual funding contingent on the availability of Federal appropriations.

STATUTORY AUTHORITY: Fish and Wildlife Coordination Act, as amended, at 16 U.S.C. 661.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.472, Unallied Science Programs.

APPLICATION DEADLINE: Proposals must be received by 5 p.m. EST on February 12, 2007. Hard copy applications must be postmarked by February 12, 2007.

ADDRESS FOR SUBMITTING PROPOSALS: Applicants should submit proposals online through *www.grants.gov*. If online submission is not possible, paper applications may be mailed to NOAA/NMFS/Office of Protected Resources, Attn: Lisa Manning, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

INFORMATION CONTACT: Lisa Manning, 1315 East-West Highway, Silver Spring, MD 20910; email: *lisa.manning@noaa.gov*; phone: 301–713–1401.

ELIGIBILITY: Eligible applicants are state, tribal, or local governments that have regulatory or management authority over one or more federally identified species of concern or over activities that affect one or more federally identified species of concern.

COST SHARING REQUIREMENTS: There are no cost-sharing or matching requirements under this solicitation.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

National Ocean Service

1. FY 2007 Regional Integrated Ocean Observing System Development

SUMMARY DESCRIPTION: Designed to be user-driven and provide sustained data and information in forms and at rates required by decision makers, the Integrated Ocean Observing System (IOOS) will efficiently link observations, data management, and modeling to provide required data and information on local to global scales, e.g., from the local scale of beaches and shellfish beds to the global scale of an El Niño event.

Regional coastal ocean observing systems (RCOOSs) are designed to complement the observing systems managed directly by federal agencies that meet national priorities. With the guidance of Regional Associations to understand regional priorities, RCOOSs provide the types of data, information, and products needed to address the estuarine and coastal issues experienced by the different regions, and to leverage the delivery and applicability of data collected by local network nodes. NOAA views this announcement as an opportunity to demonstrate the regional observing system concept. To assist in regional IOOS development, NOAA seeks proposals for one- to three-year grant or cooperative agreement projects that address the following focus areas:

1. Regional coastal ocean observing systems (RCOOS) development - to further the establishment and integration of observing system assets within regions and the operation of those assets for the benefit of the region. Proposals submitted under this focus area will demonstrate the approach and benefits of integration at the scale of the Regional Association. While focus areas 2 and 3 address particular components of IOOS (e.g., data management and product development), this focus area invites proposals that implement an end-to-end RCOOS that addresses regional needs.

2. IOOS application and product development for regional stakeholders — to develop, advance, and document the value of applying existing IOOS assets to the real-world issues of managers, industry, and the general public. Proposals submitted under this focus area will address regional needs for IOOS applications and products and quantify the value of the application or product to the end user.

3. Data management and communication by local data network nodes — to develop guidance and processes for regional non-federal data providers to contribute to the IOOS data stream. Proposals submitted under this focus area will develop local data network nodes that deliver regional data to a range of consumers using common standards and protocols.

The program priorities for this opportunity support NOAA's mission support goal of: Weather and Water — Serve Society's Needs for Weather and Water Information. Other goals are supported, but this is the goal the opportunity most closely addresses.

FUNDING AVAILABILITY: Funding Availability: Total anticipated funding for all awards is approximately $15,000,000 and is subject to the availability of FY 2007 appropriations. Multiple awards are anticipated from this announcement. The anticipated federal funding per award (min-max) is approximately $100,000 to $6,000,000. The anticipated number of awards ranges from 7 to 14, approximately, and will be adjusted based on available funding.

STATUTORY AUTHORITY: Statutory authority for this program is provided under the Coastal Zone Management Act, 16 U.S.C. 1456c (Technical Assistance); 33 U.S.C. 883d; and 33 U.S.C. 1442 (Research program investigating possible long-range effects of pollution, overfishing, and anthropogenically-induced changes of ocean ecosystems).

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) Number: 11.473, Coastal Services Center.

APPLICATION DEADLINE: A LOI is required prior to submitting a full proposal. LOIs must be received by the Coastal Services Center by 5 p.m. EST on January 31, 2007. Full proposal applications must be received by 5 p.m. EST, April 17, 2007.

ADDRESS FOR SUBMITTING APPLICATIONS: LOIs must be sent via e-mail to *James.L.Free@noaa.gov*. Applicants submitting a LOI should reference the Funding Opportunity Title (FY 2007 Regional Integrated Ocean Observing System Development) as the subject line of the e-mail containing the LOI.

If an applicant does not have Internet access, the applicant must submit through surface mail one original and two copies of the LOI to the Coastal Services Center. No fax copies will be accepted. Any U.S. Postal Service correspondence should be sent to the attention of James Lewis Free, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC, 29405–2413.

Full proposal application packages should be submitted through Grants.gov APPLY. The standard NOAA funding application package is available at *www.grants.gov*.

If an applicant does not have Internet access, the applicant must submit through surface mail one set of originals (signed) and two copies of the proposals and related forms to the Coastal Services Center. No e-mail or fax copies will be accepted. Any U.S. Postal Service correspondence should be sent to the attention of James Lewis Free, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC, 29405–2413.

INFORMATION CONTACT: For administrative issues, contact James Lewis Free at 843–740–1185 (phone) or e-mail him at *James.L.Free@noaa.gov*. Technical questions on the IOOS announcement should be directed to the following people according to the focus area in question: RCOOS Development, Geno Olmi by telephone at 843–740–1230 (phone) or e-mail him at *Geno.Olmi@noaa.gov*; IOOS Applications and Product Development, Dave Eslinger by telephone (843) 740–1270, or by e-mail *Dave.Eslinger@noaa.gov*; and Data Management and Communications, Jim Boyd by telephone (843) 740–1278, or by e-mail *James.Boyd@noaa.gov*.

ELIGIBILITY: Eligible funding applicants are institutions of higher education, non-profit and for-profit organizations, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions and foreign governments may not be the primary recipient of awards under this announcement, but are encouraged to partner with applicants. Federal partners must identify the relevant statutory authorities that will allow for the receipt of funds.

COST SHARING REQUIREMENTS: There is no requirement for cost sharing.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. California Bay Watershed Education and Training (B-WET) Program, Adult and Community Watershed Education in the Monterey Bay

SUMMARY DESCRIPTION: The California B-WET Program, Adult and Community Watershed Education, is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the Monterey Bay watershed. Funded projects provide meaningful watershed education to adults and communities. The term

meaningful watershed education is defined as outcome-based programs that educate citizens about their role in protecting water quality and demonstrate behavioral changes that improve water quality and promote environmental stewardship. This program will support NOAA's mission to protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

FUNDING AVAILABILITY: This solicitation announces that approximately $100,000 may be available in FY 2007 in award amounts to be determined by the proposals and available funds. The National Marine Sanctuary Program anticipates that approximately 2–4 grants will be awarded with these funds and that typical project awards will range from $10,000 to $50,000.

STATUTORY AUTHORITY: 16 U.S.C. 1440, 15 U.S.C. 1540.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.429, Marine Sanctuary Program.

APPLICATION DEADLINE: Proposals must be received by 5 p.m. Pacific standard time on February 1, 2007. Hard copy and electronic proposals received after that time will not be considered for funding and will be returned to the applicant.

ADDRESS FOR SUBMITTING PROPOSALS: It is strongly preferred that you submit your application through Grants.gov at the internet site: *http://www.grants.gov*. You may access, download, and submit an electronic grant application through Grants.gov. The full funding announcement is available via the grants.gov web site: *http://www.grants.gov*. The announcement will also be available at the NOAA web site *http://sanctuaries.noaa.gov/bwet* or by contacting the program officials identified below. Applicants must comply with all requirements contained in the full funding opportunity announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov.

INFORMATION CONTACT: Paper applications, a signed original and 2 copies (submission of five additional hard copies is strongly encouraged to expedite the review process, but it is not required) may be submitted to Attn: Seaberry Nachbar, B-WET Program Manager, Monterey Bay National Marine Sanctuary Office, 299 Foam Street, Monterey, CA 93940. The closing deadline for applying through grants.gov is the same as for the paper submission noted in this announcement.

ELIGIBILITY: Eligible applicants are institutions of higher education, nonprofit organizations, state or local government agencies, and Indian tribal governments. The Department of Commerce/ National Oceanic and Atmospheric Administration (DOC/ NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that service underserved areas.

COST SHARING REQUIREMENTS: No cost sharing is required under this program; however, the National Marine Sanctuary Program strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

National Weather Service

1. Hydrologic Research and Social Science Research in Hydrologic Applications.

SUMMARY DESCRIPTION: This program announcement is for projects to be conducted by research investigators for a 1-year or a 3-year period, depending on which high-priority area the proposal is submitted to. June 1, 2007, should be used as the proposed start date on proposals. This program represents an NOAA/NWS effort to create a cost-effective continuum of basic and applied research through collaborative research between the Hydrology Laboratory of the NWS Office of Hydrologic Development and academic communities or other private or public agencies which have expertise in hydrologic research, and in social science research in hydrologic applications. These activities will engage researchers and students in basic and applied research to improve hydrologic forecasting, including the display of probabilistic information to emergency managers and to the general public. The program priorities for this opportunity support NOAA's mission support goal of: Weather and Water-Serve Society's Needs for Weather and Water Information.

FUNDING AVAILABILITY: It is expected that, depending on availability of funds, one award for each of the three priority areas described in the detailed announcement will be made. However, if no proposals are deemed of suitable quality in any of the two areas, no award in that particular area will be made. The government Maximum funding is described in the detailed announcement.

STATUTORY AUTHORITY: 15 U.S.C. 313 and 33 U.S.C. 883d.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER : 11.462, Hydrologic Research.

APPLICATION DEADLINE: Proposals are due no later than 3 p.m. EST 30 calendar days after the publication of this announcement. Proposals should be submitted through *http://www.grants.gov*. For applicants without internet access, they may be sent to NOAA/NWS; 1325 East-West Highway, Room 8176; Silver Spring, MD 20910–3283.

INFORMATION CONTACT(S): Dr. Pedro Restrepo by phone at 301–713–0640 ext. 210, or fax to 301–713–0963, or via e-mail at *Pedro.Restrepo@noaa.gov*. Proponents are advised that soliciting advice on any aspect of this funding opportunity from employees and contractors of the Office of Hydrologic Development, other than Dr. Pedro Restrepo, is not permitted. Requesting advice from any other NOAA office, such as NOHRSC, NCEP or any of the RFCs or WFOs is allowed and highly encouraged.

ELIGIBILITY: Eligible applicants are Federal agencies, institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations, state, local and Indian tribal governments. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

COST SHARING REQUIREMENTS: None.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Oceans and Atmospheric Research

1. NOAA's Great Lakes Ecosystem Research

SUMMARY DESCRIPTION: NOAA's mission is to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our nation's economic, social and environmental needs. Proposals funded under this announcement fulfill NOAA's ecosystem mission to protect, restore, and manage use of coastal and ocean resources through ecosystem-based management. The Great Lakes Environmental Research Laboratory (GLERL) is actively involved in research on ecological prediction, aquatic invasive species, physical environment prediction, and environmental observing systems. Specific research projects include studies on aquatic invasive species in the Great Lakes, especially prevention of introduction and effects on food webs, the development of coastal environmental forecast systems, Great Lakes water supplies, water level forecasting, food web interactions and regulation and forecasting risks to Human Health (e.g., beach closings, drinking water quality and harmful algal blooms).

FUNDING AVAILABILITY: Total anticipated federal funding for FY 2007 is $1.5M in the first year with funding for 20 - 30 of awards. Federal Funding for FY 2008 and beyond may be used in part to fund some awards submitted under this competition. We anticipate that the annual cost of most funded projects will fall between $1,000 and $50,000 per year. Actual funding levels will depend upon the final FY 2007 and subsequent budget appropriations.

STATUTORY AUTHORITY: 33 U.S.C. 883d.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.460 - Special Oceanic and Atmospheric Projects

APPLICATION DEADLINE: Letters of Intent should be received at GLERL no later than 5 p.m. EST, February 16, 2007. Full proposals must be received no later than 5 p.m. EST, March 30, 2007.

ADDRESS FOR SUBMITTING PROPOSALS: (1) Letters of Intent (LOI). LOIs are encouraged to be submitted by facsimile or e-mail to the identified NOAA program element's program manager and to *GLERLgrants@noaa.gov*. If an applicant does not have Internet access, LOI hard copies should be sent to the Program Managers listed with each program in the Program Priorities section and to the GLERL Grants Manager, Sandra Salyers, NOAA/GLERL, 2205 Commonwealth Blvd; Ann Arbor, MI., 48105, phone 734–741–2246; (2) Proposals. Proposals should be submitted through Grants.gov APPLY (*http://www.grants.gov*). If an applicant does not have Internet access, please contact the GLERL Grants Manager (see above) for hard copy instructions.

INFORMATION CONTACT: Sandra Salyers, NOAA/GLERL, 2205 Commonwealth Blvd; Ann Arbor, MI 48105, phone 734–741–2246.

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, State, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

COST SHARING REQUIREMENTS: No cost sharing is required.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Under Secretary's Associated Office (USAO)

1. National Ocean Sciences Competition for High School Students

SUMMARY DESCRIPTION: NOAA's Office of Education (OED), on behalf of its partner agencies in the National Oceanographic Partnership Program (NOPP), is requesting applications in support of an academic competition for high school students focusing on ocean sciences and related fields. The goal of this program is to expose high school students in the United States and its territories to the excitement of ocean sciences and related fields as well as careers in those fields. Projects should be 5 years in duration, employ one or more of the strategies articulated in the NOAA Education Plan (*http://www.oesd.noaa.gov/NOAA_Ed_Plan.pdf*), involve partnerships among academic institutions, free-choice learning venues, NGOs and Federal entities, and have an evaluation that both monitors the quality of the experience for the participants (be they students, teachers, or volunteers) and the impact of the program on the participants. Although it is expected that the project's focal point will be a tiered academic competition with regional and national-level events, it should also provide additional learning experiences for student participants, their peers and their teachers, such as internships and field or research experiences. It is anticipated that final recommendations for funding under this announcement will be made on or around February 28, 2007, and that the grant funded through this announcement will have a start date no earlier than April 1, 2007. There are no other program priorities for this announcement. This FFO meets NOAA's Mission Goal to protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

FUNDING AVAILABILITY: NOAA announces the availability of approximately $2,000,000 of Federal financial assistance in FY 2007 for an academic competition for high school students on ocean sciences and related fields. One award in the form of a grant will be made. NOAA will only consider projects that have a duration of five years. The total Federal amount for all years that may be requested from NOAA for the direct and indirect costs of the proposed project shall not exceed $10,000,000 for five years. The minimum Federal amount that must be requested from NOAA for all years for the direct and indirect costs is $1,000,000. Applications requesting Federal support from NOAA of less than $1,000,000 total or more than $10,000,000 total will not be considered for funding through this announcement. The amount of funding available through this announcement will be dependent upon the final appropriations for FY 2007 through FY 2011 and commitment of funds from partnering agencies of the National Oceanographic Partnership Program (NOPP).

STATUTORY AUTHORITY: Authority for this funding opportunity is provided by the following: 15 U.S.C. 1540.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.469 - Congressionally Identified Awards and Projects

APPLICATION DEADLINE: The deadline for full applications is 5 p.m., EST February 12, 2007.

ADDRESS FOR SUBMITTING PROPOSALS: Full applications should be submitted through Grants.gov (*http://www.grants.gov*). If an applicant does not have Internet access, one hard copy should be sent to ATTN: Competition Manager for Funding Opportunity SEC-OED–2007–2000888, DOC/NOAA Office of Education, 1401 Constitution Ave., NW, Room 6863, Washington, DC 20230. If submitting a hard copy, applicants are requested to provide a CD-ROM of the application, including scanned signed forms.

INFORMATION CONTACTS: For further information contact Sarah Schoedinger at 704–370–3528 or *sarah.schoedinger@noaa.gov*.

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, and state, local and Indian tribal governments in the United States. For profit organizations, foreign institutions, foreign organizations and foreign government agencies are not eligible to apply. Federal agencies are not eligible to receive Federal assistance under this announcement, but may be project partners. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to increasing the participation of Minority Serving Institutions (MSIs), i.e., Historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that work in underserved communities. Applications are encouraged that involve any of the above types of institutions.

COST SHARING REQUIREMENTS: None.

OTHER: An individual or institution may apply only once through this funding opportunity.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Administrative Services for NOAA's Ernest F. Hollings Undergraduate Scholarship Program

SUMMARY DESCRIPTION: The purpose of this document is to advise the public that NOAA's Office of Education is announcing the availability of Federal assistance for a not-for-profit organization for administrative services for the Ernest F. Hollings Undergraduate Scholarship Program. The purposes of the program include: (1) To increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities; (2) to increase public understanding and support for stewardship of the ocean and atmosphere and improve environmental literacy; (3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, state and local levels of government; and (4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States.

The Hollings Scholarship Program provides selected undergraduate applicants with awards that include academic assistance (up to a maximum of $8,000) for full-time study during the 9-month academic year; a 10-week, full-time internship position ($650/week) during the summer at a NOAA or partner facility; and, if reappointed, academic assistance (up to a maximum of $8,000) for full-time study during a second 9-month academic year. The internship between first and second years of the award provides ''hands-on'' multi-disciplinary educational training experience involving scholars in NOAA-related scientific, research, technological, policy, management, and education activities. Awards also include a housing subsidy for scholars who do not reside at home during the summer internship and travel expenses for attendance and participation at a Hollings scholarship orientation program, conference travel, and an end of summer internship presentation program.

The program priorities for this opportunity support NOAA's mission support goal of Critical Support — Facilities, ships, aircraft, environmental satellites, data-processing systems, computing and communications systems.

FUNDING AVAILABILITY: Subject to appropriations, this solicitation announces that funding at a maximum of $3,400,000 will be available for program administration of the Ernest F. Hollings Undergraduate Scholarship Program over a two-year period. Only one application will be funded. Up to 18 percent is allowed for administrative overhead and at least 82 percent is for student support. It is anticipated that the funding instrument will be a cooperative agreement since NOAA will be substantially involved in the selection of scholarship recipients, identifying NOAA facilities to place students during the one summer internship, and with collaboration, participation, or intervention in project performance.

STATUTORY AUTHORITY: 15 U.S.C. 1540, P.L. 108–447.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 11.481 - Educational Partnership Program with Minority Serving Institutions.

APPLICATION DEADLINE: Applications must be received by the NOAA Office of Education on or before February 12, 2007 no later than 5 p.m. EST.

ADDRESS FOR SUBMITTING APPLICATIONS: Applications submitted in response to this announcement should be submitted through the Grants.gov web site. Electronic access to the full funding announcement for this program is available via the Grants.gov web site: *http://www.grants.gov*. The announcement will also be available at the NOAA Office of Education web site *http://www.oesd.noaa.gov* or by contacting the program official identified below. Paper applications (a signed original and two copies) may also be submitted to NOAA at the following address: NOAA/Office of Education, 1315 East West Highway, Room 10703, Silver Spring, MD 20910. No facsimile applications will be accepted. Organizations are encouraged to submit Letters of Intent to NOAA within 30 days of this announcement to aid in planning the review processes. Letters of Intent may be submitted via e-mail to *Chantell.Haskins@noaa.gov*. Information should include a general description of the program administration proposal.

INFORMATION CONTACT: Chantell Haskins, Program Manager at (301) 713–9437 ext. 125 or *Chantell.Haskins@noaa.gov*.

ELIGIBILITY: Proposals will only be accepted from non-profit organizations.

COST SHARING REQUIREMENTS: None

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Non-Competitive Project

The following entry provides the description and requirements of NOAA's noncompetitive project. NOAA Northeast Pacific Expedition Grant Program

SUMMARY DESCRIPTION: NOAA's Undersea Research Program (NURP), Ocean Exploration Program, and National Marine Sanctuary Program announce that they will be sponsoring an expedition in 2009 to examine deep sea habitats in the Northeast Pacific Ocean. The geographic regions of interest include waters off the coasts of the states of California, Oregon, Washington, Alaska (including the Aleutian Islands), and Hawaii (specifically the Northwestern Hawaiian Islands), and the Emperor Seamounts. It is anticipated that the expedition will use the R/V Kaìimikai-o-Kanaloa and the 2000–meter capable human occupied submersibles, Pisces IV and V, and be approximately four months in length with seven to ten individual segments. Funding will be provided for an external, competitive grant program entitled the NOAA Northeast Pacific Expedition Grant Program to be

administered through the NURP Centers for the West Coast and Polar Regions and Hawaii and the Western Pacific Regions, the Hawaii Undersea Research Laboratory, in partnership with NURP headquarters, the Ocean Exploration Program and the National Marine Sanctuary Program. Specific priorities, geographic preferences, application requirements, and the competitive peer-review process will be provided in the request for proposals to be posted at *http://www.westnurc.uaf.edu/expedition*. The program priorities for this opportunity support NOAA's mission support goal of: Ecosystems - Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management.

FUNDING AVAILABILITY: Approximately $2,000,000 may be available in FY 2008 and FY 2009 to support awards under this program.

STATUTORY AUTHORITY: Statutory authority for this program is provided under 33 U.S.C. 883d.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) Number: 11.430, National Undersea Research Program.

INFORMATION CONTACT: Kimberly Puglise, 301–713–2427, extension 199 or e-mail at *kimberly.puglise@noaa.gov*. The request for proposals will be announced at: *http://www.westnurc.uaf.edu/expedition*.

COST SHARING REQUIREMENTS: The awards require a 1:1 federal to non-federal match.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2007 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Notice of Proposed Requirement for Use of a Universal Identifier by Grant Applicants (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet *http://www.dunandbradstreet.com*.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the NEPA, for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216__--6__--TOC.pdf*, and the Council on Environmental Quality implementation regulations, http://ceq.eh.doe.gov/nepa/regs/ceq/toc__ceq.htm.

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). NOAA has developed an environmental information questionnaire to provide applicants and Federal grant managers with a simple tool to ensure that project and environmental information is obtained. The questionnaire will apply only to those programs where actions are considered major Federal actions or to those where NOAA must determine if the action is a major Federal action. The questionnaire consists of a comprehensive list of questions that encompasses a broad range of subject areas. The applicants will not be required to answer every question in the questionnaire. Each program will draw from the final comprehensive list of questions to create a relevant subset of questions for applicants to answer. These questions will be found in the Federal Funding Opportunity Announcement for individual programs under Section IV.B. (Application and Submission Information; Content and Form of Application Submission). The information provided in answers to the questionnaire will be used by NOAA staff to determine compliance requirements for NEPA and conduct subsequent NEPA analysis as needed. The information provided in the questionnaire may also be used for other regulatory review requirements associated with the proposed project. NOAA may require follow-up information after the application process has been completed.

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in the drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases, if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations (15 CFR 734.2(b)(2)(ii))

(a) This clause applies to the extent that this financial assistance award involves access to export-controlled information or technology.

(b) In performing this financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

(c) Definitions

(1) Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is ''deemed'' to be an export to

the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

(2) Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic I Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

(d) The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

(e) Nothing in the terms of this financial assistance award is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

(f) The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled information technology.

NOAA implementation of Homeland Security Presidential Directive — 12.

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive -12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF LLL, CD–346, SF 424 Research and Related Family, SF 424 Short Organizational Family, and the SF 424 Individual Form Family has been approved by the Office of Management and Budget (OMB) under the respective control numbers 4040–0004, 0348–0044, 0348–0040, 0348–0046, 0605–0001, 4040–0001, 4040–0003, and 4040–0005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: December 20, 2006.

Daniel Clever,

Deputy Director, Acquisitions and Grants Office.

[FR Doc. E6–22176 Filed 12–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122106B]

Regional Fishery Management Council Chairs, Vice Chairs, and Executive Directors Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: NMFS will host a meeting of the Regional Fishery Management Council Chairs, Vice Chairs, and Executive Directors in January 2007. The intent of this meeting is to discuss issues of relevance to the Councils, including implementation of the FY 2007 budget, updates on NMFS initiatives on limited access programs, and issues related to implementation of the bill recently passed by Congress that would amend the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The meeting will begin at 9 a.m. on Wednesday, January 10, 2007, recess at 5 p.m. or when business is complete; reconvene at 9 a.m. on Thursday, January 11, 2007, and adjourn by 5 p.m. or when business is complete; and reconvene at 9 a.m. on Friday, January 12, 2007, and adjourn by noon.

ADDRESSES: The meeting will be held at NOAA Headquarters, Room 4527, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William D. Chappell: telephone 301–713–2337 or e-mail at *William.Chappell@noaa.gov*; or Linda Moon: telephone 301–713–2337 or e-mail at *Linda.Moon@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (HR 5946), when signed by the President, will establish the Council Coordinating Committee by amending Section 302 (16 U.S.C. 1852) of the Magnuson-Stevens Act. The committee consists of the chairs, vice chairs, and executive directors of each of the 8 Regional Fishery Management Councils authorized by the Magnuson-Stevens Act or other Council members or staff. NMFS will host this meeting and provide reports to the Committee for its information and discussion. The main topic of discussion will be implementation of the newly authorized Act. NMFS will also present and accept

comments on its plans for implementing portions of the Act that will affect the Councils. Copies of the agenda may be obtained by calling 301–713–2337. Members of the public who wish to attend the meeting must call the previous number for entry into the building.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation orother auxiliary aids should be directed to Linda Moon at 301–713–2337 at least 5 working days prior to the meeting.

Dated: December 21, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–22110 Filed 12–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) gives notice of a proposed new system of records entitled ''COMMERCE/PAT–TM–19 Dissemination Events and Registrations.'' We invite the public to comment on the system announced in this publication.

DATES: Written comments must be received no later than January 26, 2007. The proposed system of records will be effective on January 26, 2007, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: Susan.Brown@uspto.gov.*
- *Fax:* (571) 273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

All comments received will be available for public inspection at the Public Search Facilities, Madison East—1st Floor, 600 Dulany Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Director, Office of External Affairs, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314, (571) 272–9300.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of a new system of records that is subject to the Privacy Act of 1974. The proposed system of records will maintain information on individuals who register to participate in special agency-sponsored events and programs designed to disseminate information to the public on topics related to patents and trademarks.

The proposed new system of records, ''COMMERCE/PAT–TM–19 Dissemination Events and Registrations,'' is published in its entirety below.

COMMERCE/PAT-TM–19

SYSTEM NAME:

Dissemination Events and Registrations.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of External Affairs, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested participation in an agency-sponsored event.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, address, phone number, e-mail address, and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 35 U.S.C. 2, and E.O. 9397.

PURPOSE(S):

To plan and manage events associated with dissemination of information to the public regarding patents and trademarks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses Nos. 4–5, 9–10 and 13, as found at 46 FR 63501–63502 (December 31, 1981).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On electronic media and in paper.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Maintained in areas accessible only to authorized personnel in a building protected by security guards during nonbusiness hours. Systems are password protected.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series record schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Under Secretary and Director, Office of External Affairs, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

NOTIFICATION PROCEDURE:

Information may be obtained from the Office of the Under Secretary and Director, Office of External Affairs, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. Requesters should provide their names in accordance with the inquiry provisions appearing in 37 CFR part 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The rules for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102 subpart B. Requests from individuals should be addressed to the same address as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individuals and those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 18, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services Data Architecture and Services Division.

[FR Doc. E6–22122 Filed 12–26–06; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0019, Stocks of Grain in Licenses Warehouses

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''the Commission'' is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before insert date February 20 2007.

ADDRESSES: Comments may be mailed to Gary J. Martinaitis, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, (202) 418–5527; e-mail: *gmartinaitis@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, 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, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Stocks of Grain in Licensed Warehouses, OMB Control No. 3038–0019—Extension

Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rules is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of the collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.42 & 1.43	3	Weekly	156	1.0	156

There are no capital costs or operating and maintenance costs associated with this collection.

This estimated is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: December 20, 2006.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–9869 Filed 12–26–06; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0222]

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: *Effective Date:* December 27, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of

Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

California

Installation Name: PVT George L. Richey U.S. Army Reserve Center San Jose.

LRA Name: County of Santa Clara.

Point of Contact: Larry Klamecki, Special Projects Manager, County of Santa Clara.

Address: 70 West Hedding Street, 11th Floor, San Jose, CA 95110.

Phone: (408) 299–6413.

Washington

Installation Name: Navy-Marine Corps Reserve Center Tacoma.

LRA Name: Local Redevelopment Authority for the U.S. Navy Marine Reserve Center—Tacoma.

Point of Contact: Jack C. Hedge, Port of Tacoma.

Address: One Sitcum Way, Tacoma, WA 98421.

Phone: (253) 592–6712.

Dated: December 20, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9867 Filed 12–26–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement for Introduction of the P–8A Multi-Mission Maritime Aircraft to the U.S. Navy Fleet and Notice of Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy (DON) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of homebasing the P–8A Multi-Mission Maritime Aircraft (MMA) to the East and West Coasts of the United States and a presence, i.e., homebase or detachment, in Hawaii.

The DON proposes to replace the maritime patrol P–3C aircraft with the P–8A MMA at existing continental United States maritime patrol homebases for P–3C Orion aircraft while maintaining a maritime patrol presence in Hawaii. The purpose is to transition from P–3C patrol aircraft to the P–8A MMA at existing homebases to maximize utilization of existing infrastructure to the maximum extent practicable to facilitate a quick and efficient transition while maintaining combat readiness. Currently, P–3C patrol squadrons are based at Naval Air Station (NAS) Brunswick, ME (to be relocated in their entirety to NAS Jacksonville by 2010 as a result of the Base Realignment and Closure 2005 process); NAS Jacksonville, FL; NAS Whidbey Island, WA; Marine Corps Base Hawaii (MCBH) Kaneohe Bay, HI; with periodic detachments at NAS North Island, CA.

The proposed action is needed to transition from existing P–3C aircraft to the P–8A MMA while maintaining the Navy's overall maritime patrol capability in support of national defense objectives and policies without interruption or impediment to operations or combat readiness.

The P–8A is designed to increase combat capability utilizing a smaller force making it a more effective tool for national defense. The P–8A is a derivative of the 737 commercial aircraft and will be equipped with systems capable of performing the current P–3C missions. Introduction of the P–8A MMA aircraft will begin in 2011 and be completed by 2019.

The following have been identified as receiving sites: NAS Whidbey Island, WA, NAS Jacksonville, FL, and either MCBH Kaneohe Bay or Hickam Air Force Base, HI, with a training detachment site at NAS North Island, CA. The DON is currently evaluating a range of alternatives based on the number of squadrons homebased at each site, placement of the fleet replacement squadron, and the number of main operating bases.

DATES AND ADDRESSES: Public scoping meetings will be held to receive written comments on environmental concerns that should be addressed in the EIS. Public scoping meetings will be as follows:

1. Jacksonville, FL, Thursday, January 11, 2007, 5 p.m.–8 p.m., Holiday Inn, Orange Park, 150 Park Avenue, Orange Park, FL 32073.

2. Honolulu, HI, Thursday, January 18, 2007, 5 p.m.–8 p.m., Pacific Beach Hotel, 2490 Kalakaua Avenue, Honolulu, HI 96815.

3. Coronado, CA, Thursday, February 8, 2007, 5 p.m.–8 p.m., Coronado Public Library, 640 Orange Avenue, Coronado, CA 92118.

4. Whidbey Island, WA, Thursday, February 15, 2007, 5 p.m.–8 p.m., Oak Harbor School District Office, Board Room, 350 S. Oak Harbor Street, Oak Harbor, WA 98277.

FOR FURTHER INFORMATION CONTACT: Commander, Naval Facilities Engineering Command Atlantic Division, 6506 Hampton Blvd, Norfolk, VA 23508–1278, Attn: MMA PM, fax 757–322–4894.

SUPPLEMENTARY INFORMATION: The purpose is to transition from P–3C patrol aircraft to the P–8A MMA at existing homebases to maximize utilization of existing infrastructure to the maximum extent practicable to facilitate a quick and efficient transition while maintaining combat readiness. The P–3C which has been in service since August 1969 is quickly approaching the end of its service life.

The EIS will address the environmental impacts of the proposed action associated with basing of the P–8A MMA and associated with construction and/or renovation of buildings and other support facilities. In addition, the EIS will assess impacts on each local community and economy associated with relocation of military and contract personnel to the area to support the operation and maintenance of the P–8A MMA squadrons.

The EIS will address any potential environmental impacts associated with: water resources, air quality, biological resources, threatened and endangered species, land use, socioeconomic resources, infrastructure, and cultural resources. Further, the DON will examine potential effects on existing airspace and aircraft noise exposure levels in and around the bases. The analyses will include direct and indirect impacts, and will account for cumulative impacts from other past, present and reasonably foreseeable future actions in the site specific location.

The DON is initiating the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, state, and local agencies, and interested parties are encouraged to provide written comments to the DON to identify specific issues or topics of environmental concern that should be addressed in the EIS. The DON will consider these comments in determining the scope of the EIS.

Written comments on the scope of the EIS should be submitted and postmarked no later than March 2, 2007, and should be mailed to: Commander, Naval Facilities Engineering Command Atlantic, 6506 Hampton Blvd., Norfolk,

VA 23508–1278, Attn: MMA PM, fax 757–322–4859; or made on line at *http://www.mmaeis.com.*

Dated: December 21, 2006.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–22157 Filed 12–26–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, January 16, 2007, 8 a.m.—5 p.m.; Wednesday, January 17, 2007, 8 a.m.—12 p.m.

Opportunities for public participation will be held Tuesday, January 16, from 1 to 1:15 p.m. and 3:45 to 4 p.m.; and Wednesday, January 17, from 9:15 to 9:30 a.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered.

ADDRESSES: Red Lion Hotel, 475 River Parkway, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Shannon A. Brennan, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1216, Idaho Falls, ID 83415. Phone (208) 526–3993; Fax (208) 526–1926 or e-mail: *shannon.brennan@nuclear.energy.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Shannon A. Brennan for the most current agenda):

- Progress to Clean-up (Environmental Management Status).
- Calcine Update.
- Engineering Test Reactor Engineering Evaluation/Cost Analysis.
- TAN–607 Hot Shop Engineering Evaluation/Cost Analysis.
- Tank Farm Grouting Update.
- Spent Nuclear Fuel Update.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Shannon A. Brennan at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Shannon A. Brennan, Federal Coordinator, at the address and phone number listed above.

Issued at Washington, DC on December 21, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–22116 Filed 12–26–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8262–3]

Science Advisory Board Staff Office; EPA Clean Air Scientific Advisory Committee (CASAC); CASAC Ozone Review Panel Notification of a Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel (CASAC Panel) to review EPA's Final Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information (Final Ozone Staff Paper, January 2007), focusing on Chapter 6 (The Primary O3 NAAQS) and Chapter 8 (The Secondary O3 NAAQS).

DATE: The teleconference meeting will be held on Monday, January 29, 2007, from 1 to 5 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in number and access code; submit a written or brief oral statement (three minutes or less); or receive further information concerning this teleconference meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO). Mr. Butterfield may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Ozone Review Panel consists of the seven CASAC members supplemented by subject-matter-experts. The CASAC Ozone Review Panel provides advice and recommendations to EPA concerning ozone and related photochemical oxidants in ambient air. The Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the national ambient air quality standards (NAAQS) for the six ''criteria'' air pollutants, including ambient ozone. Pursuant to sections 108 and 109 of the Act, EPA is in the process of reviewing the ozone NAAQS, which the Agency most recently revised in July 1997. EPA's Office of Air Quality

Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR), will publish a Final Ozone Staff Paper as part of its review of the ozone NAAQS. The Final Ozone Staff Paper evaluates the policy implications of the key scientific and technical information contained in the Agency's final Air Quality Criteria for Ozone and Related Photochemical Oxidants, Volumes I, II, and III, (EPA/600/R–05/004aF–cF, February 2006), and identifies critical elements that EPA believes should be considered in its review of the ozone NAAQS. The Ozone Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Ozone Air Quality Criteria Document (AQCD) and the public health and welfare policy judgments required of the EPA Administrator in reviewing the ozone NAAQS. EPA solicited advice and recommendations from the CASAC Panel on the First Draft Ozone Staff Paper (November 2005) in a public meeting on December 8, 2005, in Durham, NC. The CASAC's letter to the EPA Administrator (EPA–CASAC–CON–06–003, dated February 16, 2006) is posted on the SAB Web Site at *http://www.epa.gov/sab/pdf/casac_con_06_003.pdf*. In addition, EPA solicited the Panel's advice and recommendations on the Second Draft Ozone Staff Paper (July 2006) in a public meeting on August 24–25, 2006, in Durham, NC. The CASAC's letter to the Administrator (EPA–CASAC–07–001, dated October 24, 2006) is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/casac-07–001.pdf*. In that letter, the CASAC indicated it would review the Agency's Final Ozone Staff Paper and offer additional, unsolicited advice to the Agency on Chapter 6 (The Primary O3 NAAQS) and Chapter 8 (The Secondary O3 NAAQS). The purpose of such advice is to advise EPA as it develops a proposed rule for ozone and related photochemical oxidants. This teleconference meeting continues the CASAC Ozone Review Panel's advisory activities in the current review cycle for the ozone NAAQS.

Technical Contact: Any questions concerning the Agency's Final Ozone Staff Paper should be directed to Dr. Dave McKee, OAQPS, at phone: (919) 541–5288, or e-mail: *mckee.dave@epa.gov.*

Availability of Meeting Materials: The Final Ozone Staff Paper will be posted on or about January 5, 2007 on the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html*. The document may be accessed in the ''Documents for Current Review'' section under ''Staff Papers.'' A copy of the draft agenda and other materials for this CASAC teleconference will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/casacorpanel.html* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC Ozone Review Panel to consider during the advisory process. Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Mr. Butterfield, CASAC DFO, in writing (preferably via e-mail), by January 22, 2007, at the contact information noted above, to be placed on the list of public speakers for this meeting. Written Statements: Written statements should be received in the SAB Staff Office by January 26, 2007, so that the information may be made available to the CASAC Panel for their consideration prior to this teleconference. *Written statements* should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 19, 2006.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E6–22146 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8262–2]

Science Advisory Board Staff Office Notification of Public Meetings Teleconferences) of the Science Advisory Board Hypoxia Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing four public teleconferences of the SAB Hypoxia Advisory Panel to discuss preparation of a Draft Advisory on the science concerning hypoxia in the Gulf of Mexico.

DATES: The dates and times for the teleconferences are:

(1) *SAB Hypoxia Advisory Panel Subgroup 1:* Characterization of the Causes of Hypoxia—January 26, 2007 from 9 a.m. to 12 p.m. Eastern Standard Time;

(2) *SAB Hypoxia Advisory Panel Subgroup 2:* Characterization of Nutrient Sources, Fate, and Transport—January 25, 2007 from 10 a.m. to 1 p.m. Eastern Standard Time;

(3) *SAB Hypoxia Advisory Panel Subgroup 3:* Scientific Basis for Goals and Management Options—February 20, 2007 from 2 to 4 p.m. Eastern Standard Time; and

(4) *SAB Hypoxia Advisory Panel:* February 12, 2007 from 9 a.m. to 12 p.m. Eastern Standard Time.

Location: The teleconferences will be conducted by phone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the teleconference call-in numbers and access codes to participate in the teleconferences may contact the following individuals. (1) For the SAB Hypoxia Advisory Panel Subgroup 1's teleconference on January 26, 2007, contact Dr. Thomas Armitage, Designated Federal Officer (DFO), by telephone at (202) 343–9995, or e-mail at *armitage.thomas@epa.gov*. (2) For the SAB Hypoxia Advisory Panel Subgroup 2's teleconference on January 25, 2007, contact Mr. David Wangsness, DFO, by telephone at (202) 343–9975, or e-mail at *wangsness.david@epa.gov*. (3) For the Hypoxia Advisory Panel's teleconference on February 12, 2007 and Hypoxia Advisory Panel Subgroup 3's teleconference on February 20, 2007, contact Dr. Holly Stallworth, DFO, by telephone at (202) 343–9867, or e-mail at *stallworth.holly@epa.gov*. General information about the SAB, as well as any updates concerning the teleconferences announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Hypoxia Advisory Panel will hold public meetings to continue its discussion and prepare a draft report that evaluates the state of the science regarding hypoxia in the Northern Gulf of Mexico. The SAB was established by 42 U.S.C. 4365 to provide

independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA participates with other Federal agencies, states and tribes in the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. In 2001, the Task Force released the Action Plan for Reducing, Mitigating and Controlling Hypoxia in the Northern Gulf of Mexico (or Action Plan available at *http://www.epa.gov/msbasin/taskforce/actionplan.htm*). The Action Plan was informed by the science described in An Integrated Assessment of Hypoxia in the Northern Gulf of Mexico (or Integrated Assessment available at *http://oceanservice.noaa.gov/products/hypox_final.pdf*) developed by the National Science and Technology Council, Committee on Environment and Natural Resources. Six technical reports provided the scientific foundation for the Integrated Assessment and are available at *http://oceanservice.noaa.gov/products/pubs_hypox.html#fia*. The aforementioned documents provide a comprehensive summary of the state-of-the-science for the Gulf of Mexico hypoxic zone through about the year 2000.

EPA's Office of Water has requested that the SAB develop a report that evaluates the state-of-the-science regarding the causes and extent of hypoxia in the Gulf of Mexico, as well as the scientific basis of possible management options in the Mississippi River Basin. The SAB is asked to focus on scientific advances since 2000 that may have increased scientific understanding and control options.

In response to EPA's request, the SAB Staff Office formed the SAB Hypoxia Advisory Panel. Background on the Panel formation process was provided in a **Federal Register** notice published on February 17, 2006 (71 FR 8578–8580). The SAB Hypoxia Advisory Panel met on September 6–7, 2006 to plan its work and organized itself into three subgroups listed above. The SAB Hypoxia Advisory Panel also met on December 6–8, 2006. Background for the first meeting of the Hypoxia Advisory Panel was provided in a **Federal Register** published in 71 FR 45543–45544; and background for the second meeting was provided in 71 FR 66329–66330. The three subgroups of the Panel have held multiple public teleconferences to begin developing the Panel's report. Background information for the subgroup teleconferences was provided in **Federal Register** notices published on September 25, 2006 (71 FR 55786–55787) and October 6, 2006 (71 FR 59107). Information about the SAB Hypoxia Advisory Panel is available on the SAB Web Site at: *http://www.epa.gov/sab*.

Availability of Meeting Materials: Materials in support of this meeting will be placed on the SAB Web Site *http://www.epa.gov/sab* in advance of the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact the appropriate Designated Federal Officer at the contact information noted above no later two weeks prior to each teleconference to be placed on the public speaker list.

Written Statements: Written statements should be received in the SAB Staff Office no later than two weeks prior to the teleconference or meeting so that the information may be available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail to *stallworth.holly@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Access: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at (202) 343–9867 or *stallworth.holly@epa.gov*. To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: December 20, 2006.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E6–22141 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8262–1]

Science Advisory Board Staff Office; Notification of an Upcoming Teleconference of the Ecological Processes and Effects Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Ecological Processes and Effects Committee to discuss a draft report on advancing the science and application of ecological risk assessment.

DATES: The public teleconference will be held on January 26, 2007, from 1 p.m. to 3 p.m. (eastern standard time).

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code for the teleconference may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9995; or by e-mail at *armitage.thomas@epa.gov*. General information about the SAB may be found on the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Ecological Processes and Effects Committee will hold a public teleconference to discuss a draft advisory report to EPA on advancing the science and application of ecological risk assessment. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB Ecological Processes and Effects Committee is conducting a study to provide advice to EPA on advancing the science and application of ecological risk assessment in environmental decision making. To gather information for developing an advisory report, the Committee held a public workshop on February 7–9, 2006 on the state of the practice of ecological risk assessment. Background

information on the workshop and a public teleconference held on July 12, 2006 to discuss a workshop summary document was provided in **Federal Register** notices published on September 8, 2005 (70 FR 53360) and June 20, 2006 (71 FR 35421). The SAB workshop summary document, a draft advisory report, and a teleconference agenda will be posted on the SAB Web site provided above prior to the teleconference.

Procedures for Providing Public Input: The SAB Staff Office accepts written public statements of any length, and accommodates oral public statements whenever possible. The SAB Staff Office expects that public statements presented at SAB meetings will not repeat previously submitted oral or written statements. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference meeting will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested parties should contact the DFO, contact information provided above, in writing via e-mail at least 10 days prior to the scheduled teleconference in order to be placed on the public speaker list. Speakers should provide an electronic copy of their statements to the DFO for distribution to interested parties and participants in the meeting. Written Statements: *Written statements* should be received in the SAB Staff Office at least seven days before the scheduled teleconference so that the information may be made available to the Panel for their consideration. Written statements should be supplied to the DFO at the address and contact information provided above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: Individuals requiring special accommodation to access the teleconference should contact the appropriate DFO at the phone number or e-mail address noted above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 20, 2006.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E6–22145 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0986; FRL–8109–5]

The Allethrins Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the allethrin series of pesticides (bioallethrin, esbiol, esbiothrin, and pynamin forte), and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for the allethrins through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 26, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0986, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0986. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Molly Clayton, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0522; fax number: (703) 308-7070; e-mail address: *clayton.molly@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 regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for the allethrin series of pesticides (bioallethrin, esbiol, esbiothrin, and pynamin forte), and is soliciting public comment on risk management ideas or proposals. The allethrins are synthetic pyrethroids used as insecticides on both indoor (residential and commercial) and outdoor (residential, commercial, and recreational) use sites. EPA developed the risk assessments and risk characterization for the allethrins through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The human health risk assessment accompanying this notice considered a pending new use for the allethrins in food handling establishments. This pending use, and the risks associated with it, are not subject to reregistration at this time and will not be included in the reregistration eligibility decision for the allethrins.

Allethrins are used to control flying and crawling insects in a number of commercial, horticultural and residential applications. Commercial applications include space, broadcast and crack and crevice treatment in a variety of commercial, industrial, residential, and institutional sites. Horticultural applications include foliar and fogger treatment on non-food plants. Residential uses include pest control in homes and outdoor domestic structures, on gardens and direct application to cats, dogs and horses.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for the allethrins. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as half-life data, nature of residue data, etc., or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for the allethrins. Risks of concern associated with the use of the allethrins include the following: incidental oral exposures from residential surface sprays and pet treatments, and post-application inhalation exposures from residential space sprays and outdoor fogger applications. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

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 the allethrins, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For the allethrins, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its limited use and few complex issues. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

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 allethrins. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data

concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, Allethrins.

Dated: December 19, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–22124 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0992; FRL–8108–6]

Pesticide Products; 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 January 26, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0992, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0992. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Hope Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-5410; e-mail address: *johnson.hope@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 or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

File Symbol: 62719-LAE. *Applicant*: Dow Agrosciences, LLC., 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: GF-1727. Herbicide. *Active ingredient*: florasulam: N-(2,6-difluorophenyl)-8-fluoro-5-methoxy (1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide at 0.39%; and MCPA: 2-methyl-4-chlorophenoxyacetic acid, 2-ethylhexyl ester at 42.25%. *Proposal classification/Use*: Wheat (including durum), barley, oats, rye, and triticale. (Hope Johnson).

File Symbol: 62719-LAG. *Applicant*: Dow Agrosciences, LLC., 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: GF-184. Herbicide. *Active ingredient*: florasulam: N-(2,6-difluorophenyl)-8-fluoro-5-methoxy (1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide at 0.25%; and fluroxypyr 1-methylheptyl ester: ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy) acetic acid, 1-methylheptyl ester at 14.53%. *Proposal classification/Use*: Wheat (including durum), barley, oats, rye, and triticale. (Hope Johnson).

File Symbol: 62719-LAN. *Applicant*: Dow Agrosciences, LLC., 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: EF-1343. Herbicide *Active ingredient*: florasulam: N-(2,6-difluorophenyl)-8-fluoro-5-methoxy (1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide at 4.84%. Proposal classification/Use: Wheat (including durum), barley, oats, rye, and triticale. (Hope Johnson).

File Symbol: 62719-LAR. *Applicant*: Dow Agrosciences, LLC., 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: EF-1440. Herbicide *Active ingredient*: florasulam: N-(2,6-difluorophenyl)-8-fluoro-5-methoxy (1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide at 45%. *Proposal classification/Use:* Manufacturing use only. (Hope Johnson).

File Symbol: 62719-LLI. *Applicant*: Dow Agrosciences, LLC., 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: EF-1383. Herbicide *Active ingredient*: florasulam: N-(2,6-difluorophenyl)-8-fluoro-5-methoxy (1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide at 0.58%, and 2,4-dichlorophenoxyacetic acid, 2-ethylhexyl ester at 42.33%. *Proposal classification/Use*: Wheat (including durum), barley, rye, and triticale. (Hope Johnson).

File Symbol: 62719-LLO. *Applicant*: Dow Agrosciences, LLC., 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: Florasulam Wet Cake Technical. Herbicide. *Active ingredient*: florasulam: N-(2,6-difluorophenyl)-8-fluoro-5-methoxy (1,2,4)triazolo(1,5-c)pyrimidine-2-sulfonamide at 99.2%. *Proposal classification/Use*: Manufacturing use only. (Hope Johnson).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 19, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–22121 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0934; FRL–8108–7]

Paradichlorobenzene; Notice of Receipt of Request to Voluntarily Cancel Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel their registration and the use of products containing the pesticide paradichlorobenzene. The request would terminate all uses of Fertilome Tree Borer Crystals. The request would not terminate the last paradichlorobenzene product registered for use in the U.S. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 26, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0934, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0934. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically

captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Christina Scheltema, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-2201; fax number: (703) 308-8005; e-mail address: *scheltema.christina@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 regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from the pesticide registrant, Voluntary Purchasing Groups, Inc., to cancel the product registration for Fertilome Tree Borer Crystals [EPA Reg. No. 7401-123] containing the active ingredient paradichlorobenzene. Although this product is registered for use on fruit trees, it is no longer being produced or sold in the United States. In a letter dated October 31, 2006, Brazos Associates, Inc, the authorized agent for the registrant, Voluntary Purchasing Groups, Inc., requested that EPA cancel the product registration for Fertilome Tree Borer Crystals. This request would not terminate the last paradichlorobenzene product registered for use in the U.S.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from Voluntary Purchasing Groups, Inc. to cancel a single paradichlorobenzene product registration. The affected product and registrant making the request are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The paradichlorobenzene registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registration.

TABLE 1.—PARADICHLOROBENZENE PRODUCT REGISTRATION WITH PENDING REQUEST FOR CANCELLATION

Registration No.	Product name	Company
7401-123	Fertilome Tree Borer Crystals	Voluntary Purchasing Groups, Inc.

TABLE 2. —REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
7401	Authorized Agent for Voluntary Purchasing Groups, Inc.: Michael A. Jackson Brazos Associates, Inc. 1806 Auburn Avenue Carrollton TX 75007-1451

IV. 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 a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of EPA Reg. No. 7401-123

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 26, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product has been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

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. In any order issued in response to this request for cancellation of a product registration, the Agency proposes to include the following provisions for the treatment of any existing stocks of the product identified or referenced in Table 1.

The registrant will have 18 months to sell or distribute existing stocks of the product that are packaged, labeled and available for shipment. Persons other than the registrant will be able to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides, pests, Fertilome Tree Borer Crystals, and paradichlorobenzene.

Dated: December 14, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–22057 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board

AGENCY: U. S. Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of Membership of the EEOC Performance Review Board.

SUMMARY: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the Chair regarding SES retention and compensation matters, including performance ratings, performance awards, potential Presidential Rank Award nominees, and performance-based pay adjustments.

FOR FURTHER INFORMATION CONTACT: Angelica E. Ibarguen, Chief Human Capital Officer, Office of Human Resources, U.S. Equal Employment Opportunity Commission, 1801 L Street, NW., Room Washington, DC 20507, Telephone: (202) 663–4306.

SUPPLEMENTARY INFORMATION: The Board shall consist of at least three voting members. When evaluating a career appointee's initial appraisal or recommending a career appointee for a performance award, more than half of the members must be SES career appointees. The names and position titles of the members of the EEOC PRB are set forth below (all are EEOC officials except Rita Franklin, Deputy Director, Office of Human Capital Management , Department of Energy):

Leslie E. Silverman, Vice Chair (Chairperson of the PRB), Carlton Hadden, Director, Office of Federal Operations (Member); James Lee, Deputy General Counsel (Member); Spencer Lewis, Director, New York District Office (Member); Rita Franklin, Deputy Director, Office of Human Capital Management, Department of Energy (Member); and Jeffrey Smith, Chief Financial Officer (Alternate).

Membership is effective on the date of this notice.

Signed at Washington, DC on this 19th day of December 2006. For the Commission.

Naomi C. Earp,

Chair.

[FR Doc. E6–22108 Filed 12–26–06; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 January 22, 2007.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Spencer MHC and Spencer Mid–tier Holding Company, both of Spencer, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Spencer Savings Bank, Spencer, Massachusetts.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. FineMark Holdings, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of FineMark National Bank & Trust, both of Fort Myers, Florida (in organization).

C. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to merge with United Heritage Bankshares of Florida, Inc., and thereby indirectly acquire voting shares of United Heritage Bank, both of Orlando, Florida.

Board of Governors of the Federal Reserve System, December 21, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22104 Filed 12–26–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3520). The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through January 31, 2010 the current OMB clearance for information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule (''MTOR'' or ''Rule''), 16 CFR Part 435. That clearance expires on January 31, 2007.

DATES: Comments must be filed by January 26, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Mail or Telephone Order Merchandise Trade Regulation Rule: FTC File No. R511929,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H 135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *paperworkcomment@ftc.gov.* However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2967.

SUPPLEMENTARY INFORMATION: On October 13, 2006, the FTC sought comment on the information collection requirements associated with the Mail or Telephone Order Merchandise Trade Regulation Rule (''MTOR'' or ''Rule''), 16 CFR Part 435 (OMB Control Number: 3084–0106). *See* 71 FR 60530. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before January 26, 2007.

The MTOR was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship merchandise ordered by mail on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. Accordingly, the Commission amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem (*e.g.*, Internet sales), and the Rule was then

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

renamed the ''Mail or Telephone Order Merchandise Rule.''

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the MTOR requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

Burden Statement

Estimated total annual hours burden: 3,083,000 hours (rounded to the nearest thousand).

In its 2003 PRA-related **Federal Register** Notices [2] and corresponding submission to OMB, FTC staff estimated that 53,600 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,800 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[3] Thus, the total estimated hours burden was 3,094,000 hours, rounded up to the nearest thousand [(53,600 established companies × 50 hours) + (1,800 new entrants × 230 hours)].

No provisions in the Rule have been amended or changed since staff's prior submission to OMB. Thus, the Rule's disclosure and record-keeping requirements remain the same. Since then, however, the number of businesses engaged in the sale of merchandise by mail or by telephone has increased. Comparing data from the U.S. Department of Commerce 2002 Statistical Abstract with data from the 2006 Statistical Abstract,[4] between 1999 and 2002 the number of businesses subject to the MTOR grew from 51,800 to 54,500, or an average increase of 675 new businesses a year [(54,500 businesses in 2002—51,800 businesses in 1999) (4 years]. Assuming this growth rate continues, the average number of established businesses during the three-year period for which OMB clearance is sought for the Rule would be 58,550.[5]

Conversely, based on the 2002 and 2006 Statistical Abstract data, FTC staff is reducing its estimate of new businesses per year from 1,800 to 675. Thus, staff estimates that the average number of affected entities during the three-year OMB clearance period will be approximately 59,225 (58,550 established companies + 675 new entrants).

Accordingly, staff estimates total industry hours to comply with the MTOR by then will be 3,083,000 hours [(58,550 established companies x 50 hours) + (675 new entrants x 230 hours)], rounded to the nearest thousand.

This may overstate the total number of hours spent on MTOR compliance. The mail-order industry has been subject to the basic provisions of the Rule since 1976 and the telephone-order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Moreover, arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the MTOR is widely regarded by direct marketers as being good business practice. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Accordingly, the Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute ''burden'' under the PRA.[6] Nevertheless, staff continues to conservatively assume that the time devoted to compliance with the Rule by existing and new companies remains unchanged.

Estimated labor costs: $53,829,000 (rounded to the nearest thousand).

FTC staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. According to the 2002 and 2006 Statistical Abstract, average payroll for ''electronic shipping and mail order houses,'' ''direct selling establishments,'' and ''other direct selling establishments'' rose from $14.41 per hour in 1999 to $15.92 per hour in 2002, an increase of $1.51 per hour over four years ($15.92 per hour in 2002—$14.41 per hour in 1999), or an average of $0.378 per year ($1.51 increase over four years (4 years). Assuming average payroll continues to increase an average of $0.378 per hour per year, the average payroll during the three-year period for which OMB clearance is sought for the Rule would be $17.46 per hour.[7] Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for electronic shipping and mail order houses and direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses for MTOR compliance

[2] 68 FR 58683 (Oct. 10, 2003); 68 FR 74580 (Dec. 24, 2003).

[3] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[4] Comparing Table 1000, ''Retail Trade—Establishments, Employees and Payroll: 1999 and 2000,'' Statistical Abstract of the United States, 122nd edition, 2002, U.S. Department of Commerce, Economics and Statistics Administration, with Table 1015, ''Retail Trade—Establishments, Employees and Payroll: 2000 and 2002,'' Statistical Abstract of the United States, 125th edition, 2006, U.S. Department of Commerce, Economics and Statistics Administration.

[5] As discussed above, the existing OMB clearance for the Rule expires on January 31, 2007 and the FTC is seeking to extend the clearance through January 31, 2010. The average number of established businesses during the three-year clearance period was determined as follows: [(54,500 businesses in 2002 + (675 new entrants per year × 5 years)) + (54,500 businesses in 2002 + (675 new entrants per year × 6 years)) + (54,500 businesses in 2002 + (675 new entrants per year × 7 years))÷ (3 years.

[6] Staff recognizes that, since the FTC's previous PRA submission to OMB for the Rule, many businesses have upgraded the information management systems they need in order to comply with the Rule and to track orders more effectively. These upgrades, however, were primarily prompted by the industry's need to deal with growing consumer demand for merchandise (resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet). Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[7] The approximate payroll during the three-year clearance period was determined as follows: [($15.19 payroll in 2002 + ($0.378 average increase per year × 5 years)) + ($15.19 payroll in 2002 + ($0.378 average increase per year × 6 years)) + ($15.19 payroll in 2002 + ($0.378 average increase per year × 7 years))] (3 years.

during the three-year period for which OMB approval is sought would be approximately $53,829,000 (3,083,000 hours x $17.46/hr.), rounded to the nearest thousand. Relative to direct industry sales, this total is negligible.[8]

Estimated annual non-labor cost burden: $0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

William Blumenthal,

General Counsel.

[FR Doc. E6–22171 Filed 12–26–06; 8:45 am]

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[8] Based on a $9.775 billion average yearly increase in sales for ''electronic shopping and mail-order houses'' from 2000 to 2004 (according to the 2006 Statistical Abstract), staff estimates that total mail or telephone order sales to consumers in the three-year period for which OMB clearance is sought will average $187.4 billion. Thus, the projected average labor cost for MTOR compliance by existing and new businesses for that period would amount to less than 0.029% of sales.

FEDERAL TRADE COMMISSION

Public Workshop: Negative Options: An FTC Workshop Analyzing Negative Option Marketing

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice announcing public workshop and requesting public comment.

SUMMARY: The FTC is planning to host a public workshop that will analyze the marketing of offers of goods and services with negative option features. The workshop will address the pros and cons of such offers, discuss online marketing of such offers, and explore ways to make effective disclosures in online advertising of such offers.

DATES: The workshop will be held on Thursday, January 25, 2007 from 8 a.m. to 4:30 p.m. at the Federal Trade Commission's Satellite Building, located at 601 New Jersey Avenue, NW., Washington, DC. The event is open to the public and there is no fee for attendance. Pre-registration is not required. Comments addressing the workshop agenda topics and the issues discussed by the panelists at the workshop must be received on or before February 26, 2007.

ADDRESSES: Interested persons are invited to submit written comments addressing the workshop agenda topics and the issues discussed by the panelists at the workshop. Comments should refer to ''Negative Option Workshop—Comment P064202'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two copies to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H (Annex E), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area, and at the Commission, is subject to delay due to heightened security precautions.

Because U.S. postal mail is subject to delay due to heightened security measures, please consider submitting your comments in electronic form. Comments filed in electronic form (except comments containing any confidential material) should be submitted by visiting the Web site at *https://secure.commentworks.com/ftc-negativeoptionworkshop* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-negativeoptionworkshop* Web site. If this Notice appears at *www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that *regulations.gov* forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, 202–326–3740, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Room NJ–2202, Washington, DC 20580. Prior to the workshop, an agenda and additional information for attendees will be posted on the FTC's Web site, *www.ftc.gov/bcp/workshops/negativeoption.*

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

Many offers for products or services marketed to consumers today include not just an offer for one product or an initial provision of services, but the opportunity to consent in advance to continue to receive products or services in the future. This type of sales offer or agreement is commonly known as a ''negative option offer.'' The central characteristic of a negative option offer is that the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

Negative option offers take a variety of forms. One of the best known is a prenotification negative option plan. In such a plan, consumers receive periodic announcements of upcoming merchandise and have a set period of time to contact the company and decline the item. If they remain silent, the company sends them the merchandise. Another common offer is called a continuity plan. In this type of plan, consumers receive regular shipments of merchandise until the consumer cancels the agreement. A third popular offer is the trial conversion. Consumers in such a plan agree to receive products or utilize

[1] Commission Rule 4.2(d), 16 CFR 4.2 (d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

services for a trial period at no charge or for a reduced price. If the consumer does not cancel the agreement before the end of the trial period, the product shipments or provision of services continue and the consumer incurs charges.

The FTC's upcoming workshop ''Negative Options: Analyzing the Marketing of Offers with Negative Option Features'' will continue the Commission's long-standing efforts to address these types of sales offers in a manner that balances their benefits to businesses and consumers against the potential for deception and abuse. The workshop will provide an opportunity to learn more about the benefits and costs of negative option offers from consumer, business, and academic perspectives.

With the explosion of Internet marketing over the past ten years, negative option offers are as much a fixture of online advertising as in any other advertising media. The workshop will bring together Internet experts, industry, and consumer groups to discuss consumer behavior online and how it affects consumers and marketers with respect to negative option offers.

We expect to address the following questions:

1. What are the pros and cons of negative option marketing?

• Why do businesses choose to structure offers with negative option features?

• What are the benefits of negative option offers to businesses and consumers?

• What are the costs of negative option offers to businesses and consumers?

• How do consumers interpret or misinterpret negative option offers?

2. How do consumers behave when viewing and responding to marketing offers online?

• How do consumers navigate online advertising?

• How do marketers present contract terms and make disclosures in online advertising?

• What does online research reveal about how to communicate effectively important offer terms to consumers?

3. How can marketers meet the clear and conspicuous standard for advertising disclosures when making negative option offers online?

• Are there issues unique to negative option offers that must be addressed when making clear and conspicuous disclosures?

• What challenges do marketers face in applying the clear and conspicuous standard to online negative option offers?

4. How can advertisers make negative option offers with effective disclosures that are compatible with the advertising message?

• Where in online advertising should marketers make negative option disclosures?

• At what point in the sales offer should marketers make such disclosures?

• What types of information about the offer should marketers include in the advertising?

Form and Availability of Comments

The FTC requests that interested parties submit written comments addressing the above questions to foster greater understanding of the issues. In particular, the FTC requests that commentators submit relevant studies, surveys, research, and empirical data. The comment period will remain open after the workshop so that interested parties can provide input regarding the discussions held at the workshop. Written comments must be received on or before February 26, 2007, and may be filed in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–22147 Filed 12–26–06; 8:45 am]

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.s.c. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—11/27/2006			
20070272	MDU Resources Groupo, Inc.	Cascade Natural Gas Corp.	Cascade Natural Gas Corp.
20070278	Prism Business Media Holdings, LLC.	Penton Media, Inc.	Penton Media, Inc.
20070289	RiskMetrics Group, Inc.	Institutional Shareholder Services	Institutional Shareholder Services
20070291	Affordable Residential Communities, Inc..	The C. Clifton Robinson Intervivos Assets Trust.	NLASCO, Inc.
20070300	Wellsford Real Properties, Inc.	Reis, Inc.	Reis, Inc.
20070304	Alfred E. Mann	MannKind Corporation	MannKind Corporation
20070315	Aruze	Wynn Resorts, Limited	Wynn Resorts, Limited
20070317	H.I.G. Capital Partners III, L.P.	The Bernard Sherman 2000 Trust	The Harvard Drug Group, L.L.C.
20070322	ValueAct Capital Master Fund, L.P..	Seitel, Inc.	Seitel, Inc.
20070324	David Geffen	DWA Escrow LLLP	Dream Works Animation SKG, Inc.
20070325	Jeffrey Katzenberg	DWA Escrow LLLP	Dream Works Animation SKG, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/28/2006			
20070237	Blue Harbour Strategic Value Partners Offshore, Ltd..	Community Health Systems, Inc.	Community Health Systems, Inc.

Trans #	Acquiring	Acquired	Entities
20070249	Madison Dearborn Capital Partners IV, L.P..	James E. Mauer	JEM Sales, Inc. Zartic, Inc. Zar Tran, Inc.
20070284	Wellspring Capital Partners IV, L.P..	Superior Plus Income Fund	JW Aluminum Holding Company
20070293	Herbst Gaming, Inc.	Kirk Kerkorian	PRMA Land Development Company The Primodonna Company, LLC
20070320	Joseph M. Gregory	Lehman Brothers Holdings Inc.	Lehman Brothers Holdings Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/29/2006			
20070299	Prides Capital Fund I, L.P.	Waste Services, Inc.	Waste Services, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/30/2006			
20070250	Allis-Chalmers Energy Inc.	OGRS, L.L.C.	Oil & Gas Rental Services, Inc.
20070274	Affiliated Managers Group, Inc.	Chicago Equity Partners, LLC	Chicago Equity Partners, LLC
20070281	SkillSoft PLC	2003 TIL Settlement	Thomson Global Resources Thomson Learning Inc.
20070282	2003 TIL Settlement	SkillSoft PLC	SkillSoft PLC and certain assets of Teksid Aluminum Components, Inc. Teksid Aluminum Foundry, Inc. Teksid do Brasil Aluminio Ltd. Teksid Investment Aluminum B.V.
20070309	Alfa, S.A.B. de C.V.	Questor Partners Bermuda, L.P..	
TRANSACTIONS GRANTED EARLY TERMINATION—12/01/2006			
20070295	TC Pipelines	Sierra Pacific Resources Inc.	Tuscarora Gas Transmission Company
20070298	Nomura Holding, Inc.	Silver Lake Partners II, L.P.	Instinet Incorporated
20070314	Westbury Trust	Waste Services, Inc.	Waste Services, Inc.
20070316	Electric Power Development Co., Ltd..	Peoples Energy Corporation	COB Energy Facility, LLC Elwood Energy, LLC Elwood Expansion, LLC
TRANSACTIONS GRANTED EARLY TERMINATION—12/04/2006			
20070287	Micron Technology, Inc.	Bali Investments S.a.r.l.	Avago Technologies Limited
20070303	Hunter's Glen/Ford, Ltd.	Affordable Residential Communities Inc..	Affordable Residential Communities Inc.
20070310	Bank of America Corporation	Clout Financial Services, Inc.	Clout Financial Services, Inc.
20070311	SPC Partners III, L.P.	Raj Bhathal	RAJ Manufacturing, Inc.
20070327	McKesson Corporation	Per-Se Technologies, Inc.	Per-Se Technologies, Inc.
20070335	Zubair M. Kazi	YUM! Brands, Inc.	KFC U.S. Properties, Inc.
20070337	Liz Claiborne, Inc.	Newton Holding, LLC	Kate Spade LLC
20070339	PepsiCo, Inc.	North Castle Partners II, L.P.	Naked Juice Co. Holdings, Inc.
20070342	Sandler Capital Partners V, L.P.	Dean Hazen	Starstream Communications Inc.
20070346	Catholic Healthcare West	Mission Holding Corporation	CDS of Nevada, Inc. and Primary Care Plus Mission Holding Corporation Primary Care Plus Foundation Saint Mary's Foundation Saint Mary's Health First Saint Mary's Outpatient Surgery Center at Galena Saint Mary's Preferred Health Insurance Company, Inc. Saint Mary's Saint Mary's Regional Medical Center
20070350	CHS Private Equity V LP	Mainline Holding Company, LLC	Mainline Holding Company, LLC
20070354	GWLS Holdings, Inc.	Fenway Partners Capital Fund II, L.P..	Greatway Logistics Services, Inc.
20070359	W. Jack Davis	Citigroup Inc.	ERICO Global Company
20070362	Abbott Laboratories	Kos Pharmaceuticals, Inc.	Kos Pharmaceuticals, Inc.
20070363	Alexander Abramov	Oregon Steel Mills, Inc.	Oregon Steel Mills, Inc.
20070364	Roman Abramovich	Oregon Steel Mills, Inc.	Oregon Steel Mills, Inc.
20070370	Audax Private Equity Fund, L.P.	Thomas Gorny	Dot5Hosing, Inc. iPower, Inc. StartLogic, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—12/05/2006			
20070259	MatlinPatterson Global Opportunities Partners (Cayman) II LP.	Owens Corning	Owens Corning
20070260	MatlinPatterson Global Opportunities Partners II L.P..	Owens Corning	Owens Corning

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—12/06/2006			
20070328	The Bear Stearns Copanies, Inc.	Dean Vanech	Delta Power Company, LLC DPC Atlantis, LLC
20070376	Sterling Investment Partners II, L.P..	American Capital Strategies, Ltd.	WWC Acquisitions, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—12/07/2006			
20070319	Bayer AG	Warner Chilcott Limited	Warner Chilcott (US), Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—12/08/2006			
20070276	Thompson Street Capital Partners II, L.P..	Randy Mauermann	Connecticut Electric & Switch Manufacturing Co. Parallax Power Supply, LLC Tacoma Electric Supply, LLC
20070301	Tata Steel Limited	Corus Group plc	Corus Group plc
20070312	CSL Limited	Medimmune, Inc.	Medimmune, Inc.
20070313E.P. Hamilton Trusts, LLC.	Blackwell Publishing Limited	Blackwell Publishing Limited.	
20070326	Alexander Knaster	Richard W. Muzzy, Jr.	The Holland Group, Inc.
20070330	Harbour Group Investments V, L.P..	FdG Capital Partners LLC	Implus Footcare, LLC
20070349	News Corporation	Netherlands Mobile Holdings, B.V..	Netherlands Mobile Holdings, B.V.
20070352Fortis SA	Stuart N. Leaf	Cadogan Management LLC.	
20070353	Fortis N.V.	Stuart N. Leaf	Cadogan Management LLC
20070366	Diamond Castle Partners IV, L.P.	Providence Equity Partners IV L.P..	BlueStone TV Holdings Inc.
20070375	Green Equity Invwestors IV, L.P.	Federated Department Stores, Inc..	David's Bridal, Inc. Priscilla of Boston, Inc.
20070382	Dynea Oy	Dynea Canada Ltd. Dynea Chemicals Oy Dynea Mexico S.A. de C.V. Marmorandum LLC.	
20070385	Morgenthaler lPartners VII, L.P.	Frank Gibbs	Ryan Herco Products Corporation
20070387	Morgan Stanley	Welsh, Carson, Anderson & Stowe IX, L.P..	the Company
20070388	InterMedia Partners VII, L.P.	Primedia, Inc.	Primedia Enthusiast Publications, Inc. Primedia Special Interest Publications, Inc. Primedia Specialty Group, Inc.
20070389	J.W. Childs Equity Partners III, L.P..	CHG Healthcare Services, Inc.	CHG Healthcare Services, Inc.
20070402	AT&T Inc.	Comergent Technologies	Comergent Technologies, Inc.
20070405	Parallel Investment Partners, PL	Ricarhd A. Godley	Regional Management Corp.
20070413	American Express Company	Oak Investment Partners XI, Limited Partnership.	Harbor Payments, Inc.
20070416	SIC Investment Co., Ltd.	Toshiba Ceramics Co., Ltd.	Toshiba Ceramics Co., Ltd.
20070423	Cypress Semioconductor Corporation.	Thomas Dinwoodie	PowerLight Corporation
20070424	Thomas Dinwoodie	Cypress Semioconductor Corporation.	SunPower Corporation
TRANSACTIONS GRANTED EARLY TERMINATION—12/11/2006			
20070351	AEGON, N.V.	Clark, Inc.	Clark, Inc.
20070356	Nidec Corporation	Valeo S.A.	Valeo Equipment 1 Mexico, S.de R.L. de C.V. Valeo Equipment 1 U.S., Inc.
20070418	Motorola, Inc.	Good Technology	Good Technology, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—12/12/2006			
20061437	Johnson & Johnson	Pfizer, Inc.	CHC Direct LLC Parke, Davis & Company LIC Pfizer H.C.P. Corporation and Others Pfizer Overseas, Inc. Pfizer Pharmaceuticals LLC Pharmacia & Upjohn Company LLC Tabor Corporation Warner Lambert Co LLC
20070332	Rhone Capital L.L.C.	Compar Invest S.A.	LWB Refractories Holding GmbH
20070340	3M Company	Don Segal	SoftMed Systems, Inc.

Trans #	Acquiring	Acquired	Entities
20070357	BlackRock Kelso Capital Holding LLC.	Joseph A. Megy	Jamegy, Inc.
20070361	Caxton-Iseman (VNG), L.P.	Gary E. West	Valley National Gases Incorporated
20070368	Great Hill Equity Partners III, L.P.	FreightQuote.com Inc.	FreightQuote.com Inc.
20070372	Q-Comm Corporation	Journal Communications, Inc.	Norlight Telecommunications, Inc.
20070401	Quad-C Partners VII, L.P.	Dublin Clark Fund II, L.P.	Special Event Services, Inc.
20070408	Royal Bank of Canada	Ronald H. Shear	CAMS GP, LLC Carlin Asset Management, LLC GTP, LLC
20070409	Paul G. Desmarais	U.S. Bancorp	U.S. Bank National Association
TRANSACTIONS GRANTED EARLY TERMINATION—12/13/2006			
20070393	Alan B. Miller	Texoma HealthCare System	TexomaCare Texoma Interstate Ventures, Inc. Texoma Medical Center, Inc. Texoma Medical Center Restorative Care Hospital Texoma Specialty Care
TRANSACTIONS GRANTED EARLY TERMINATION—12/14/2006			
20070396	Pfizer Inc.	Embrex, Inc.	Embrex, Inc.
20070404	West Central Cooperative	SoyMor Cooperative	SoyMor Biodiesel LLC
20070406	The Penderley Charitable Trust	Orient Overseas (International) Limited.	Consolidated (Terminal Holdings) Ltd. Global Terminal & Container Services Inc.
20070432	Reed Elsevier PLC	BuyerZone.com, Inc.	BuyerZone.com, Inc.
20070433	Reed Elsevier PLC	BuyerZone.com, Inc.	BuyerZone.com, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—12/15/2006			
20070386Abbott Laboratories.	Enanta Pharmaceuticals, Inc.	Enanta Pharmaceuticals, Inc.	
20070419	Premium Holding Corporation	Independent Bank Corporation	Mepco Acceptance Corp Mepco Insurance Premium Financing, Inc.
20070428	Beecken Petty O'Keefe QP Fund II, L.P.	Fidelity Investors VI Limited Partnership.	TIDI Holdings, LLC
20070430	Alleghany Corporation	Homesite Group Incorporated	Homesite Group Incorporated
20070436	Axium International, Inc.	Computer Horizons Corp.	Chimes, Inc. Chimes Servicing Corp.
20070439	Global Geophysical Services, Inc.	Global Geophysical Services, Inc.	
20070459	Actuant Corporation	Hubregsem Bonnet Equity Partners, L.P.	Maxima Holding Company, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–9865 Filed 12–26–06; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Los Alamos National Laboratory, Los Alamos, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On November 9, 2006, as provided for under 42 U.S.C. 7834q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy predecessor agencies and their contractors or subcontractors who were monitored or should have been monitored for exposure to ionizing radiation associated with radioactive lanthanum (RaLa) operations at Technical Area 10 (Bayo Canyon Site), Technical Area 35 (Ten Site), and Buildings H, Sigma, and U (located within Technical Area 1) at the Alamos National Laboratory (LANL) for a number of work days aggregating at least 250 work days during the period from September 1, 1944 through July 18, 1963, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on December 9, 2006, as provided for under 42 U.S.C. 7834*l*(14)(C). Hence, beginning on December 9, 2006, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Ellicott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also

be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 06–9876 Filed 12–26–06; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Oak Ridge Thermal Diffusion Plant (S–50), Oak Ridge, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On November 9, 2006, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy predecessor agencies and their contractors or subcontractors who were monitored or should have been monitored while working at S–50 Oak Ridge Thermal Diffusion Plant (S–50) for a number of work days aggregating at least 250 work days during the period from july 9, 1944 through December 31, 1951, or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on December 9, 2006, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on December 9, 2006, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliottt, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 06–9877 Filed 12–26–06; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Oak Ridge Institute of Nuclear Studies Cancer Research Hospital, Oak Ridge, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On November 9, 2006, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy predecessor agencies and their contractors or subcontractors who were monitored or should have been monitored while working at the Oak Ridge Institute of Nuclear Studies Cancer Research Hospital from May 15, 1950, through December 31, 1963, and who were employed for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on December 9, 2006, as provided for under 42 U.s.C. 7384*l*(14)(C). Hence, beginning on December 9, 2006, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard, M.D.

Director, National Institute for Occupational Safety and Health.

[FR Doc. 06–9875 Filed 12–26–06; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07–04JL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Intervention Development to Increase Cervical Cancer Screening Among Mexican American Women: Phase 2—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Differences in incidence of invasive cervical cancer exist among some minority populations. Among women

older than age 29, cervical cancer incidence for Hispanic women was approximately twice that for non-Hispanic women. Papanicolaou (Pap) tests can prevent cervical cancer. Nevertheless, recent studies suggest that Hispanic women in the United States and Puerto Rico under-use cervical cancer screening tests. Additionally, survey data have shown that Hispanic women in the international border region of the United States under-utilize these Pap tests compared to non-Hispanic women in the same region. The need exists to increase Pap test screening among Hispanic women living in the United States.

The purpose of this project is to refine a multi-component behavioral intervention delivered by lay health workers to increase cervical cancer screening among U.S. and foreign-born Mexican women. The proposed study will use personal interviews and workshops. There will be no cost to respondents other than their time.

Estimated Annualized Burden Hours

Type of data collection	Number of respondents	Number of responses per respondent	Average burden per responses (in hours)	Total burden (in hours)
Personal interviews	128	1	2	256
Workshops	60	1	5.5	165
Total				411

Dated: December 14, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–22118 Filed 12–26–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–091]

NIOSH Proposed Revision of the ''Occupational Exposure Sampling Strategies Manual (OESSM)''

AGENCY: The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

ACTION: Notice to request public comments.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) is considering updating the Occupational Exposure Sampling Strategies Manual(OESSM), NIOSH Document Number: DHHS (NIOSH) Publication Number 77–173; and requests user feedback to maximize the relevancy of any revisions to the document. Specifically, NIOSH seeks input in the following areas:

1. The relevance, currency, and appropriateness of the OESSM; identification of the most useful components of the OESSM; information on the disciplines and jobs of current users; and other useful resources related to sampling strategies.

2. The need for an updated/revised OESSM; the types of information needed but not currently included in the OESSM; the revisions needed to make the OESSM more useful; the gaps, unmet needs for guidance, or needs for new information; and the topics that do not need to be updated or addressed in the OESSM to avoid duplicating already existing materials.

3. Information needs relative to exposure assessment and sampling strategies (*e.g.*, qualitative vs. quantitative, control banding approaches, etc.).

4. The Action Level approach (decision statistics, utility of the decision logic chart in the current OESSM [p. 11]).

5. Statistical issues, including the need for new sampling strategy statistics, the existing sampling strategy applications, and the need for specific sampling strategies that are currently not addressed.

6. The most appropriate (needed or preferred) dissemination medium for an updated/revised OESSM (hard copy, CD, Web-based, etc.), including the preferred organizational format (*e.g.*, one large document, one overview document with several monographs on specific topics, etc).

NIOSH expects to hold a public meeting (date, time, and location to be announced in the **Federal Register** on a later date) for additional input on future occupational exposure sampling strategies guidance.

A copy of the current Occupational Exposure Sampling Strategies Manual and additional information related to this announcement can be found at: *http://www.cdc.gov/niosh/review/public/77–173.*

ADDRESSES: Comments should be submitted to the NIOSH Docket Office, ATTN: Docket Number NIOSH–091, Robert A. Taft Laboratories, 4676 Columbia Parkway, M/S C–34, Cincinnati, OH 45226, telephone 513/533–8450, fax 513/533–8285.

Comments may also be submitted directly through the Web site *http://www.cdc.gov/niosh/review/public/77–173*. The document will remain available for comment until February 28, 2007.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 113, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Person for Technical Information: Mary Lynn Woebkenberg, Ph.D., Robert A Taft Laboratories, 4676 Columbia Parkway, Mailstop C–22, Cincinnati, Ohio 45226.

Dated: December 18, 2006.

James D. Seligman,

Chief Information Officer, Center for Disease Control and Prevention.

[FR Doc. E6–22120 Filed 12–26–06; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, ''CMS Fraud Investigation Database (FID), System No. 09–70–0527,'' most recently modified at 67 FR 65795 (October 28, 2002). We propose to modify existing routine use number 1 that permits disclosure to agency

contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remained as routine use number 1. We will delete routine use number 2 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We propose to broaden the scope of the disclosure provisions of this system by adding a routine use to permit the release of information to another Federal and state agencies to: (1) Contribute to the accuracy of CMS' proper payment of Medicare benefits; (2) enable such agency to administer a Federal health benefits program, and/or (3) assist Federal/state Medicaid programs within the state. We will broaden the scope of routine uses number 4 and 5 authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all Federally-funded health benefit programs.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to collect and maintain information to: (1) Identify if a violation(s) of a provision of the Social Security Act (the Act) or a related penal or civil provision of the United States Code (U.S.C.) related to Medicare (Title XVIII), Medicaid (Title XIX), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) have been committed; (2) determine if HHS has made a proper payment as prescribed under applicable sections of the Act; (3) determine whether these programs have been abused; and (4) coordinate investigations related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program; (5) prevent duplications investigatory efforts; and (5) provide case file material to the HHS Office of the Inspector General when a case is referred for fraud investigation. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant, or a CMS grantee; (2) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support litigation involving the Agency related to this system of records; and (4) combat fraud, waste, and abuse in certain health care programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

Effective Dates: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 20, 2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Tara Ross, Health Insurance Specialist, Program Integrity Group, Office of Financial Management, CMS, Mail Stop C3–02–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–9530 or e-mail *tara.ross@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

This system was established under the authority of sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, 1877, and 1902 of the Social Security Act (Title 42 U.S.C. sections 405, 1306, 1307, 1395g, 1395h, 1395l, 1395u, 1395ii, 1395kk, 1395mm, 1395nn, and 1396a).

B. Collection and Maintenance of Data in the System

Individuals alleged to have violated provision of the Act related to Medicare (Title XVIII), Medicaid (Title XIX), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) or other criminal/civil statutes as they pertain to the Social Security Act (the Act) programs where substantial basis for criminal/civil prosecution exist, defendants in criminal prosecution cases, or persons alleged to have abused the programs. The system contains the name, work address, work phone number, social security number, Unique Provider Identification Number (UPIN), and other identifying demographics of individuals alleged to have violated provision of the Act or persons alleged to have abused Medicare and/or Medicaid programs.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release FID information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both individually identifiable and non-individually-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of FID. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of

information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason the data are being collected; *e.g.*, is to identify if a violation(s) of a provision of the Social Security Act or a related penal or civil provision of the United States Code.

2. Determines that:

a. the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. establish administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

b. remove or destroy at the earliest time all individually-identifiable information; and

c. agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees that have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant, or grantee whatever information is necessary for the contractor, consultant, or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant, or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/state Medicaid programs within the state.

Other Federal or State agencies in their administration of a Federal health program may require FID information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper payment for services provided.

FID data may be disclosed to a state agency, agency of a state government, an agency established by state law, or its fiscal agent for purposes of ensuring that no payments are made with respect to any item or service furnished by an individual during the period when excluded from participation in Medicare and other Federal and state health care programs.

FID data may potentially be released to the state only on those individuals who are either individuals excluded from participation in the Medicare and other Federal and state health care programs, or employers of excluded individuals, or are legal residents of the State, irrespective of the location of provider or supplier furnishing items or services.

3. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. the Agency or any component thereof, or

b. any employee of the Agency in his or her official capacity, or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

4. To support a CMS contractor that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

5. To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in a program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct,

remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require FID information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy is to prohibit release even of not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: December 19, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NUMBER: 09–70–0527.

SYSTEM NAME:

''Centers for Medicare & Medicaid Services (CMS) Fraud Investigation Database (FID),'' HHS/CMS/OFM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and at various other remote locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals alleged to have violated provision of the Act related to Medicare (Title XVIII), Medicaid (Title XIX), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) or other criminal/civil statutes as they pertain to the Act programs where substantial basis for criminal/civil prosecution exist, defendants in criminal prosecution cases, or persons alleged to have abused the programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name, work address, work phone number, social security number, Unique Provider Identification Number (UPIN), and other identifying demographics of individuals alleged to have violated provision of the Act or persons alleged to have abused Medicare and/or Medicaid programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system was established under the authority of sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, 1877, and 1902 of the Act (Title 42 United States Code (U.S.C.) sections 405, 1306, 1307, 1395g, 1395h, 1395l, 1395u, 1395ii, 1395kk, 1395mm, 1395nn, and 1396a).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to collect and maintain information to: (1) Identify if a violation(s) of a provision of the Social Security Act (the Act) or a related penal or civil provision of the U.S.C. related to Medicare (Title XVIII), Medicaid (Title XIX), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) have been committed; (2) determine if HHS has made a proper payment as prescribed under applicable sections of the Act; (3) determine whether these programs have been abused; and (4) coordinate investigations related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program; (5) prevent duplications investigatory efforts; and (5) provide case file material to the HHS Office of the Inspector General when a case is referred for fraud investigation. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant, or a CMS grantee; (2) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support litigation involving the Agency related to this system of records; and (4) combat fraud, waste, and abuse in certain health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees that have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need access to the records in order to assist CMS.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/state Medicaid programs within the state.

3. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. the Agency or any component thereof, or

b. any employee of the Agency in his or her official capacity, or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

4. To support a CMS contractor that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such programs.

5. To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, and abuse in a program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such programs.

B. ADDITIONAL PROVISIONS AFFECTING ROUTINE USE DISCLOSURES

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

All records are accessible by UPIN/NPI or alpha (name) search. This system supports both on-line and batch access.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained for a period of 15 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Program Integrity Group, Office of Financial Management, CMS, Mail Stop C3–02–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, social security number (SSN) or UPIN, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with

Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from FID computer files as transmitted by the contractor sites.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

HHS claims exemption of certain records (case files on active fraud investigations) in the system from notification and access procedures under 5 U.S.C. 522a (k) (2) inasmuch as these records are investigatory materials compiled for program (law) enforcement in anticipation of a criminal or administrative proceedings. (See Department Regulation (45 CFR 5b.11))

APPENDIX A. HEALTH INSURANCE CLAIMS

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Centers for Medicare & Medicaid Services and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

I. CENTRAL OFFICE ADDRESS

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

II. CMS REGIONAL OFFICES

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

III. INTERMEDIARY ADDRESSES (HOSPITAL INSURANCE)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South, Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, PO Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, PO Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, PO Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C B MS, PO Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, PO Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthm IN), PO Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, Trailblazer, PO Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, PO Box 3248, Main PO Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual of Omaha, PO Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, PO Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue SW., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, PO Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, PO Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, PO Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, PO Box 2847, Seattle, WA 98111–2847.

IV. MEDICARE CARRIERS

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, PO Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, PO Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, PO Box 22545, Jackson, MI 39225–2545.

Medicare Coordinator, Administar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, PO Box 8190, Madison, WI 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., PO Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA-DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S-NE, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, PO Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian BCBSND (C0), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian BCBSND (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, PO Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC-California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

V. PAYMENT SAFEGUARD CONTRACTORS

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS, 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co. 6601 Little River Turnpike, Suite 300 Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., PO Box 30207 400 South Salina Street, 2890 East Cottonwood Pkwy. Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd., PO Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., PO Box 100282, Columbia, SC 29202.

[FR Doc. E6–22139 Filed 12–26–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Deletion of System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice to republish the deletion of 10 systems of records.

SUMMARY: This notice supersedes the **Federal Register** Notice (FR)71 FR 70971 (December 7, 2006) that contained Centers Medicare & Medicaid Services (CMS) identification numbers that do not properly identify the CMS systems of records to be deleted.

DATES: *Effective Dates:* CMS filed a report of proposed deletions with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 19, 2006. To ensure that all parties have adequate time in which to comment, the deletions will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy

Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.—3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Jacqueline Code, Management Analysis, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. She can also be reached by telephone at 410–786–0393, or via e-mail at *Jacquie.Code@cms.hhs.gov*.

CMS is deleting the following systems of records.

System No.	Title	System Manager
09–1234;70–0036	Evaluation of the Competitive Bidding for Durable Medical Equipment Demo	HHS/CMS/ORDI
09–70–0053	Medicare Beneficiary Health Status Registry	HHS/CMS/ORDI
09–70–0067	End Stage Renal Disease Managed Care Demonstration	HHS/CMS/ORDI
09–70–0539	Claims Payment System for Medicare's Healthy Aging Demo Project	HHS/CMS/ORDI
09–70–0548	Data Collection of Medicare Beneficiaries Receiving Implantable Cardioverter-Defibulators for Primary Prevention of Sudden.	HHS/CMS/OCSQ
09–70–0549	Data Collection for Medicare Beneficiaries Receiving FDG Positron Tomography for Brain, Ovarian, Pancreatic, Small Cell Lung and Testicular Cancer.	HHS/CMS/OCSQ
09–70–0554	Anti-Cancer Chemotherapy for Colorectal Cancer (CRC)	HHS/CMS/OCSQ
09–70–0556	Carotid Artery Stenting	HHS/CMS/OCSQ
09–70–0561	Data Collection for Medicare Beneficiaries Receiving FDG Positron Tomography for Dementia.	HHS/CMS/OCSQ
09–70–0570	Medicare Bariatric Surgery System	HHS/CMS/OCSQ

Dated: December 14, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. E6–22125 Filed 12–26–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) (OMB No. 0915–0247)—Revision

The CHGME PP was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Data are collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–1 (Initial Application)	60	1	60	26	1,560
HRSA 99–1 (Reconciliation Application)	60	1	60	8	480
HRSA 99–2 (Initial Application)	60	1	60	15	900
HRSA 99–2 (Reconciliation Application)	60	1	60	5	300
HRSA 99–3 (Initial Application)	60	1	60	.25	15
HRSA 99–3 (Reconciliation Application)	60	1	60	.25	15
HRSA 99–4 (Reconciliation Application)	60	1	60	14	840
HRSA 99–5 (Initial Application)	60	1	60	.25	15
HRSA 99–5 (Reconciliation Application)	60	1	60	.25	15
Total	60		60		4,140

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management

and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 19, 2006.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E6–22138 Filed 12–26–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment request; The Atherosclerosis Risk in Communities Study (ARIC)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995. the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 28, 2006, pages 50924–50925, and allowed 60-days for public comments. Only one comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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 OMB control number.

Proposed Collection: Title: The Atherosclerosis Risk in Communities Study (ARIC).

Type of Information Collection Request: Revision of a currently approved collection (OMB NO. 0925–0281.

Need and Use of Information Collection: This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women.

Frequency of Response: The participants will be contacted annually.

Affected Public: Individuals or households: Businesses or other for profit; Small businesses or organizations.

Type of Respondents: Individuals or households; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows:

Estimated Number of Respondents: 12,845;

Estimated Number of Responses per Respondent: 1.0;

Average Burden Hours per Response: 0.242; and

Estimated Total Annual Burden Hours Requested: 3,108. The annualized cost to respondents is estimated at $60,525, assuming respondents' time at the rate of $16.5 per hour for family and patient respondents, and $75 per hour for physicians. There are not Capital Costs to report. There are no Operation or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Participant Follow-up	11,500	1.0	0.2500	2,875
[1] Physician, hospital, nursing home staff	945	1.0	0.1667	158
[1] Participant's next-of-kin	450	1.0	0.1667	75
Total	12,845	1.0	0.2420	3,108

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact; Dr. Hanyu Ni, NIH, NHLBI, 6701 Rockledge Drive, NSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0448 or E-mail your request, including your address to: *nihany@nhlbi.nih.gov*.

Comments Due Date: Comments regarding this information collection are based assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 20, 2006.

Peter Savage,

Acting Director, National Institutes of Health.

[FR Doc. 06–9874 Filed 12–26–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Addiction Technology Transfer Centers (ATTC) Network Program Monitoring (OMB No. 0930–0216)—Revision

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) will continue to monitor program performance of its Addiction Technology Transfer Centers (ATTCs). The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Health Care Policy and Research, National Institute of Justice, and other sources, as well as other SAMHSA programs. To accomplish this, the ATTCs develop and update state-of-the-art, research-based curricula and professional development training.

Each of the forms is described below. There are no changes to any of the forms. Sixty percent of the forms are administered in person to participants at educational and training events, who complete the forms by paper and pencil. Ten percent of the training courses are online, and thus, those forms are administered online. The remaining thirty percent is made up of those 30-day follow-up forms that are distributed to consenting participants via electronic mail using an online survey tool.

Event Description: The event description form asks approximately 10 questions of the ATTC faculty/staff for each of the ATTC events. The approved form asks the event focus, format, and publications to be used in the event.

Technical Assistance and Meeting Pre-event Information: The ATTCs provide technical assistance, which is a jointly planned consultation generally involving a series of contacts between the ATTC and an outside organization/institution during which the ATTC provides expertise and gives direction toward resolving a problem or improving conditions. A meeting is an ATTC sponsored or co-sponsored event in which a group of people representing one or more agencies other than the ATTC work cooperatively on a project, problem, and/or a policy. For technical assistance and meeting events, the pre-event information form asks approximately 10 questions of each individual who participated in the event. The approved form asks the participants to report their demographic information, education, work setting, responsibilities, and training goals. Satisfaction measures after each technical assistance and meeting event and at 30-day follow-up will be collected using the CSAT Government Performance and Results Act (GPRA) Customer Satisfaction forms. The burden has been approved under OMB # 0930–0197.

Training Forms

Trainings are defined as ATTC sponsored or co-sponsored events, mainly focusing on the enhancement of knowledge and/or skills of counselors and other professionals who work with individuals with substance use disorder-related problems. The study design for trainees will include a description of each event, and a pre-post survey that collects identical information at initiation of ATTC courses/trainings, at the completion of the course/training, and again after 30 days.

Pre-Event Information Form for Training: The pre-event information form for training asks approximately 10 questions of each participant in the training. The approved form asks the participants to report demographic information, education, work setting, responsibilities, and training goals.

Post-Event Information Form for Training: The Post-Event Information Form for Training asks approximately 30 questions of each individual that participated in the training. The approved form asks the participants to report demographic information, satisfaction with the quality of the training and training materials, and to assess their level of skills in the topic area.

Followup Information Form for Training: The Followup Information Form for Training asks about 10 questions of about 25% of consenting participants. The approved form asks the participants to report demographic information, satisfaction with the quality of the training and training materials, and to assess their level of skills in the topic area.

This information will assist CSAT in documenting the numbers and types of participants in ATTC events, describing the extent to which participants report improvement in their clinical competency, and which method is most effective in disseminating knowledge to various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total annual burden hours
Faculty/staff: Event Description Form	200	1	.25	50
Meeting and Technical Assistance Participants:Pre-Event Information Form	3,000	1	.08	240
Training Participants:				
Pre-Event Information Form	27,000	1	.13	3,510
Post-Event Information Form	27,000	1	.16	4,320
Followup Information	6,750	1	.16	1,080
Total	30,200	.....	.....	9,200

Written comments and recommendations concerning the proposed information collection should be sent by January 26, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: December 18, 2006.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E6–22117 Filed 12–26–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Cross-site Evaluation of the Garrett Lee Smith Memorial Suicide Prevention and Early Intervention Programs—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) will conduct the cross-site evaluation of the Garrett Lee Smith Memorial Suicide Prevention and Early Intervention State/Tribal Programs and the Garrett Lee Smith Memorial Suicide Prevention Campus Programs. The data collected through the cross-site evaluation will address four stages of program activity: (1) The context stage will assess the existing databases and availability of data sources, (2) the product stage will describe the products and services that are developed and utilized by these programs, (3) the process stage will assess the progress on key activities and milestones related to implementation of program plans, and (4) the impact stage will assess the impact of program activities on youth/students, gatekeepers, faculty/staff, and program partners within States/Tribal sites and campus sites. In addition, enhanced evaluation efforts are planned for the Tennessee Lives Count Suicide Prevention Program. The purpose of the enhanced evaluation is to expand upon self-evaluation and cross-site evaluation efforts to evaluate medium- and long-term outcomes associate with suicide prevention program activities.

There are 36 State/Tribal programs and 55 Campus programs participating in the cross-site evaluation. Data will be collected from suicide prevention program staff (project directors, evaluators), key program stakeholders (state/local officials, child-serving agency directors, gatekeepers, mental health providers, campus administrators), training participants, college students, and campus faculty/staff. Data collection for the cross-site evaluation will be conducted over a three-year period that spans FY2007 through FY2009. Because the State/Tribal grantees differ from the campus grantees in programmatic approaches, specific data collection activities also vary by type of program. The following describes the specific data collection activities and the sixteen data collection instruments to be used, followed by a summary table of number of respondents and respondent burden:

- *Existing Database Inventory (2 versions).* The Existing Database Inventory includes two versions to be administered to one respondent from (1) The 36 State/Tribal grantees and (2) the 55 Campus grantees. The Existing Database Inventory will be completed once in year one and once in year three of the cross-site evaluation by program staff. The questions included assess the availability of existing data, the integration of data systems, and the data elements that may or may not be collected in each system. The Existing Database Inventory will take approximately 30 minutes to complete and the number of existing databases within each grantee site will determine the number of items to complete. Questions on the Existing Database Inventory are open-ended and multiple choice.
- *Product and Services Inventory-State/Tribal (2 versions).* The Product and Services Inventory for State/Tribal grantees includes 2 versions. The State/Tribal grantees will complete the State/Tribal Product and Services Inventory-Baseline version once in year one of the cross-site evaluation and the State/Tribal Product and Services Inventory-Follow-up version quarterly thereafter in years two and three. The baseline version assesses the development and utilization of products and services during the first year of grant funding, and the follow-up version updates the development of products and services on a quarterly basis. These products and services may include awareness campaign products and materials; risk identification training materials and workshops; and enhanced services, including early intervention, family support, and postsuicide intervention services, as well as evidence-based programs. Both versions of the State/Tribal Product and Services Inventory will take approximately 45 minutes and the number of products and services developed and utilized within each grantee site will determine the number of items to complete. Questions on both versions of the State/Tribal Product and Services Inventory are open-ended and multiple choice.
- *Product and Services Inventory-Campus (2 versions).* The Product and Services Inventory for Campus grantees includes 2 versions. The Campus grantees will complete the Campus Product and Services Inventory-Baseline version once in year one of the cross-site evaluation and will complete the Campus Product and Services Inventory-Follow-up version quarterly thereafter in years two and three. The baseline version assesses the development and utilization of products and services during the first year of grant funding, and the follow-up version updates the development of products and services on a quarterly basis. These products and services may include awareness campaign products and materials; risk identification training materials and workshops; and enhanced services, including early intervention, family support, and postsuicide intervention services, as well as evidence-based programs. Both versions of the Campus Product and Services Inventory will take approximately 45 minutes and the number of products and services developed and utilized within each grantee site will determine the number of items to complete. Questions on both versions of the State/Tribal Product and Services Inventory are open-ended and multiple choice.
- *Referral Network Survey (1 version).* The Referral Network Survey will be administered to representatives of organizations and/or agencies involved in the referral networks that support the 36 State/Tribal suicide prevention programs. The 14 State/Tribal grantees funded in October 2005 will receive two administrations of the Referral Network Survey and the 22 State/Tribal grantees funded in June and October 2006 will receive 3 administrations. It is estimated that for each of the 36 State/Tribal referral networks, there are approximately 20 agencies/organizations involved. Therefore, assuming 2 appropriate respondents per agency/organizations and an 80% response rate, we estimated that 3,008 respondents would complete the Referral Network Survey, or 1,003 annually. The questions included on the Referral Network Survey will describe the referral networks, the agencies and organizations involved and at what level and the types of agency agreements and protocols are in place to support youth who are identified at risk for suicide. Questions on the Referral Network

Survey include multiple-choice, Likert-scale, and open-ended. The Referral Network Survey includes 37 items and will take approximately 40 minutes to complete.

• *Training Exit Survey (1 version).* The Training Exit Survey will be administered to participants in suicide prevention training activities held in the 36 State/Tribal sites following their participation in training activities. It is estimated that approximately 1,000 per State/Tribal site will be trained in suicide prevention. As such, data will be collected from approximately 36,000 training participants, or 12,000 per year, one time immediately following their training experience in each year of the cross-site evaluation. The questions on the Training Exit Survey obtain information to assess the content of the training, the participants' intended use of the skills and knowledge learned, and satisfaction with the training experience. Questions on the Training Exit Survey include multiple-choice, Likert-scale, and open-ended. The Training Exit Survey includes 29 items and will take approximately 10 minutes to complete.

• *Training Utilization and Penetration (TUP) Key Informant Interview (1 version).* The TUP Key Informant Interview is a qualitative follow-up interview administered to individuals who participated in training activities as part of the State/Tribal suicide prevention programs. One training activity will be identified per year in each of the 36 State/Tribal sites and ten key informants who completed the selected training will be randomly selected for participation, for a total of 360 respondents per year. The TUP will be administered within two months of the training experience to assess whether the suicide prevention knowledge, skills and/or techniques learned through training were utilized and had an impact on youth. The interviews will include close-ended background questions, with the remaining questions being open-ended and semi-structured. The TUP includes 23 items and will take approximately 40 minutes to complete.

• *Suicide Prevention Exposure, Awareness and Knowledge Survey (SPEAKS)—Student Version (1 version).* The SPEAKS-Student version assesses the exposure, awareness and knowledge of suicide prevention activities among the student population on campus as result of the suicide prevention program. Questions include whether students have been exposed to suicide prevention materials, their agreement with myths and facts about suicide, and the availability of resources to provide assistance to those at risk for suicide. The 21 Campus grantees funded in FY 2006 will receive two administrations of the SPEAKS-Student Version (one in each remaining year of their grant funding) and the 34 Campus grantees funded in FY 2007 will receive three administrations (one in each year of grant funding). The SPEAKS-Student Version will be administered to 28,800 respondents, or 9,600, per year. A random sample of students will be drawn without replacement in each year of administration. The SPEAKS-Student Version is web-based and includes multiple-choice, Likert-scale and true/false questions. The SPEAKS-Student Version includes 54 items and will take approximately 15 minutes to complete.

• *Suicide Prevention Exposure, Awareness and Knowledge Survey (SPEAKS)-Faculty/Staff Version (1 version).* The SPEAKS-Faculty/Staff version assesses the exposure, awareness and knowledge of suicide prevention activities among faculty/staff on campus as result of the suicide prevention program. Questions include whether faculty/staff have been exposed to suicide prevention materials, their agreement with myths and facts about suicide, and the availability of resources to provide assistance to those at risk for suicide. The 21 Campus grantees funded in FY 2006 will be administered the survey twice (in each of the remaining years of grant funding) and the 34 Campus grantees funded in FY 2007 will receive three administrations (one in each remaining year of grant funding). A sampling plan to obtain 50 faculty/staff respondents in each of the 55 Campus grantee sites for a total of 7,200 total respondents, or 2,400 per year, will be developed by the cross-site evaluation team. A random sample of faculty/staff will be drawn without replacement in each year of administration. The SPEAKS-Faculty/Staff Version is web-based and includes multiple-choice, Likert-scale and true/false questions. The SPEAKS-Faculty/Staff Version includes 52 items and will take approximately 15 minutes to complete.

• *Campus Infrastructure Interviews (4 versions).* The Campus Infrastructure Interviews include 4 versions of the qualitative interviews to be administered to five different respondent types; (1) Administrator, (2) Student Group Leader, (3) Counseling Center Staff, (4) Faculty/Staff-human services department, and (5) Faculty/Staff-non-human service department. Five individuals from each of the 55 Campus sites will be selected as key informants to participate in the Campus Infrastructure Interview either in year two or in year three of the cross-site evaluation, for a total of 260 respondents. Questions on the Campus Infrastructure Interview include whether respondents are aware of suicide prevention activities, what the campus culture is related to suicide prevention, and what specific efforts are in place to prevent suicide among the campus population. Questions will include close-ended background questions, with the remaining questions being open-ended and semi-structured. The Campus Infrastructure Interviews include 29 items and will take approximately 60 minutes to complete.

• *Tennessee Lives Count Six-Month Follow-up Survey (1 version).* The six-month follow-up survey is administered as part of the enhanced evaluation. A random sample of training participants involved in the Tennessee Lives Count Suicide Prevention program will be contacted six months post training to complete the survey. Based on the sampling scheme, the six-month follow-up survey will be administered to 466 individuals per year for a total of 1,398 total respondents. The survey requests information on proximal outcomes, such as knowledge, skills, and attitudes of professionals working with at-risk youth as a result of their training experiences. The survey includes multiple-choice, likert scale, and open-ended. There are 59 items and it will take approximately 15 minutes for completion.

In addition to the above described data collection activities, data from existing sources (*i.e.*, management information systems (MIS), administrative records, case files, etc.) will be analyzed across grantee sites to support the impact stage of the cross-site evaluation. Specifically, for the cross-site evaluation of the State/Tribal Programs, existing program information related to the number of youth identified at risk as a result of screening or early identification activities, the youth who are referred for services, and the youth who present for services will be analyzed by the cross-site evaluation team to determine the impact of suicide prevention program activities. For the cross-site evaluation of the Campus programs, existing program data related to the number of students who are at risk for suicide, the number who seek services, and the type of services received will be analyzed to determine the impact of Campus program activities on the student and campus populations. Because this information is obtained through existing sources, data collection instruments were not developed as part of the cross-site evaluation and no identifiable respondents exist; therefore

no respondent burden has been estimated.

Internet-based technology will be used for collecting data via Web-based surveys, and for data entry and management. The average annual respondent burden is estimated below. The estimate reflects the total respondents across project years, the average annual number of respondents, the average annual number of responses, the time it will take for each response, and the average annual burden.

TOTAL AND ANNUAL AVERAGES: RESPONDENTS, RESPONSES AND HOURS

Measure name	No. of respondents	No. of responses/respondent	Hours/response	Response burden*
Existing Database Inventory-State version	36	1	0.5	18
Existing Database Inventory-Campus version	55	1	0.5	28
Product and Services Inventory-State version-baseline	36	1	0.75	27
Product and Services Inventory-State version-follow-up	36	2	0.75	54
Product and Services Inventory-Campus version-baseline	55	1	0.75	41
Product and Services Inventory-Campus version-follow-up	55	2	0.75	41
Training Exit Survey	12,000	1	0.17	2040
Training Utilization and Penetration (TUP) Key Informant Interview	360	1	0.67	241
Referral Network Survey	1,003	1	0.67	672
Suicide Prevention Exposure, Awareness and Knowledge Survey-Student Version (SPEAKS-S)	9,600	1	0.25	2400
Suicide Prevention Exposure, Awareness and Knowledge Survey-Faculty/Staff (SPEAKS-FS)	2,400	1	0.25	600
Campus Infrastructure Interview-Student Leader Version	18	1	1	18
Campus Infrastructure Interview-Faculty/Staff Version	37	1	1	37
Campus Infrastructure Interview-Administrator Version	18	1	1	18
Campus Infrastructure Interview-Counseling Center Staff Version	18	1	1	18
Tennessee Lives Count 6-month Interview	466	1	0.25	117
Total	26,193	.....	.....	6,370

Written comments and recommendations concerning the proposed information collection should be sent by January 26, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: December 18, 2006.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E6–22119 Filed 12–26–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–06–042]

Houston / Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston / Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Tuesday, January 23, 2007, at 9 a.m. The meeting of the Committee's working groups will be held on Tuesday, January 16, 2007, at 9 a.m. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of the committee in advance of the meeting should reach the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee will be held at the Doyle Convention Center, 2010 5th Avenue North, Texas City, Texas 77590, 409–766–3018. The working groups meeting will be held at the Galveston/Texas City Pilots, Administrative Offices, 2425 Highway 146 N. Texas City, Texas. 77590, 409–945–4461/4462. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Commander Jerry Torok, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Junior Grade Kevin Cooper, Assistant to the Executive Secretary of HOGANSAC, telephone (713) 678–9001, *e-mail kevin.j.cooper@uscg.mil*. Written materials and requests to make presentations should be sent to Commanding Officer, Sector Houston/Galveston, Attn: LTJG Cooper, 9640 Clinton Drive, Houston, TX 77029.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings:

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Whitehead) or the Committee Sponsor's representative, Executive Director (CAPT Diehl) and Chairperson (Ms. Patricia Clark).

(2) Approval of the September 26, 2006 minutes.

(3) Old Business:

(a) Navigation Operations/Maritime Incident

Review subcommittee report.

(b) Deep draft Entry Facilitation subcommittee report.

(c) Dredging subcommittee report.

(d) Technology subcommittee report.

(e) Area Maritime Security Committee Liaison's report.

(f) Harbor of Safe Refuge subcommittee report.

(g) Rules of the Road subcommittee report.

(4) New Business:

(a) Maritime Transportation Recovery Situation Unit (MTRSU) Presentation—CDR Joe Paitl.

Working Groups Meeting. The agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

(3) Put forth any action items for consideration at full committee meeting.

Procedural. Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, facilitating deep draft movements, mooring infrastructure, and safe refuge during hurricanes. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. If you would like to have written materials distributed to each member of the committee in advance of the meeting, you should send your request along with fifteen (15) copies of the materials to the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

INFORMATION ON SERVICES FOR THE HANDICAPPED: For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Secretary or Assistant to the Executive Secretary as soon as possible.

Dated: December 6, 2006.

J. R. Whitehead,

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

[FR Doc. E6–22150 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Medical Examination of Aliens Seeking Adjustment of Status, Form I–693, OMB Control No. 1615–0033.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 26, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0033 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Medical Examination of Aliens Seeking Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–693. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. The information on the application will be used by USCIS in considering the eligibility for adjustment of status under 8 CFR part 209 and 8 CFR 210.5, 245.1, and 245a.3.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 responses at 2.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; Telephone 202–272–8377.

Dated: December 20, 2006.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–22045 Filed 12–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–95]

Notice of Submission of Proposed Information Collection to OMB; Telephone Survey of Multifamily Assisted Housing Properties That are Eligible for HUD's Service Coordination Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This project is a survey of HUD's Multifamily Assisted Housing properties that are eligible for the Service Coordinator Program. The study will be administered to a statistical sample of properties. This study involves a telephone survey of multifamily property managers. The survey will assess the level of satisfaction with the provision of service coordination that links residents of Multifamily Assisted Housing to the needed supportive services.

DATES: *Comments Due Date:* January 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Telephone Survey of Multifamily Assisted Housing Properties that are Eligible for HUD's Service Coordination Program.

OMB Approval Number: 2528–NEW.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This project is a survey of HUD's Multifamily Assisted Housing properties that are eligible for the Service Coordinator Program. The study will be administered to a statistical sample of properties. This study involves a telephone survey of multifamily property managers. The survey will assess the level of satisfaction with the provision of service coordination that links residents of Multifamily Assisted Housing to the needed supportive services.

Frequency of Submission: On occasion.

Reporting burden:	*Number of respondents*	*Annual responses*	x	*Hours per response*	=	*Burden hours*
	400	1		0.5		200

Total Estimated Burden Hours: 200.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–22094 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–96]

Notice of Submission of Proposed Information Collection to OMB; Survey of Local Regulatory Practices and Manufactured Homes

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

How local regulatory barriers impact incidence of manufactured homes (MH) in metro communities is unknown. Information collected from local planning directors will help determine to what extent regulations limit MH as an affordable housing option.

DATES: *Comments Due Date:* January 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Survey of Local Regulatory Practices and Manufactured Homes.

OMB Approval Number: 2528–NEW.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: How local regulatory barriers impact incidence of manufactured homes (MH) in metro communities is unknown. Information collected from local planning directors will help determine to what extent regulations limit MH as an affordable housing option.

Frequency of Submission: Other One time.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	250	1		0.336		84

Total Estimated Burden Hours: 84.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–22096 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–97]

Notice of Submission of Proposed Information Collection to OMB; Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Assisted Living Conversion Program (ALCP) provides funding for the physical costs of converting some or all of the units of an eligible multifamily development into an assisted living facility. Funding available through the Emergency Capital Repair Program (ECRP) provides funds for substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structure, common areas, or individual dwelling units.

DATES: *Comments Due Date:* January 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0542) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP).

OMB Approval Number: 2502–0542.

Form Numbers: SF–424, SF–424–Supplemental, HUD–424–B, SF–LLL, HUD–2880, HUD–2990, HUD–2991, HUD–2530,HUD–96010, HUD–50080–ALCP,SF–269, HUD–50080–ECRP, HUD–27300, HUD–92045 HUD–92046, and HUD–92047.

Description of the Need for the Information and Its Proposed Use: The Assisted Living Conversion Program (ALCP) provides funding for the physical costs of converting some or all of the units of an eligible multifamily development into an assisted living facility. Funding available through the Emergency Capital Repair Program (ECRP) provides funds for substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structure, common areas, or individual dwelling units.

Frequency of Submission: Quarterly, Semi-annually, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	90	6.88		3.83		2,373

Total Estimated Burden Hours: 2,373

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–22158 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5038–N–05]

Notice of Proposed Information Collection: Comment Request; Rural Housing and Economic Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Miriam Sears, Reports Liaison Officer, Department of Housing Urban and Development, 451 7th Street, SW., Room 7251, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Thann Young, (202) 708–2290 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information

Title of Proposal: Rural Housing and Economic Development Program.

OMB Control Number, if applicable: 2506–0169.

Description of the need for the Information and proposed use: The information collection is essential so that HUD staff may determine the eligibility, qualifications, and capacity of the applicants to carry out activities under the Rural Housing and Economic Development Program. HUD will review the information provided by the applicants against the selection criteria contained in the Notice of Funding Availability (NOFA) in order to rate and rank the applications and select the best and most qualified applicant for funding. The applications are rated based on: (1) Capacity of the Applicant and Relevant Organizational Experience; (2) Need/Extent of the Problem; (3) Soundness of Approach; (4) Leveraging of Resources; and (5) Achieving Results and Program Evaluation.

Agency form numbers, if applicable: SF 424 (including a maximum 15 page application narrative in response to the factors for award).

Members of affected public: Eligible applicants include local rural non profit organizations, Community Development Corporations, State housing finance agencies, State community and/or economic development agencies and federally recognized Indian tribes.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency Of response, and hours of response: The total number of applications submitted from Fiscal Year 1999 through Fiscal Year 2006 was 3,159, resulting in 760 grants. The proposed frequency of the response to the collection of the information is one-time.

Status of the proposed information collection: Reinstatement of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 19, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E6–22159 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–98]

Notice of Submission of Proposed Information Collection to OMB; Continuum of Care Homeless Assistance Grant Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Grant application to determine eligibility for the Continuum of Care Homeless Assistance grant program, to establish grant amounts, and to ensure that technical requirements are met.

DATES: *Comments Due Date:* January 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0112) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of

information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Grant Application.

OMB Approval Number: 2506–0112.

Form Numbers: HUD–40090–1, HUD–40090–2, HUD–40090–3a, HUD–40090–3b, HUD–40090–4, HUD–27300, HUD–2993, HUD–2994, HUD–2880, HUD–424–SUPP, HUD–96010, HUD–2991.

Description of the Need for the Information and Its Proposed Use: Grant application to determine eligibility for the Continuum of Care Homeless Assistance grant program, to establish grant amounts, and to ensure that technical requirements are met.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	9,050	1.49		14.98		202,247

Total Estimated Burden Hours: 202,247.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 21, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–22160 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–49]

Notice of Proposed Information Collection: Comment Request; Single Family Premium Collection Subsystem—Upfront

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Lillian_L_Deitzer@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Sonja Sharpe, Branch Chief, Single Family Insurance Operations Branch, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0614 X3391 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Premium Collection Subsystem—Upfront.

OMB Control Number, if applicable: 2502–0423.

Description of the need for the information and proposed use: The Single Family Premium Collection Subsystem-Upfront (SFPCS-U) allows the lenders to remit the Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement. The SFPCS–U strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections to submitted data. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders use Automated Clearing House (ACH) and/or Electronic Data Interchange (EDI) applications for all transmissions with SFPCS–U. The authority for this collection of information is specified in 24 CFR 203.280 and 24 CFR 203.281. The collection of information is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, the lenders use the ACH and/or EDI applications to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The public reporting burden for this collection of information is estimated to average of 5 minutes per response; the number of respondents is 10,735 generating approximately 415,469 annual responses; the frequency of response is on occasion; the estimated total number of burden hours needed to prepare the information collection is 33,328.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 20, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–22163 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–50]

Notice of Proposed Information Collection: Comment Request; Uniform Physical Standards & Physical Inspection Requirements

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Kimberly Munson, Office of Asset Management, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Uniform Physical Standards & Physical Inspection Requirements.

OMB Control Number, if applicable: 2502–0369.

Description of the need for the information and proposed use: This information is necessary to ensure that HUD program participants carry out their legal obligations to maintain HUD properties in a condition that is decent, safe, sanitary, and in good repairs.

Agency form numbers, if applicable: N/A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 19,628; the frequency of responses is 1; estimated time to conduct the inspection is about 6 hours and the estimated time for preparing and submitting the certification is about 0.3 hours per submission. The estimated total annual burden hours are 79,186 (combined and based on the 3–2–1 inspection cycle).

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 20, 2006.

Frank L Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–22164 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–46]

Notice of Proposed Information Collection: Comment Request; FHA TOTAL Mortgage Scorecard

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_L_Deitzer@hud.gov*.

FOR FURTHER INFORMATION CONTACT: James Beavers, Deputy Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of

information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: FHA TOTAL Mortgage Scorecard.

OMB Control Number, if applicable: 2502–0556.

Description of the need for the information and proposed use: The data collection requirements consist of an electronic lender certification process, requirements to provide reports and loan samples at FHA's request, and appeals in writing for loss of privilege to use the scorecard. HUD uses the information to assure that lenders (and automated underwriting vendors) are aware of their obligations regarding use of the TOTAL Mortgage Scorecard and are certifying that they will comply with all pertinent regulations. It also allows FHA to request reports from lenders regarding their use of the scorecard and that they have implemented appropriate quality control procedures for using the scorecard. The collection provides an appeal mechanism should FHA take an action to terminate a lender's use of the scorecard.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 908. The number of respondents is 12,000; number of responses is 452; the frequency of response is on occasion, and the burden hour per response is varies from 1 minute to 200 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 20, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–22232 Filed 12–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5126–FA–01]

Announcement of Funding Awards for the Housing Choice Voucher Program; Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Fiscal Year 2006 awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2006 to housing agencies (HAs) under the Section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to HAs for non-competitive funding awards for housing conversion actions, public housing relocations and replacements, moderate rehabilitation replacements, and HOPE VI voucher awards.

FOR FURTHER INFORMATION CONTACT: David A. Vargas, Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4226, Washington, DC 20410–5000, telephone (202) 708–2815. Hearing-or speech-impaired individuals may call HUD's TTY number at (800) 927–7589. (Only the ''800'' telephone number is toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the housing choice voucher program are published at 24 CFR part 982. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

The purpose of this rental assistance program is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 2006 awardees announced in this notice were provided Section 8 funds on an as-needed, non-competitive basis, i.e., not consistent with the provisions of a Notice of Funding Availability (NOFAs). Announcements of awards provided consistent with NOFAs for mainstream housing and designated housing programs will be published in a separate **Federal Register** notice.

Awards published under this notice were provided (1) to assist families living in HUD-owned properties that are being sold; (2) to assist families affected by the expiration or termination of their project-based Section 8 and moderate rehabilitation contracts; (3) to assist families in properties where the owner has prepaid the HUD mortgage; (4) to provide relocation and replacement housing in connection with the demolition of public housing; (5) to provide replacement housing assistance for single room occupancy (SRO) units that fail housing quality standards (HQS); and (6) to assist families in public housing developments that are scheduled for demolition in connection with a HUD-approved HOPE VI Revitalization or Demolition Grant. Administrative fees were added to each assignment for the administration of housing choice vouchers awarded under this notice. In addition, special housing fees were included for applicable Housing tenant protection awards.

A total of $179,445,332 in budget authority for 23,099 housing choice vouchers was awarded to recipients under all of the above-mentioned categories.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: December 5, 2006.

Orlando J. Cabrera,

Assistant Secretary, Office of Public and Indian Housing.

APPENDIX A—HOUSING CHOICE VOUCHER PROGRAM ANNOUNCEMENT OF FUNDING AWARDS FOR FISCAL YEAR 2006

Housing Agency	Address	Units	Award
Public Housing Tenant Protection			
MOBILE HOUSING BOARD	P O BOX 1345, MOBILE, AL 36633	23	81,850
HA SELMA	P O BOX 950, SELMA, AL 36702	2	5,439
CITY OF TUCSON	310 NORTH COMMERCE PARK, TUCSON, AZ 85726	12	13,131
COUNTY OF LOS ANGELES HA	2 CORAL CIRCLE, MONTEREY PARK, CA 93907	26	160,011
TULARE COUNTY HA	5140 W. CYPRESS AVE, VISALIA, CA 93279	11	58,388
CITY OF OXNARD HA	435 SOUTH D STREET, OXNARD, CA 93030	2	7,276
COUNTY OF MONTEREY HA	123 RICO STREET, SALINAS, CA 93907	15	31,314

APPENDIX A—HOUSING CHOICE VOUCHER PROGRAM ANNOUNCEMENT OF FUNDING AWARDS FOR FISCAL YEAR 2006—Continued

Housing Agency	Address	Units	Award
CITY OF ANAHEIM HA	201 S. ANAHEIM BLVD., STE 203, ANAHEIM, CA 92805	2	3,028
CITY OF REDDING HA	777 CYPRESS AVENUE, REDDING, CA 96049	24	64,120
BOULDER CITY HA	3120 BROADWAY, BOULDER, CO 80304	44	90,340
WATERBURY HA	2 LAKEWOOD ROAD, WATERBURY, CT 06704	8	52,321
ENFIELD HA	17 ENFIELD TERRACE, ENFIELD TOWN, CT 06082	3	12,494
CITY OF HARTFORD HA	10 PROSPECT STREET, HARTFORD, CT 06103	6	12,349
CT DEPT OF SOCIAL SERVICES	25 SIGOURNEY STREET, 9TH FL, HARTFORD, CT 06105	7	54,510
D.C HSG AUTH	1133 NORTH CAPITOL ST NE , WASHINGTON, DC 20002	131	860,815
HA OF JACKSONVILLE	1300 BROAD STREET, JACKSONVILLE, FL 32202	38	130,015
ST. PETERSBURG HA	3250 5TH AVENUE NORTH, ST. PETERSBURG, FL 33713	154	878,042
HA OF TAMPA	1514 UNION STREET, TAMPA, FL 33607	35	83,630
MIAMI DADE HA	1401 NW 7TH STREET, MIAMI, FL 33125	114	608,472
HA WEST PALM BEACH	1715 DIVISION AVENUE, WEST PALM BEACH, FL 33407	17	79,402
HA POMPANO BEACH	321 W. ATLANTIC BLVD, POMPANO BEACH, FL 33061	118	1,353,876
HA OCALA	P.O. BOX 2468, OCALA, FL 34478	35	173,797
BROWARD COUNTY HA	1773 NORTH STATE ROAD 7, LAUDERHILL, FL 33313	220	1,659,741
HA DELRAY BEACH	770 S W 12TH TERRACE, DELRAY BEACH, FL 33444	199	1,898,994
HA COLUMBUS GA	P O BOX 630, COLUMBUS, GA 31902	271	343,785
HA MARIETTA	95 COLE STREET, MARIETTA, GA 30061	121	326,336
CITY OF DES MOINES MUNICIPAL HA	100 EAST EUCLID, STE 101, DES MOINES, IA 50313	1	4,978
DUBUQUE DEPT OF HUMAN RIGHTS	1805 CENTRAL AVENUE, DUBUQUE, IA 52001	27	80,346
HA OF THE CITY OF EAST ST. LOUIS	700 NORTH 20TH STREET, EAST ST LOUIS, IL 62205	94	935,022
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	76	193,692
HA OF NEW ORLEANS	P. O. BOX 6409, NEW ORLEANS, LA 70174	16	81,949
WEBSTER HA	GOLDEN HEIGHTS, WEBSTER, MA 01570	2	4,347
COMM DEV PROG COMM OF MA E.O.C.D.	100 CAMBRIDGE STREET, BOSTON, MA 02114	69	580,011
HA OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	5	122,429
BALTIMORE CO. HOUSING OFFICE	6401 YORK ROAD, 1ST FL, BALTIMORE, MD 21212	13	58,543
MD DEPT OF HSG & COMM	100 COMMUNITY PLACE, CROWNSVILLE, MD 21032	3	6,137
MAINE STATE HA	353 WATER STREET, AUGUSTA, ME 04330	43	181,219
MICHIGAN STATE HSG DEV. AUTH.	P.O. BOX 30044, LANSING, MI 48909	123	81,362
ST. FRANCOIS COUNTY PH AGENCY	P O BOX N, PARK HILLS, MO 63601	10	20,994
HA BILOXI	P O BOX 447, BILOXI, MS 39533	134	1,057,119
MT DEPARTMENT OF COMMERCE	POB 200545 836 FRONT STREET, HELENA, MT 59620	30	70,662
STUTSMAN COUNTY HA	217 1ST AVENUE N, JAMESTOWN, ND 58401	7	16,219
FARGO HSG AND REDEV AUTH	PO BOX 430, FARGO, ND 58107	10	36,793
OMAHA HA	540 SOUTH 27TH STREET, OMAHA, NE 68105	3	1,738
NJ DEPT OF COMM AFFAIRS	101 SOUTH BROAD STREET, TRENTON, NJ 08625	36	70,179
CITY OF RENO HA	1525 EAST NINTH ST RENO, NV 89512	220	1,040,296
HA OF BEACON	1 FORRESTAL HEIGHTS, BEACON, NY 12508	2	4,468
TOWN OF AMHERST	C/O BELMONT SHELTER 1195 MAIN STREET, BUFFALO, NY 14209.	5	12,357
CITY OF NEW YORK DHPD	100 GOLD STREET ROOM 5N, NEW YORK, NY 10007	170	748,900
NEW YORK STATE HSG FIN AUTH	25 BEAVER STREET, RM 674, NEW YORK, NY 10004	66	238,438
COLUMBUS METRO. HA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	10	43,900
CINCINNATI METROPOLITAN HA	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210	11	60,183
HA OF JACKSON COUNTY	2231 TABLE ROCK ROAD, MEDFORD, OR 97501	1	988
HA OF THE CITY OF PITTSBURGH	200 ROSS STREET, PITTSBURGH, PA	73	119,410
SCRANTON HA	400 ADAMS AVENUE, SCRANTON, PA 18510	6	26,749
ALLENTOWN HA	1339 ALLEN STREET, ALLENTOWN, PA 18102	6	11,020
CHESTER HA	1010 MADISON STREET, CHESTER, PA 19016	2	12,594
BEAVER COUNTY HA	300 STATE STREET, BEAVER, PA 15009	9	44,338
DAUPHIN COUNTY HA	501 MOHN STREET, STEELTON, PA 17113	8	41,375
WARREN HA	20 LIBBY LANE, WARREN, RI 02885	7	23,655
MUNICIPALITY OF PONCE	P O BOX 1709, PONCE, PR 00733	97	148,096
MUNICIPALITY OF BAYAMON	P O 1588, BAYAMON, PR 00960	25	146,355
PUERTO RICO HSG FIN CORP	CALL BOX 71361–GPO, SAN JUAN, PR 00936	247	1,152,246
HA COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	35	50,326
CITY OF SPARTANBURG H/A	P O BOX 2828, SPARTANBURG, SC 29304	7	29,682
HA SUMTER	P O BOX 1030, SUMTER, SC 29151	46	123,343
HA NORTH CHARLESTON	P O BOX 70987, NORTH CHARLESTON, SC 29415	6	12,288
S C STATE HSG FINANCE & DEV	300–C OUTLET POINTE BLVD, COLUMBIA, SC 29210	9	9,577
METROPOLITAN DEV & HSG AUTH	701 SOUTH SIXTH STREET, NASHVILLE, TN 37202	117	768,802
HOUSTON HA	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	23	113,674
BROWNSVILLE HA	P O BOX 4420, BROWNSVILLE, TX 78523	164	511,593
HA OF DALLAS	3939 N. HAMPTON RD, DALLAS, TX 75212	1,105	9,718,480
HA OF BEAUMONT	4925 CONCORD RD., BEAUMONT, TX 77708	138	355,615
WESLACO HA	P O BOX 95, WESLACO, TX 78596	67	153,033
EDINBURG HA	P O BOX 295, EDINBURG, TX 78540	100	430,824
ALAMO HA	P O BOX 445, ALAMO, TX 78516	38	94,858
HA OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115	4	13,763

APPENDIX A—HOUSING CHOICE VOUCHER PROGRAM ANNOUNCEMENT OF FUNDING AWARDS FOR FISCAL YEAR 2006—Continued

Housing Agency	Address	Units	Award
ROANOKE REDEV & HA	2624 SALEM TRNPK, NW, ROANOKE, VA 24017	20	55,405
CHARLOTTESVILLE REDEV & HA	605 EAST MAIN ST, RM A040, CHARLOTTESVILLE, VA 22902.	9	52,804
STAUNTON REDEV & HSG AUTH	PO BOX 1369, STAUNTON, VA 24402	13	47,863
ARLINGTON CO DEPT OF HUMAN SERV.	3033 WILSON BLVD, STE 400A, ARLINGTON, VA 22201	22	150,850
PRINCE WILLIAM COUNTY	15941 DONALD CURTIS DR, STE 112, WOODBRIDGE, VA 22191.	1	13,461
WHEELING HA	11 COMMUNITY STREET, WHEELING, WV 26003	4	16,792
Total for Public Housing Tenant Protection		5,233	$29,245,616
Housing Tenant Protection			
AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK 99510	44	326,649
H/A CITY OF MONTGOMERY	1020 BELL ST, MONTGOMERY, AL 36104	114	604,471
DOTHAN H/A	P O BOX 1727, DOTHAN, AL 36302	100	45,070
HA JASPER	P O BOX 582, JASPER, AL 35501	60	237,559
HA DECATUR	P O BOX 878, DECATUR, AL 35602	20	89,580
HA TUSKEGEE	2901 DAVISON STREET, TUSKEGEE INSTITUTE, AL 36088	49	164,807
JONESBORO URBAN RENEWAL & HSG	330 UNION STREET, JONESBORO, AR 72401	3	16,745
COUNTY OF COCHISE PHA	100 CLAWSON AVENUE-OLDHIGHSCH, BISBEE, AZ 85603	60	274,768
STATE OF ARIZONA	1700 W WASHINGTON STREET, STE 210, PHOENIX, AZ 85007.	59	270,600
SAN FRANCISCO HA	440 TURK STREET, SAN FRANCISCO, CA 94102	30	514,553
COUNTY OF LOS ANGELES HA	2 CORAL CIRCLE, MONTEREY PARK, CA 93907	45	499,960
OAKLAND HA	1619 HARRISON ST, OAKLAND, CA 94612	84	1,104,681
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD., 3RD FL, LOS ANGELES, CA 90057	109	1,009,744
COUNTY OF SACRAMENTO HSG	P.O. BOX 1834, SACRAMENTO, CA 95812	73	664,588
COUNTY OF BUTTE HA	2039 FOREST AVENUE, SUITE 10, CHICO, CA 95928	44	257,681
COUNTY OF SUTTER HA	448 GARDEN HIGHWAY, YUBA CITY, CA 95992	0	15,000
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	0	357,755
CITY OF LONG BEACH HA	521 E. 4TH STREET, LONG BEACH, CA 90802	17	170,861
HA OF CITY OF NEW HAVEN	360 ORANGE STREET, NEW HAVEN, CT 06511	34	286,424
NORWICH HA	10 WESTWOOD PARK, NORWICH, CT 06360	15	113,730
MANCHESTER HA	24 BLUEFIELD DR, MANCHESTER TOWN, CT 06040	46	349,633
CT DEPT OF SOCIAL SERVICES	25 SIGOURNEY STREET, 9TH FL, HARTFORD, CT 06105	281	2,541,757
D.C HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	622	7,288,063
HA TAMPA	1514 UNION ST, TAMPA, FL 33607	98	898,930
HA BREVARD COUNTY	615 KUREK COURT, MERRITT ISLAND, FL 32954	70	442,927
CITY OF FORT MYERS	1700 MEDICAL LANE, FORT MYERS, FL 33907	5	30,674
CITY OF PENSACOLA SECTION 8	180 GOVERNMENTAL CENTER, PENSACOLA, FL 32501	33	166,568
HA SAVANNAH	200 EAST BROAD STREET, SAVANNAH, GA 31402	204	1,432,808
HA ATLANTA GA	230 JOHN WESLEY DOBBS AVE. NE, ATLANTA, GA 30303	153	1,451,566
GA DEPT OF COMM AFFAIRS	60 EXECUTIVE PARK SO, NE, STE 250, ATLANTA, GA 30329	5	33,772
CHARLES CITY HSG & REDEV AUTH	1000 SOUTH GRAND AVE, CHARLES CITY, IA 50616	34	133,438
CENTRAL IOWA REGIONAL HA	1201 GATEWAY DRIVE, GRIMES, IA 50111	10	44,830
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL 60661	414	4,224,799
CHAMPAIGN COUNTY HA	205 WEST PARK AVENUE, CHAMPAIGN, IL 61820	74	511,367
WAUKEGAN HA	215 S. MARTIN KING, JR. AVENUE, WAUKEGAN, IL 60085	73	664,668
CRAWFORDSVILLE HA	CRAWFORDSVILLE, CRAWFORDSVILLE, IN 47933	80	348,691
KANSAS CITY HA	1124 NORTH NINTH STREET, KANSAS CITY, KS 66101	59	408,582
WICHITA HA	332 N. RIVERVIEW, WICHITA, KS 67203	25	147,904
FORD COUNTY HA	P O BOX 1636, DODGE CITY, KS 67801	30	123,138
COWLEY COUNTY PHA	PO BOX 1122, ARKANSAS CITY, KS 67005	59	148,316
LOUISVILLE HA	420 SOUTH EIGHTH STREET, LOUISVILLE, KY 40203	32	188,656
LEXINGTON-FAYETTE COUNTY HA	300 NEW CIRCLE ROAD, LEXINGTON, KY 40505	83	452,723
LAFAYETTE (CITY) HA	100 C O CIRCLE, LAFAYETTE, LA 70501	40	215,603
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA 02111	535	6,683,269
NEW BEDFORD HA	P.O. BOX A–2081, NEW BEDFORD, MA 02741	60	417,679
LAWRENCE HA	353 ELM STREET, LAWRENCE, MA 01842	168	1,422,128
HA OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	303	2,347,472
HA PRINCE GEORGE'S COUNTY	9400 PEPPERCORN PLACE, STE 200, LARGO, MD 20774	43	505,161
CHARLES COUNTY COMMISSIONERS	8190 PORT TOBACCO ROAD, PORT TOBACCO, MD 20677	140	1,343,853
MD DEPT OF HSG & COMM DEV	100 COMMUNITY PLACE, CROWNSVILLE, MD 21032	8	49,892
MAINE STATE HA	353 WATER STREET, AUGUSTA, ME 04330	7	42,359
YPSILANTI HSG COMMISSION	601 ARMSTRONG DRIVE, YPSILANTI, MI 48197	0	27,750
INKSTER HSG COMMISSION	4500 INKSTER ROAD, INKSTER, MI 48141	234	1,573,332
COLDWATER HSG COMMISSION	60 S. CLAY, COLDWATER, MI 49036	7	24,144
GRAND RAPIDS HSG COMM.	1420 FULLER AVE SE, GRAND RAPIDS, MI 49507	124	749,793
TAYLOR HSG COMMISSION	15270 PLAZA SOUTH DRIVE, TAYLOR, MI 48180	524	3,629,008
FERNDALE HSG COMMISSION	415 WITHINGTON, FERNDALE, MI 48220	204	1,691,674

APPENDIX A—HOUSING CHOICE VOUCHER PROGRAM ANNOUNCEMENT OF FUNDING AWARDS FOR FISCAL YEAR 2006—Continued

Housing Agency	Address	Units	Award
SOUTHFIELD HSG COMMISSION	26000 EVERGREEN ROAD, SOUTHFIELD, MI 48076	184	1,233,109
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	886	,755,670
ST PAUL PHA	555 NORTH WABASHA, STE 400, ST. PAUL, MN 55102	27	245,593
METROPOLITAN COUNCIL HRA	390 ROBERT STREET NORTH, ST. PAUL, MN 55101	14	126,362
WASHINGTON COUNTY HRA	321 BROADWAY AVENUE, ST. PAUL PARK, MN 55071	50	461,459
ST. LOUIS HA	4100 LINDELL BLVD, ST. LOUIS, MO 63108	175	1,114,057
INDEPENDENCE HA	210 SOUTH PLEASANT, INDEPENDENCE, MO 64050	5	30,398
LEES SUMMIT HA	111 SOUTH GRAND, LEES SUMMIT, MO 64063	137	1,044,505
MOUNTAIN GROVE HA	301 WEST FIRST STREET, MOUNTAIN GROVE, MO 65711	6	18,040
HA OF THE CITY OF CHARLOTTE	1301 SOUTH BOULEVARD, CHARLOTTE, NC 28236	.....	33 157,760
H/A CITY OF GREENVILLE	1103 BROAD STREET, GREENVILLE, NC 27834	12	106,680
FRANKLIN VANCE WARREN OPP'TY INC	P.O. BOX 1453, HENDERSON, NC 27536	53	331,959
MINOT HA	108 EAST BURDICK EXPRESSWAY, MINOT, ND 58701	0	12,250
STARK COUNTY HA	1149 WEST VILLARD, DICKINSON, ND 58602	10	32,212
COOPERSTOWN HOUSING AND	P.O. BOX 208, COOPERSTOWN, ND 58425	8	22,525
DICKEY/SARGENT HA	309 NORTH 2ND, ELLENDALE, ND 58436	0	4,000
ATLANTIC CITY HA	227 VERMONT AVENUE, ATLANTIC CITY, NJ 08404	40	345,544
PLEASANTVILLE HA	156 NORTH MAIN STREET, PLEASANTVILLE, NJ 08232	100	886,324
KEANSBURG HA	ONE CHURCH STREET, KEANSBURG, NJ 07734	122	1,391,332
BURLINGTON COUNTY HA	49 RANC0CAS ROAD, MOUNT HOLLY, NJ 08060	60	539,722
NJ DEPT OF COMM AFFAIRS	101 SOUTH BROAD STREET, TRENTON, NJ	503	4,594,085
ALBUQUERQUE HA	1840 UNIVERSITY BLVD, SE, ALBUQUERQUE, NM 87106	125	676,655
REGION IV HA	600 MITCHELL, CLOVIS, NM 88101	8	32,483
CITY OF LAS VEGAS HA	420 N. 10TH STREET, LAS VEGAS, NV 89125	40	356,541
COUNTY OF CLARK HA	5390 EAST FLAMINGO ROAD, LAS VEGAS, NV 89122	87	692,264
HA OF SYRACUSE	516 BURT STREET, SYRACUSE, NY 13202	0	21,500
NEW YORK CITY HA	90 CHURCH STREET, 9TH FLOOR, NEW YORK, NY 10007	1,727	17,338,870
HA OF SCHENECTADY	375 BROADWAY, SCHENECTADY, NY 12305	0	8,750
HA OF ROCHESTER	675 WEST MAIN STREET, ROCHESTER, NY 14611	504	2,378,820
HA OF NORWICH	13 BROWN STREET, NORWICH, NY 13815	23	101,640
HA OF AUBURN	20 THORNTON AVE, AUBURN, NY 13021	72	279,516
CITY OF NEW YORK DHPD	100 GOLD STREET ROOM 5N, NEW YORK, NY 10007	693	16,099,605
CITY OF PEEKSKILL	840 MAIN STREET, PEEKSKILL, NY 10566	40	416,239
KINGSTON COMMUNITY DEV	420 BROADWAY, KINGSTON, NY 12401	122	805,191
NEW YORK STAT DHCR	25 BEAVER STREET, RM 674, NEW YORK, NY	1,935	20,406,519
COLUMBUS METRO. HA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	412	2,652,880
CINCINNATI METROPOLITAN HA	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210	189	1,135,849
DAYTON METROPOLITAN HA	400 WAYNE AVE, DAYTON, OH 45401	2	9,506
BUTLER MET.HA	4110 HAMILTON MIDDLETOWN RD, HAMILTON, OH 45011	36	226,767
LICKING METRO HA	144 WEST MAIN STREET, NEWARK, OH 43055	11	59,948
CITY OF MARIETTA	304 PUTNAM STREET, MARIETTA, OH 45750	66	275,286
HANCOCK MHA	1800 N. BLANCHARD ST, STE 114, FINDLAY, OH 45840	20	81,343
TULSA HA	P.O. BOX 6369, TULSA, OK 74148	115	716,652
OKLAHOMA HFA	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	43	229,811
HA OF JACKSON COUNTY	2231 TABLE ROCK ROAD, MEDFORD, OR 97501 16 101,018.		
CENTRAL OREGON REGL HA	405 SW 6TH STREET, REDMOND, OR 97756	10	71,158
HA OF THE CITY OF PITTSBURGH	200 ROSS STREET, PITTSBURGH, PA 15219	82	470,343
PHILADELPHIA HA	12 SOUTH 23RD STREET, PHILADELPHIA, PA 19103	96	755,144
ALLENTOWN HA	1339 ALLEN STREET, ALLENTOWN, PA 18102	108	595,603
JOHNSTOWN HA	501 CHESTNUT ST, JOHNSTOWN, PA 15907	22	94,425
ALTOONA HA	2700 PLEASANT VALLEY BLVD, ALTOONA, PA 16602	57	201,714
FRANKLIN COUNTY HA	436 WEST WASHINGTON ST, CHAMBERSBURG, PA 17201	17	70,601
MUNICIPALITY OF BARRANQUITAS	P.O. BOX 250, BARRANQUITAS, PR 00794	100	438,472
MUNICIPALITY OF AGUADA	P.O. BOX 517, AGUADA, PR 00602	48	204,638
PIERRE HSG & REDEV AUTH	301 W. PLEASANT AVE, PIERRE, SD 57501	39	148,929
PENNINGTON CO HSG & REDEV AUTH	1805 WEST FULTON ST, RAPID CITY, SD 57702	8	40,713
MEMPHIS HA	700 ADAMS AVE, MEMPHIS, TN 38105	126	954,697
KNOXVILLE COMMUNITY DEV	P.O. BOX 3550, KNOXVILLE, TN 37927	9	43,457
TENNESSEE HDA	404 J. ROBERTSON PKWY, STE 1114, NASHVILLE, TN 37243.	2	30,392
HA OF EL PASO	5300 PAISANO, EL PASO, TX 79905	25	150,391
CORPUS CHRISTI HA	3701 AYERS STREET, CORPUS CHRISTI, TX 78415	104	717,726
HA OF DALLAS	3939 N. HAMPTON RD, DALLAS, TX 75212	52	497,267
GREGORY HA	P.O. BOX 206, GREGORY, TX 78359	19	112,250
HA OF ABILENE	555 WALNUT, ABILENE, TX 7960	88	449,539
LANCASTER HA	525 W. PLEASANT RUN RD, STE K, LANCASTER, TX 75146	25	195,712
LONGVIEW HSG. & COMM. DEV	P.O. BOX 1952, LONGVIEW, TX 75606	128	788,005
DEEP EAST TX COUNCIL OF GOVTS	210 PREMIER DRIVE, JASPER, TX 75951	11	68,943
NEWPORT NEWS REDEV & HA	PO BOX 797, NEWPORT NEWS, VA 23607	44	304,484
NORFOLK REDEV & H/A	201 GRANBY ST, NORFOLK, VA 23501	38	249,096
CITY OF VIRGINIA BEACH	2424 COURTHOUSE DR., VIRGINIA BEACH, VA 23456	90	682,607

APPENDIX A—HOUSING CHOICE VOUCHER PROGRAM ANNOUNCEMENT OF FUNDING AWARDS FOR FISCAL YEAR 2006—Continued

Housing Agency	Address	Units	Award
VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE STREET, RICHMOND, VA 23220	101	774,726
HA OF THE CITY OF BREMERTON	110 RUSSELL RD, BREMERTON, WA 98312	6	37,705
HA OF THE CITY OF MILWAUKEE	809 NORTH BROADWAY, MILWAUKEE, WI 53201	30	179,749
TOMAH HA	819 SUPERIOR AVE, TOMAH, WI 54660	2	7,821
WISCONSIN HSG & ECON DEV AUTH	PO BOX 1728, MADISON, WI 53701	16	72,650
Total for Housing Tenant Protection		16,061	$142,748,149
HOPE VI Vouchers			
CITY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	44	245,673
STAMFORD HA	22 CLINTON AVE, STAMFORD, CT 06904	84	1,108,174
MIAMI DADE HA	1401 NW 7TH STREET, MIAMI, FL 33125	0	2,591,250
HA OF THE CITY OF FORT MYERS	4224 MICHIGAN AVE, FORT MYERS, FL 33916	220	208,727
NEWPORT HA	301 SOUTHGATE, NEWPORT, KY 41072	130	308,651
LEXINGTON-FAYETTE COUNTY HA	300 NEW CIRCLE ROAD, LEXINGTON, KY 40505	150	141,240
LONG BRANCH HA	PO BOX 336 GARFIELD COURT, LONG BRANCH, NJ 07740	134	775,720
PLEASANTVILLE HA	156 NORTH MAIN STREET, PLEASANTVILLE, NJ 08232	50	269,159
SAN MIGUEL COUNTY HA	COUNTY COURTHOUSE ANNEX BLDG, LAS VEGAS, NM 87701.	65	369,096
THE MUNICIPAL HA	1511 CENTRAL PARK AVE, YONKERS, NY 10710	75	420,657
AKRON MHA	100 W. CEDAR STREET, AKRON, OH 44307	70	80,286
HA OF PORTLAND	135 SW ASH STREET, PORTLAND, OR 97204	98	108,776
MEMPHIS HA	700 ADAMS AVE, MEMPHIS, TN 38105	385	455,578
PORTSMOUTH REDEV&H/A	801 WATER STREET, STE 200, PORTSMOUTH, VA	300	368,580
Total for HOPE VI Vouchers		1,805	$7,451,567
Grand Total		23,099	$179,445,332

[FR Doc. E6–22097 Filed 12–26–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact for Grand Cote National Wildlife Refuge in Avoyelles Parish, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan and Finding of No Significant Impact for Grand Cote National Wildlife Refuge are available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The compatibility determinations for hunting, fishing, wildlife observation and photography, environmental education and interpretation, all-terrain vehicle use, cooperative farming, and resource research studies, are also available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to the Grand Cote National Wildlife Refuge, 401 Island Road, Marksville, Louisiana 71351. The plan may also be accessed and downloaded from the Service's Website *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: Grande Cote National Wildlife Refuge is located about 5 miles west of the city of Marksville, Louisiana (population 6,087), and 20 miles southeast of Alexandria, Louisiana (population 46,000), south of Highway 1, west of Highway 115, and north and east of Highway 114. The refuge is part of the central Louisiana National wildlife Refuge Complex, which includes Grand Cote, Lake Ophelia, and Cat Island National Wildlife Refuges and several fee and easement Farm Service Agency sites. The refuge covers 6,075 acres but could reach 13,000 acres if all land within the approved acquisition boundary is purchases. The refuge was established in 1989 to provide wintering habitat for mallards, pintails, blue-winged teal, and wood ducks, as well as production habitat for wood ducks to meet the goals of the North American Waterfowl Management Plan. The refuge consists of a complex of bottomland hardwood forests, agricultural lands, moist-soil areas, and direct access roads and trails. annually, more than 2,000 visitors participate in refuge activities.

The availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for a 45-day public review and comment period was announced in the **Federal Register** on June 16, 2006 (71 FR 34955). The draft plan and environmental assessment identified and evaluated three alternatives for managing the refuge over the next 15 years. alternative 1 represents o change from current management of the refuge. Under this alternative, 6,075 acres of refuge lands would continue to be protected, maintained, restored, and enhanced for resident wildlife, waterfowl, and threatened and endangered species. Under Alternative 2, the ''preferred alternative,'' more staff, equipment, and facilities would be added in order to maximize management and restoration of the refuge's wetland and moist-soil habitats and hydrology in support of migratory and resident waterfowl and other wildlife, especially white-tailed deer and woodcock. Alternative 3 would add more staff, equipment, and facilities in order to maximize bottomland hardwood forest restoration in support of migratory birds and other wildlife.

Based on the environmental assessment and the comments received, the Servcie adopted Alternative 2 as its preferred alternative. This alternative was considered to be the most effective for meeting the purposes of the refuge by conserving, restoring, and managing the refuge's wetlands and moist-soil habitats and hydrology. Alternative 2 best achieves national, ecosystem, and refuge-specific goals and objectives and positively addresses significant issues and concerns expressed by the public.

FOR FURTHER INFORMATION CONTAT: Tina Chouinard, Natural Resource Planner, Central Louisiana National Wildlife Refuge Complex, telephone: 318/253–4238; fax: 318/253–7139; e-mail: tina_chouinard@fws.gov; or by writing to the Natural Resource Planner at the address in the **ADDRESSES**section.

AUTHORITY: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: September 12, 2006.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on December 21, 2006.

[FR Doc. 06–9871 Filed 12–26–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Merritt Island National Wildlife Refuge in Brevard and Volusia Counties, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for Merritt Island National Wildlife Refuge are available for review and comment. 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 nd Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

DATES: Comments on the Draft Comprehensive Conservation Plan and Environmental Assessment for Merritt Island National Wildlife Refuge must be received no later than February 26, 2007.

ADDRESSES: A copy of the draft plan and environmental assessment is available on compact diskette or hard copy, and may be obtained by contacting the refuge at: Telephone: 321/861–0667; E-mail: *MerrittIslandCCP@fws,giv*; or by writing to: Merritt island NWR CCP, P.O. Box 6504, Titusville, Florida 32782–6504. You may also access or download a copy of the plan and environmental assessment at the following Web site address: *http://southeast.fws.gov/planning/*. Comments should be mailed to the refuge at the above address or e-mailed to: *MerrittIslandCCP@fws.gov.*

SUPPLEMENTARY INFORMATION: The draft comprehensive conservation plan addresses several priority issues raised by the Service, the Florida Fish and Wildlife Conservation Commission, other governmental partners, and the public, including: the spread of exotic, invasive, and nuisance species; the threats to threatened, endangered, and other imperiled species; the threats and impacts of an ever-increasing human population and the associated demand for public use activities; the management/maintenance of impounded wetlands; the coordination between intergovernmental partners; and the decline in migratory birds and their habitats.

To address these priority issues, four alternatives were developed and evaluated during the planning process.

Alternative A continues current refuge management activities and programs. Under this alternative, the refuge would continue to maintain 550 Florida scrub jay family groups across 15,000 acres, 11–13 nesting pairs of bald eagles, and 6.3 miles of sea turtle nesting beaches.

Alternative B expands refuge management actions on needs of threatened and endangered species. The refuge would aggressively manage for Florida scrub jays, restoring and maintaining 19,000–20,000 acres in optimal condition to support 900 family groups. Habitat management activities would support the number of nesting pairs of bald eagles to expand to 20, with increased protection of nest sites, development of artificial nesting platforms, and increased cultivation of future nest areas and nesting trees.

Alternative C focuses refuge management actions on the needs of migratory birds. Current management activities for threatened and endangered species would remain the same or would be decreased. The refuge would manage intensively for waterfowl, increasing the acres of impounded wetlands managed to over 16,000 acres and annually supporting targets of 250 breeding pairs of mottled duck, 60,000 lesser scaup, 25,000 dabbling ducks, and 38,000 diving ducks. The refuge would also intensively manage for shorebirds, increasing to over 5,000 acres managed in impounded wetlands.

Alternative D, the Service's proposed alternative, takes a more landscape view of the refuge and its resources, focusing refuge management on wildlife and habitat diversity. The refuge would support 500–650 Florida scrub jay family groups with 350–500 territories in optimal conditions across 15,000–16,000 acres. With active management, the refuge would support 11–15 nesting pairs of bald eagles; maintain 6.3 miles of sea turtle nesting beaches; and maintain 100 acres of habitat for the southeastern beach mouse, while the refuge population would serve as a source for reintroduction of the beach mouse to other sites. Manatee-focused management would be re-established on the refuge. The refuge would manage 15,000–16,000 acres in impounded wetlands with a waterfowl focus and would support targets of 250 breeding pairs of mottled ducks, 60,000 lesser scaup, 25,000 dabbling ducks, and 38,000 other diving ducks. Visitor services, programs, and messages would be focused on wildlife and habitat diversity, while also including threatened and endangered species and migratory birds.

The actions outlined in the draft plan and in two included step-down plans provide direction and guidance for management of Merritt Island National Wildlife Refuge. Successful implementation will depend on coordiantion and partnerships between the public, the Service, and other governmental agencies.

After the review and comment period for the draft plan and environmental assessment, all comments will be analyzed and considered by the Service. All comments 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 other Service and Departmental policies and procedures.

Merritt Island National Wildlife Refuge was established in 1963, to protect migratory birds through an agreement with the National Aeronautics and Space Administration, as an overlay of John F. Kennedy Space Center. The over 140,000 acres of beaches and dunes, estuarine waters, forested and non-forested wetlands, impounded wetlands, adn upland shrub lands and forests of the refuge support over 500 wildlife species and over 1,000 plant species, including a variety of waterfowl, shorebirds, and neotropical migratory birds.

FOR FURTHER INFORMATION CONTACT: Ron Hight, Refuge Manager, or Cheri Ehrhardt, Natural Resource Planner, at 321/861–0667.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 9, 2006.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on December 21, 2006.

[FR Doc. 06–9870 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: We must receive written data or comments on these applications at the address given below, by January 26, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. This notice is provided under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES** section).

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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. 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.

Applicant: Joanne M. Potts, University of Saint Andrews, Saint Andrews, Fife, Scotland, TE139405–0.

The applicant requests authorization to take (capture, radio tag/collar, examine, measure, release, recapture) the Key Largo woodrat (Neotoma floridana smalli) and Key Largo cotton mouse (Peromyscus gossypinus allapaticola) while developing efficient and reliable methods for long-term monitoring of the Key Largo woodrat's population size. Although the Key Largo cotton mouse is not the target species, it may be incidentally captured. The proposed activities would occur on the Crocodile Lakes National Wildlife Refuge (Monroe County, Florida) and the Key Largo Hammocks Botanical Reserve (Dade County, Florida).

Applicant: FTN Associates, Ltd., Dennis E. Ford, Little Rock, Arkansas, TE139474–0.

The applicant requests authorization to take (capture, identify, release) the American burying beetle (Nicrophorus americanus) while conducting long-term monitoring of the population at the Fort Chaffee Maneuver Training Center in Crawford, Franklin, and Sebastian Counties, Arkansas.

Applicant: Steven Bradford Cook, Cookeville, Tennessee, TE140151–0.

The applicant requests authorization to take (capture, temporarily hold, release) the Nashville crayfish (Orconectes shoupi) while developing a macro and micro habitat model. The proposed activities would occur in the Mill Creek Watershed, Davidson and Williamson Counties, Tennessee.

Dated: December 1, 2006.

Cynthia Dohner,

Acting Regional Director.

[FR Doc. E6–22135 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Home in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Carmen and John Wilson (Applicants) request an incidental take permit (ITP) for a duration of one year, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate removal of about 0.23 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat, incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Charlotte County, Florida (Project). The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before January 26, 2007.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or the Service's South Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559. Please reference permit number TE118198–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office or the South Florida Ecological Services Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Elizabeth Landrum, Fish and Wildlife Biologist, South Florida Ecological Services Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 772/562–3909, ext. 304, facsimile: 772/562/4288.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE118198–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Recent surveys by environmental consultants documented the presence of scrub-jays using the Applicants' property in Port Charlotte, Florida (Harbor Heights Subdivision). It was determined that one scrub-jay family, currently consisting of two adult birds, likely use the property as a portion of their territory. The scrub-jays using the subject residential lot and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in Charlotte County.

Since the Applicants' residential lot falls within a known scrub-jay territory, it likely provides a portion of the foraging, sheltering and possibly nesting habitat needs for one scrub-jay family. Construction of the proposed Project may result in harm to scrub-jays, incidental to the carrying out of otherwise lawful activities. The destruction of 0.23 acre of habitat associated with the proposed residential construction may result in the take of one family of scrub-jays by reducing the amount of available habitat within their territory.

The Applicants propose to minimize impacts to the scrub-jay by conducting land clearing activities outside of the nesting season (March 1 through June 30). In addition, the Applicants would landscape only with native scrub oaks and other native scrub vegetation, and would avoid planting tall growing trees that could serve as perches for scrub-jay predators. The Applicants would not keep and would try to prevent free-roaming cats from residing on the property as these may prey upon young scrub-jays. The Applicants propose to mitigate the take of scrub-jays through contribution of $12,190 to an approved scrub-jay conservation fund. Funds in this account would be earmarked for use in the conservation and recovery of scrub-jays, including habitat acquisition, restoration, and management.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, would individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, the ITP would be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an ITP. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: November 9, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–22127 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of Four Multi-family Residences in Charlotte County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Results Builders, Inc. (Applicant) requests an incidental take permit (ITP) for a duration of two years, pursuant to section 10(a)(1)(B) of the

Endangered Species Act of 1973, as amended (Act). The Applicant anticipates removal of about 1.6 acres of Florida scrub-jay (Aphelocoma coerulescens)(scrub-jay) foraging, sheltering, and possibly nesting habitat, incidental to lot preparation for the construction of four multi-family residences and supporting infrastructure on four lots in Charlotte County, Florida (Project). The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before January 26, 2007.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or the Service's South Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559. Please reference permit number TE108858–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office or the South Florida Ecological Services Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Connie Cassler, Fish and Wildlife Biologist, South Florida Ecological Services Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 772/562–3909, ext. 243, facsimile 772/562–4288.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE108858–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Recent surveys by environmental consultants documented the presence of scrub-jays using the Applicant's property in Punta Gorda, Florida (Punta Gorda Isles Subdivision). It was determined that one scrub-jay family, currently consisting of four birds, likely use the Applicant's four lots as a portion of their territory. The scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in southern Sarasota and western Charlotte Counties.

Since the Applicant's residential lots fall within a known scrub-jay territory, it likely provides a portion of the foraging, sheltering and possibly nesting habitat needs for one scrub-jay family. Construction of the proposed Project may result in harm to scrub-jays, incidental to the carrying out of otherwise lawful activities. The destruction of 1.6 acres of habitat associated with the proposed multi-family residential construction may result in the take of one family of scrub-jays by reducing the amount of available habitat within their territory.

The Applicant proposes to mitigate for the loss of 1.6 acres of scrub-jay habitat by contribution to an authorized scrub-jay fund. Contribution to a scrub-jay fund would be $84,800, ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and management. This contribution would be sufficient to acquire and perpetually manage about 3.2 acres of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The Applicant proposes to minimize impacts to the scrub-jay by conducting land clearing activities outside of the nesting season (March 1 through June 30) and to remove any exotic vegetation from the lot. The Applicant also proposes to landscape with native scrub oaks and other native species to maintain as natural a habitat as possible. The Applicant has proposed the footprint of all four dwellings on each lot as close to the road as possible, so that the largest possible area of vegetation will exist in the rear of the properties following landscaping. Since the rear of each lot is adjacent to the rear of one or two of the other lots, a continuous strip of vegetation would be created. The Applicant would avoid planting perch trees for predators that could prey on scrub-jays in the surrounding unimproved lots.

The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, would individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, the ITP would be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in

combination with the above findings, will be used in the final analysis to determine whether or not to issue an ITP. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: November 9, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–22136 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Final Environmental Impact Statement for the Proposed Oil Spill Response Facility at Shepard Point, near Cordova, Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), with the cooperation of the Native Village of Eyak, the Federal Highway Administration, and the U.S. Army Corps of Engineers, intends to file a Final Environmental Impact Statement (FEIS) with the U.S. Environmental Protection Agency for the proposed oil spill facility at Shepard Point, near Cordova, Alaska, and that the FEIS is now available for public review. The purpose of the proposed project, the Cordova Area Oil Spill Facility, is to provide a deepwater staging facility for the rapid deployment of equipment to the sites of any oil spills that might occur in the Prince William Sound and environs.

DATES: The Record of Decision on the proposed action will be issued on or after January 30, 2007. Any comments on the FEIS must arrive by January 29, 2007.

ADDRESSES: You may hand carry written comments to the BIA's Alaska Regional Office at 709 West 9th Street, 3rd Floor Federal Building, Juneau, Alaska, or mail them to Kristin K'eit, Environmental Scientist, Bureau of Indian Affairs, Alaska Regional Office, Division of Environmental and Cultural Resource Management, P.O. Box 25520, Juneau, Alaska 99802–5520. You may also fax your comments to (907) 586–7044, or submit them electronically at the project Web site, *http://www.cordovarf@urscorp.com*.

Note: BIA cannot receive electronic comments directly via e-mail at this time. Please include your name, return address, and the caption, ''FEIS Comments, Proposed Cordova Oil Spill Response Facility, Cordova, Alaska,'' on the first page of your written comments.

To obtain a copy of the FEIS, please contact Kristin K'eit at the mailing address above or her telephone number below. Copies of the FEIS are available for public review at the BIA's Alaska Regional Office in Juneau and at the Public Libraries in Juneau, Cordova and Anchorage, Alaska. Copies of the FEIS have also been sent to agencies and individuals who participated in the scoping process and to all others who have previously requested copies of the document.

FOR FURTHER INFORMATION CONTACT: Kristin K'eit, (907) 586–7423.

SUPPLEMENTARY INFORMATION: The proposed action that is the focus of this Environmental Impact Statement (EIS) is to construct an oil spill response facility at Shepard Point near Cordova, consisting of a dedicated deepwater port, additional staging and storage area, and a 4.5 mile access road to the Cordova road system. The facility will allow all tide transfer of out-of-region supplies such as booms, skimmers, sorbents, anchors, tools and personal protective equipment from the all weather airport at Cordova to a wider variety of response vessels than can currently use Cordova's port. The BIA determined that an EIS is required due to the potentially significant effects of the project. Construction of the Cordova Oil Spill Response Facility would enhance the regional spill response capability that presently exists in Prince William Sound by providing all tide access and efficient flow of pre-positioned and out-of-region equipment, supplies and personnel to vessels responding to oil spills in Prince William Sound and the northern Gulf of Alaska.

The proposed action is one of three Prince William Sound oil spill response facilities identified for construction in the 1992 Alyeska Settlement Agreement and Consent Decree (Alyeska Consent Decree), and the only one that has not yet been constructed. The Shepard Point Road is identified as a baseline transportation project in the 2001 Prince William Sound Regional Transportation Plan, included in the State Transportation Improvement Program, and listed as the top priority in the Native Village of Eyak's Tribal Transportation Plan. The Alaska State Legislature appropriated funds in 1993 for construction of a road to Shepard Point in support of an oil spill response facility and deepwater port at Shepard Point. The Cordova City Council passed a resolution in the spring of 2004 supporting development of the Shepard Point oil spill response facility.

The purpose of this project is to:

- Construct an oil spill response facility and deepwater port in the Cordova area that could receive oil spill equipment from any location at all tides via an air-to-ground-to-response-vessel or cargo vessel-to-response-vessel transportation sequence;
- Accommodate existing and foreseeable future oil spill response and cargo vessels with deeper drafts than the current capabilities of existing facilities in the area; and,
* Include an adequately sized area for staging and storing response equipment that would be contiguous to the dock.

The project is needed to improve and enhance Cordova's existing oil spill response capabilities and to maximize the efficiency with which Cordova could support a response effort. The project would allow for transfer of response material from the all-weather Cordova Airport to the full range of response vessels, at any tide. It would also allow the most efficient use of the resources that are already available in the Cordova area, including trained oil spill responders, a large fleet of fishing vessels, the all-weather airport and a large amount of pre-positioned response equipment. Chapter 1 of the FEIS provides additional information concerning the purpose and need for this project.

Five alternatives, including a no action alternative, are evaluated in the FEIS. Fill dock and piling dock design variants are identified for all of the build alternatives, and four road options are examined for Alternative 4 at Shepard Point.

In Alternative 1, the no action alternative, no new or improved facilities would be constructed. Existing oil spill response capabilities in Cordova and Prince William Sound would continue to serve. However, the no action alternative would not meet the purpose and need for improvements to existing capabilities, nor would it fulfill the requirements of the Alyeska Consent Decree.

For Alternatives 2, 3 and 5, dredging would be required to insure all-tide access for all likely oil spill response vessels. The deepest draft design vessels require minimum water depths of –32 feet (ft) mean lower low water (MLLW) at the dock and –35 ft MLLW in navigational channels and turning basins. Dredging of the shoal in the Eastern Channel would be required for Alternatives 2, 3, and 5 and would improve the existing deep-draft channel by providing a 350-ft wide channel with a minimum clearance depth of –35 ft MLLW between the relatively deep water at the Cordova waterfront and the

deep water in Orca Bay and the open sea.

For Alternative 2, located at Ocean Dock, there are two design variants; Alternative 2A, which is a new facility with a fill dock, and Alternative 2B, which is a new facility with a pile-supported dock. Alternative 2A would replace the existing Ocean Dock, a pile-supported dock measuring approximately 400-by-75 ft, with a new fill dock. Under Alternative 2B, the existing Ocean Dock would be removed and replaced with a new, smaller (360 by 60 feet), pile-supported dock.

For Alternative 3, located at Fleming Point, there are two design variants; Alternative 3A, which is a new facility with a fill dock, and Alternative 3B, which is a new facility with a pile-supported dock. Alternative 3A consists of constructing a new fill dock and upland staging area at Fleming Point. The new fill dock would have a 600-ft-long face and would provide 3.5 acres for spill response equipment storage and operations. Alternative 3B would provide a new pile-supported dock of about 350-by-60 ft.

For Alternative 4, located at Shepard Point, there are two dock design variants; Alternative 4A, with a fill dock with a 600-ft-long face, and Alternative 4B with a pile-supported dock of about 350-by-60 ft. Additionally, there are four potential road alignments. All options would include construction of a new road from Orca to Shepard Point and a new dock and staging area of 3.5 acres at Shepard Point. A new boat launch ramp would also be constructed to launch smaller boats and skiffs due to the distance of this location from existing boat launch ramps in Cordova. Dredging would not be required for Alternative 4.

Alternative 4A, with the Inland Alternate Route road alignment, has been selected as the preferred alternative based on the key parameters of the purpose and need, and the characteristics of the various alternatives. In examining the characteristics of the alternative facilities, the BIA has identified Alternative 4 (Shepard Point) as the preferred alternative for the following reasons: 1) It meets the need established in the Alyeska Consent Decree for a deepwater, all-tide access, oil spill response facility, and 2) construction of the facility at Shepard Point provides natural deepwater access without initial or maintenance dredging (including disposal of dredged material) of a channel for all-tide access, as would be necessary for Alternatives 2, 3, and 5. In addition, construction and operation of a facility at Shepard Point would avoid adverse dock impacts associated with other alternatives, such as potential oil spill response conflicts with other uses and marine traffic in the existing harbor area, potential contamination associated with oiled vessels in the main harbor area, and impacts to existing recreation and tourism facilities. With regard to potential economic benefits, construction and operation of Shepard Point would provide road access to the existing Humpback Creek hydroelectric facility and, unlike other sites, has room for upland expansion of the staging area behind the dock. Finally, the funds allocated specifically for the Shepard Point alternative through the Alyeska Consent Decree and action by the Alaska Legislature would not be available for expenditure on other alternatives without approval of the Alaska Governor and Legislature.

The access road that would accompany either Alternative 4A or 4B would be chosen from one of four proposed routes:

- Primary Alignment—The new, two-lane, unpaved access road to Shepard Point would start at Orca and continue approximately 4.4 miles to Shepard Point. Bridges would cross Humpback Creek and Unnamed Creek. All other drainages along the route would be crossed using culverts. The new access road to Shepard Point would require approximately 350,000 cubic yards (cy) and 26 acres of fill below the high tide line.
- Upland Alternate Route (Road Option 1)—Road Option 1 follows the Primary Alignment to mile 1.68, diverges from the coastline and follows a steep upland route for 1.27 miles, then returns to the Primary Alignment coastal route just prior to the Humpback Creek Bridge for the remaining 1.37 miles. Compared with the Primary Alignment, Road Option 1 would reduce fill by about 5.5 acres and 60,000 cy, but would require the excavation or clearing of an additional 6.0 acres of forest.
- Humpback Creek Alternate Bridge Site (Road Option 2)—This access road option would follow the same route as the Primary Alignment, except that the bridge crossing at Humpback Creek would occur in the upper delta, above the Primary Alignment bridge site. There would be little change in the length of the road from that of the Primary Alignment, but placement of fill in the Humpback Creek estuary would be eliminated and there would be a decrease in total tideland fill by approximately 0.7 acre. Much more rock excavation, however, would be necessary due to the Humpback Creek bridge approaches.
- Inland Alternate Route (Road Option 3) (Preferred Road Alignment)—This access road option follows the same route as the Primary Alignment to mile 1.68, then diverges from the coastline and follows a steep inland route, returning then to the Primary Alignment coastal route just north of the Humpback Creek Delta. In response to comments on the DEIS requesting reduced impacts associated with fill, the preferred road alignment has been redesigned for one-lane traffic, with pullouts in coastal areas requiring fill below the hide tide line. The inland road portions have steep grades where the road bypasses Orca Cannery by deviating inland and where the road deviates inland to avoid the Unnamed Creek and Humpback Creek estuaries; these sections would have two lanes to provide additional margins of safety and reliability. Compared with the Primary Alignment, Road Option 3 would reduce the fill below the high tide line by 15.1 acres and 190,000 cy, but would increase terrestrial habitat excavation and/or clearing by 11.0 acres.

For Alternative 5, located at Orca, there are two design variants; Alternative 5A, which is a new facility with a fill dock with a 600-ft-long face, and Alternative 5B, which is a new facility with a pile-supported dock of about 350-by-60 ft. Alternative 5A would include construction of a new fill dock and an upland staging area at the Orca site, and would require Orca Cannery Road to be rerouted around the back of the staging area. For both of the dock design variants, the dock and 3.5-acre staging area would be used for storage of response equipment and for response operations.

Public Comment Availability

Comments, including names and home addresses of respondents, will be available for public review at the BIA address shown above, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with Section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: December 18, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–22142 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Deadline for Submitting Completed Applications to Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2008 or Calendar Year 2008

AGENCY: Office of Self-Governance, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2007, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2008 or calendar year 2008.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2007.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Dr. Kenneth Reinfeld, Acting Director, Office of Self-Governance, Department of the Interior, Mail Stop 355-G-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

25 CFR Parts 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2008 and calendar year 2008. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2008 or calendar year 2008 must respond to this notice, except for those which are: (1) Currently involved in negotiations with the Department; (2) one of the 94 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: December 12, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–22175 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW173720]

Notice of Invitation for Coal Exploration License Application, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License Application, Ark Land Company, WYW173720, Wyoming.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as 43 Code of Federal Regulations (CFR) 3410, all interested parties are hereby invited to participate with Ark Land Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 20: Lots 5 through 16;
Sec. 21: Lots 1, 2, 5 through 16;
Sec. 22: Lots 1 through 16;
Sec. 27: Lots 1 through 16;
Sec. 28: Lots 1 through 16;
Sec. 34: Lots 1 through 16.

Containing 3,671.09 acres, more or less.

DATES: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Ark Land Company, as provided in the **ADDRESSES** section below, no later than thirty days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW173720): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604. The written notice should be sent to the following addresses: Ark Land Company, Attn: Mike Lincoln, P.O. Box 460, Hanna, WY 82327, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

SUPPLEMENTARY INFORMATION: All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the reserves contained in a potential lease. This notice of invitation will be published in The News-Record of Gillette, WY, once each week for two consecutive weeks beginning the week of December 18, 2006, and in the **Federal Register**.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: December 5, 2006.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 06–9880 Filed 12–22–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–07–1610]

Notice of Availability of Record of Decision for the Ukiah Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Bureau of Land Management (BLM) policies, the BLM announces the availability of the ROD and approved Ukiah Resource Management Plan for lands and resources administered by its Ukiah Field Office. The California State Director has signed the ROD, making the RMP effective immediately.

ADDRESSES: Copies of the ROD and RMP are available upon request from the Environmental Coordinator, Ukiah Field Office, Bureau of Land Management, 2550 N. State Street, Ukiah, California or via the Internet at *http://www.ca.blm.gov/ukiah.*

FOR FURTHER INFORMATION CONTACT: Jonna Hildenbrand, (707) 468–4000.

SUPPLEMENTARY INFORMATION: The Ukiah RMP provides direction for managing the approximate 270,000 acres of BLM-managed surface acres and 214,000 additional subsurface acres (mineral estate) in northern California. The geographic area includes all BLM-managed public lands within the counties of Marin, Solano, Sonoma, Mendocino (south of the City of Willits), Lake, Napa, Yolo, Colusa, and Glenn. Planning for the Ukiah RMP officially began with a **Federal Register** notice on June 21, 2004 initiating scoping. BLM sought Tribal, public, and governmental participation in the development of this RMP and will continue to pursue partnerships in the management of the public lands. The approved RMP is essentially the same as the Proposed RMP in the Final Environmental Impact Statement (FEIS) published in June 2006. The decisions designating routes of travel for motorized vehicles are an implementation decisions and are appealable under 43 CFR part 4. These decisions are contained in Appendix A of the RMP. Any party adversely affected by the proposed route designations may appeal within 30 days of publication of this Notice of Availability. The appeal should state the specific route(s), as identified in Appendix A of the RMP, on which the decision is being appealed. The appeal must be filed with the Ukiah Field Manager at the above listed address. The BLM received no protests to the Proposed RMP/FEIS.

No inconsistencies with State or local plans, policies or programs were identified during the Governor's consistency review of the proposed RMP/FEIS.

Dated: October 20, 2006.

Rich Burns,

Ukiah Field Office Manager.

[FR Doc. E6–22170 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Burr Trail Modifications, Final Environmental Impact Statement, Capitol Reef National Park, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the Burr Trail Modifications, Capitol Reef National Park.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Burr Trail Modifications, Capitol Reef National Park, Utah. On October 23, 2006 the Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on July 14, 2006.

The following course of action will occur under the preferred alternative. In areas with high bentonite clay content, a gravel surface course will be constructed to increase safety. Geotextile fabric may be used between the aggregate and subbase to prevent gravel loss into the subgrade.

Without altering the overhanging rock, a narrow section of the road at mile point 0.65 will be widened by 6 feet to 10 feet. This will be accomplished by moving the northern roadside ditch toward the overhanging rock. A rock embankment will be added to the southern side of the road (the north bank of Sandy Creek) to provide structural stability for a portion of the road as well as slope protection.

The road bank in the vicinity of mile points 0.75 and 0.85 will be stabilized using slope protection to reduce erosion and maintain the natural contours of the existing stream channel. Up to 530 linear feet of slope protection will be placed along the base and 6 feet or more up the sides of the road embankment. The base width of the protection will remain aligned with the slope to minimize placement of rock within the existing stream channel.

Two paved fords, impassable whenever water flows across the roadway, will be constructed at mile points 0.10 and 0.20. Two vented paved fords will be constructed at mile points 0.50 and 0.60. These crossings will be passable during 2-year storm events; floodwaters will be conveyed through two 24-inch-diameter corrugated metal pipe culverts. The paved fords (vented and unvented) will be relatively consistent with the existing topography, and their length will be sufficient to contain overtopping 10-year storm event floodwaters within the paved area. Each of the fords will include slope protection to protect the upstream and downstream banks and inlet and outlet protection to reduce and minimize erosion and scour.

Paved fords, similar to those that will be constructed at mile points 0.10 and 0.20, will be constructed at each of the two minor drainage channels. The upstream channel (*i.e.*, inlet) will be recontoured to direct surface flow over the paved ford, and inlet and outlet protection will be installed to minimize erosion and scour. Slope protection will be added to portions of the downstream road embankment to minimize erosion.

A vented paved ford will be constructed to facilitate crossing Halls Creek. This ford will include four 36-inch-diameter corrugated metal pipe culverts. The roadway at the crossing will be shifted a short distance downstream (*i.e.*, to the south) from the Halls Creek/Burr Canyon drainage confluence so that the culverts in the paved ford can accommodate flows from the two drainages. Inlet and outlet protection will be added to minimize scouring and erosion. Slope protection will also be placed on the stream banks both upstream and downstream of the crossing if necessary to reduce the potential for erosion of the stream banks.

An existing culvert near the base of the switchbacks in Burr Canyon will be replaced by three 36-inch-diameter

corrugated metal pipe culverts. Inlet protection will be installed while the outlet will use the existing rock channel as erosion protection. An approximately 50-foot length of road just east of the existing culvert will be widened 6 to 10 feet by adding a rock embankment and backfilling to widen the road on the south slope of the Burr Canyon drainage.

A cattle guard will be placed at the park boundary by the National Park Service to prevent cattle from entering the park from adjacent Bureau of Land Management-administered lands, and the existing cattle guard at mile point 0.55 will be removed when the current grazing allotment expires.

This course of action and three alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Albert J. Hendricks, Superintendent, Capitol Reef National Park, HC70, Box 15, Torrey Utah 84775, 435–425–3791.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov.*

Dated: October 23, 2006.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. E6–22113 Filed 12–26–06; 8:45 am]

BILLING CODE 4312–DL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of January 29, 2007 meeting.

SUMMARY: This notice sets forth the date of the January 29, 2007 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, January 29, 2007 from 3 p.m. to 4:30 p.m. Additionally, the Commission will attend the Flight 93 Memorial Task Force meeting the same day from 1 p.m. to 2:30 p.m., which is also open to the public.

Location: The meeting will be held at the Somerset County Courthouse, Courtroom 1; 2nd floor; 111 East Union Street, Somerset, Pennsylvania 15501. The Flight 93 Memorial Task Force meeting will be held in the same location.

Agenda:

The January 29, 2007 Commission meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Minutes from October 7, 2006.

(3) Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.

(4) Old Business.

(6) Public Comments.

(7) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: December 12, 2006.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 06–9872 Filed 12–26–06; 8:45 am]

BILLING CODE 4312–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Tuesday, February 20, 2007 at 9 a.m. until 3:30 p.m., at the Lowndes County Interpretive Center located at 7001 Highway 80 West Hayneville Alabama. The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

(A) Welcome New Members.

(B) Walk thru Lowndes County IC.

(C) Update on other Interpretive Sites.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent concerning the matters to be discussed.

Person wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at 334–727–6390 (phone), 334–727–4597 (fax) or mail 1212 Old Montgomery Road, Tuskegee Institute, Alabama 36088.

Catherine F. Light,

Selma to Montgomery National Historic Trail Superintendent.

[FR Doc. 06–9890 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–04–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–48]

William R. Lockridge, M.D. Affirmance of Immediate Suspension of Registration

Introduction and Procedural History

On May 17, 2004, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Notice of Immediate Suspension of the practitioner's Certificate of Registration, BL6779005, held by William R. Lockridge, M.D. (Respondent), of Wayne, N.J. The Notice of Immediate Suspension was based upon my preliminary finding that Respondent was ''responsible for the diversion of large quantities of controlled substances'' by writing prescriptions for controlled substances that were issued on behalf of persons he never physically examined and which thus lacked a ''legitimate medical purpose.'' Order to Show Cause at 9. Based on this finding, I concluded that Respondent's continued registration ''constitute[d] an imminent danger to the public health and safety because of

the substantial likelihood that [he] would continue to divert controlled substances.'' *Id.* at 10.

More specifically, the Show Cause Order alleged that a Pennsylvania State Pharmacy Inspector had conducted an inspection of an Internet pharmacy, CMC Pharmacy (CMC), and determined that a ''significant portion of'' the controlled substances prescriptions dispensed by CMC were issued by Respondent. *Id.* at 5. The Show Cause Order alleged that a DEA Diversion Investigator (DI) had interviewed a drug-dependent person who informed the DI that he had obtained prescriptions for Schedule III and IV controlled substances such as Lortab and Xanax from Respondent based on a telephone interview and a falsified medical record. *See id.* at 5–6. The Order further alleged that this person told the DI that several of his acquaintances had also obtained prescriptions for controlled substances from Respondent and CMC although they had no legitimate medical need for the drugs. *See id.* at 6.

The Show Cause Order also alleged that the DI subsequently contacted CMC regarding the purchase of controlled substances from it, and was told that in order to do so, he was required to register as a patient of the Southwest Medical Group (SMG). *See id.* The Show Cause Order alleged that the DI, using an undercover persona, registered as a patient with SMG and faxed to it a fabricated medical record which stated that he had shoulder pain but did not indicate that he had ever been prescribed controlled substances for the condition. *See id.* at 7.

The Show Cause Order next alleged that the DI subsequently completed an online questionnaire and obtained an appointment for a telephonic consultation with Respondent. *See id.* at 8. The Show Cause Order alleged that the DI called Respondent and that during the conversation Respondent asked him why he was requesting Vicodin. *See id.* The Show Cause Order alleged that the DI told Respondent that he had bought the drug from a friend and that he needed it because he was a truck driver and had to turn his truck's steering wheel. *See id.* The Show Cause Order alleged that Respondent then suggested a prescription for 120 ten mg. tablets of Vicodin with two refills, and ultimately prescribed the drug. *See id.*

The Show Cause Order further alleged that Respondent then asked the DI whether there was anything else he could do for him. *See id.* According to the Show Cause Order, after the DI informed Respondent that he was nervous because he had just been given a contract to haul dynamite, Respondent prescribed 120 two mg. tablets of alprazolam with two refills. *See id.* The Show Cause Order thus alleged that both prescriptions were issued without a legitimate medical purpose and without a legitimate medical examination. *See id.* at 8–9.

Next, the Show Cause Order alleged that Respondent told the DI that the prescription had been forwarded to CMC. *See id.* at 9. The Show Cause Order also alleged that the DI was charged $ 115 for Respondent's services, which was payable to SMG. *See id.* The Show Cause Order alleged that the DI subsequently received 120 tablets of 10 mg. hydrocodone and 120 tablets of 2 mg. alprazolam, for which he paid $ 261. *See id.*

Finally, the Show Cause Order alleged that ''nearly all'' of the controlled substance prescriptions that were filled by CMC were issued by Respondent through the SMG. *See id.* The Show Cause further alleged that over a one year period, Respondent was responsible for dispensing more than 2,316,300 dosage units of hydrocodone-based drugs ''via the Internet, for no legitimate medical purpose and without the benefit of a * * * legitimate medical examination.'' *See id.*

DEA DIs initially attempted to serve the Show Cause Order and Immediate Suspension on Respondent at his registered location of 1777 Hamburg Turnpike, Suite 202, Wayne, N.J. However, upon their arrival at this address, the DIs were told that Respondent had not practiced there for the past four years. See ALJ at 4. Thereafter, DI Conlon, who had conducted the investigation, contacted Respondent using a phone number from SMG's Web site which was for a Florida address. *See id.* The DI instructed Respondent that his registration had been immediately suspended and subsequently, DIs from Florida served Respondent with the Order to Show Cause and Immediate Suspension. *See id.*

Thereafter, Respondent timely requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Gail Randall, who conducted a hearing in Pittsburgh, Pa., on October 26 and 27, 2004. At the hearing, the Government elicited the testimony of six witnesses and introduced numerous exhibits. Respondent rested without putting on a case. Thereafter, both parties submitted post-hearing briefs.

On November 18, 2005, the ALJ issued her decision. The ALJ concluded that the Government had proved by a preponderance of the evidence that the revocation of Respondent's registration was in the public interest and recommended that I revoke Respondent's registration. See ALJ at 42–43. Neither party filed exceptions.

Having carefully reviewed the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact and conclusions of law in their entirety. Because Respondent's registration has since expired and Respondent did not submit a renewal application, I do not adopt the ALJ's recommendation that Respondent's registration be revoked. I do, however, affirm the immediate suspension of Respondent's registration and make the following findings.

Findings of Fact

Respondent is a medical doctor who at the time of the hearing held medical licenses in the States of New Jersey and New York. See ALJ at 4. Respondent did not, however, hold a medical license in the State of Florida. See id.

At the time of the hearing, Respondent held DEA Certificate of Registration, BL6779005, with an expiration date of March 31, 2006. I take official notice of the fact that Respondent has not submitted an application to renew his Certificate of Registration.

Respondent's registered location was: Associates in Women's Health, 1777 Hamburg Turnpike, Suite 202, Wayne, N.J. See Gov. Ex. 1. Respondent had not, however, practiced at this location for at least four years prior to the May 2004 service of the Order to Show Cause. ALJ at 4. Moreover, pursuant to 5 U.S.C. 557(e), I take official notice of the records of the New Jersey Division of Consumer Affairs, which indicate that Respondent's N.J. medical license expired on June 30, 2005.[1]

Respondent did not hold a DEA Certificate of Registration for either of the two Florida addresses he used during the 2003 through 2004 time frame. See Tr. 236; Gov. Ex. 2 (printout of registration status); Gov. Ex. 8 (N.J. and N.Y. medical licenses listing Respondent's address as 2555 PGA Blvd., # 157, Palm Beach Gardens, Fl. 33410); Gov. Ex. 10 (Letter of June 28, 2003, from Respondent to Mr. Dave

[1] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, Attorney *General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); see also 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I am taking official notice, publication of this final order shall be withheld for fifteen days, which shall begin on the date of service by placing this order in the mail.

Schwartzenberger of SMG, using 2555 PGA Blvd. address); Gov. Ex. 24 (Rx forms listing Respondent's address as 461 Surfside Lane, Juno, Fl.). Respondent was living in Juno Beach, Florida, when he was finally served with the Order to Show Cause and Immediate Suspension. See Gov. Ex. 6 (Return Receipt Card signed by Respondent on June 2, 2004, using Juno Beach address).

In October 2003, a DI assigned to the Pittsburgh field office received information that CMC and Respondent were using the Internet to distribute controlled substances. ALJ at 5. While CMC was the initial focus of the investigation, at some point thereafter, a Pennsylvania State Pharmacy Inspector informed the DI that a high volume of CMC's prescriptions were for hydrocodone combination drugs (which are Schedule III controlled substances, see 21 CFR 1308.13(e)), and various benzodiazepines such as diazepam and alprazolam (which are Schedule IV controlled substances, see 21 CFR 1308.14(c)), and that ''the vast majority of the prescriptions'' filled by CMC were written by Respondent. Tr. 343, 359.

On March 25, 2004, the DI phoned CMC to find out how the ''scheme worked.'' Tr. 238. During that conversation, the DI was told by an unidentified person at CMC that the pharmacy worked with SMG and that SMG ''set up the doctor consults.'' Tr. 240; see also Gov. Ex. 3. The DI was then given SMG's phone number. See Tr. 240.

Later that day, the DI called SMG and spoke with a person named Sam about obtaining prescriptions from CMC. Id. at 241. Sam told the DI to go to SMG's Web site and follow the posted instructions to register with it. Id. at 241–42.

Thereafter, the DI, using the undercover persona of John Dearing, went to SMG's ''New Patient Registration'' webpage and completed the form. On the form, the DI gave both e-mail and street addresses, his date of birth, phone number and indicated that his medical condition was a ''problem with shoulder.'' Gov. Ex. 12. The webpage stated: ''Before completing this form please make sure you have your medical records or release form and a legible copy of your government issued identification ready to fax upon completion of this registration form.'' Id.

To comply with this requirement, the DI created a false medical record which indicated that he had been treated for neck pain and flu-like symptoms with over-the-counter drugs such as Tylenol and Motrin during several office visits. See Gov. Ex. 14; Tr. 246. The document also contained a reference to spasms and exterior and lateral extension. See Gov. Ex. 14; Tr. 246. Finally, the document did not include the name, address and phone number of a physician. See Gov. Exh. 14. The DI also created a fictitious photo identification by altering his driver's license. Tr. 243. The DI subsequently faxed both items to SMG. See Gov. Ex. 16.

Several hours later, the DI received an e-mail from SMG which congratulated him on his registration and provided him with a patient identification number. See Gov. Ex. 17. The e-mail also instructed the DI to visit the southwestmedicalgroup.com webpage to ''to secure an appointment for a physician consultation.'' Id.

Thereafter, on April 7, 2004, the DI returned to the SMG Web site and completed a ''repeat patient medical history form'' even though ''he was a new customer.'' ALJ at 8, Gov. Ex. 18, at 50. On this form, the DI was asked whether he was ''requesting a specific Medication(s)?.'' Gov. Ex. 18, at 50. The DI indicated ''yes,'' and that he was requesting ''Vicodin 10 mg'' for a ''shoulder'' condition. See id. The DI further indicated that he had ''taken Vikes before with no side effects.'' Id. Vikes is a street name for Vicodin. ALJ at 8.

The DI also selected a time for a ''consultation'' with Respondent; the DI was subsequently instructed to call Respondent at 11:10 AM the next day and was given Respondent's name and a Florida phone number. See Gov. Ex. 18, at 60.

At the appointed time, the DI called Respondent. During this conversation, Respondent asked the DI what he wanted; the DI told Respondent that he wanted Vicodin. While Respondent was aware that the DI had indicated that he had a shoulder problem, he did not ask the DI whether he was in pain and the DI did not say that he ''had any pain.'' Tr. 255–56. The DI also told Respondent that he had been getting Vicodin from friends but had just found out that it was illegal to do so. Gov. Ex. 4. Respondent replied that it was illegal to obtain the drug from friends and that a doctor had to prescribe it. See Tr. 300. Respondent then asked the DI ''how many [he] wish[ed] to purchase?''; the DI replied ''120.'' Id. Respondent then agreed to prescribe 120 Vicodin tablets with two refills. See id.

Respondent then asked whether there was ''anything else [he] could do'' for the DI. Id. at 301. The DI told Respondent that he was ''nervous'' because he was going through a divorce and had just gotten a contract to haul dynamite. Id. Respondent then asked the DI ''[w]hat would you like for your nerves?,'' and offered to prescribe ''either Xanax or Valium.'' Id. The DI eventually asked for Valium and requested that the prescription coincide with the Vicodin so that they would ''run out at the same time.'' Id. at 302. Respondent then told the DI that he would authorize a prescription for 120 Valium tablets with two refills. Id.[2]

Respondent did not take a complete medical history from the DI, and obviously did not perform a physical exam. See ALJ at 12 (citing Tr. 256–58). He did not order medical testing, and did not discuss with the DI either the risks and benefits of taking the drugs he prescribed or the availability of alternative treatments. See id. Moreover, Respondent did not ask the DI whether he was seeing other physicians or using other online pharmacies. See id. Finally, Respondent did not discuss the contents of the ''medical record'' the DI had submitted and did not establish a treatment plan or a timetable for taking the drugs. See id.

On April 22, 2004, the DI faxed to SMG a copy of the postal money order paying for the consultation. See Gov. Ex. 20. Later that day, SMG sent an e-mail to the DI providing him with a United Parcel Service tracking number and instructing him that the drugs were being shipped COD and that the ''total for all pharmacy services (medication, shipping and handling) [was] $ 261.'' See Gov. Ex. 21. The e-mail also gave instructions for ordering refills and stated that: ''You will NOT be able to refill your prescription at any local pharmacy. You must order your refill through the Southwest Medical Group Web site only.'' Id. The ALJ also found that CMC ''did not accept any form of insurance as payment for medications.'' ALJ at 9 (citing Tr. 335).

Thereafter, the DI obtained both drugs from CMC along with an invoice that indicated the details of each prescription and listed Respondent as the prescribing physician. See Gov. Ex. 22. Moreover, on May 19, 2004, during the execution of a search warrant at CMC, copies of the prescriptions which Respondent wrote for the DI were retrieved. See Gov. Ex. 24; Tr. 325. The

[2] The DI attempted to record this conversation, but the recording device did not pick up Respondent's voice. The DI subsequently called Respondent again to recapture the substance of the first conversation. See Tr. 303. The transcript of that conversation confirms that Respondent prescribed 120 tablets of both Vicodin and diazepam, with two refills for each drug, for the DI. See Gov. Ex. 4, at 9–10. In that conversation, Respondent also told the DI that the fee for the consultation (which was $ 115) should be paid to SMG. Id. at 9. The DI subsequently sent a postal money order to SMG. See Gov. Ex. 20, at 66 & 68. Respondent also informed the DI that CMC would bill him separately for the drugs. Tr. 302.

heading of the forms gave Respondent's name and his address as his Juno, Florida residence. See Gov. Ex. 24. The forms also listed Respondent's New Jersey medical license number and the DEA number for his former office in Wayne, N.J. See id., see also Gov. Ex. 8.

During the search of CMC, the Government seized the pharmacy's computer database and retrieved from it patient and prescription information. Tr. 328–29; Gov. Exs. 25–30. The ALJ specifically found that Respondent wrote ''the vast majority of [the] prescriptions filled by CMC.'' See ALJ at 10. This finding is supported by substantial evidence. See Tr. 328; Gov. Exs. 27–30.

Moreover, the Government compiled a list of CMC's customers by their State. CMC filled prescriptions for customers located ''in virtually every [S]tate.'' ALJ at 11, see also Gov. Ex. 25. Indeed, CMC filled prescriptions for customers in such far-off places as Alaska, Hawaii and Washington State. See id. The Government also compiled a 467 page list of the prescriptions filled by CMC between July 1, 2003, and May 11, 2004, which includes the patient's name, the prescribing physician's name, the drug, and the quantity. See Gov. Exhs. 28 & 30; see also Gov. Exhs. 27 & 29. Based on this evidence, I further find that the overwhelming majority of the prescriptions Respondent issued (and CMC dispensed) were for controlled substances.

The Government also submitted into evidence an analysis of the prescriptions Respondent wrote and CMC dispensed for the drugs alprazolam, diazepam, hydrocodone and Lortab (a branded drug that combines acetaminophen and hydrocodone). See Gov. Ex. 65. During the last six months of 2003, Respondent wrote 1,207 prescriptions for alprazolam (for a total of 115,400 dosage units) and 1,140 prescriptions for diazepam (for a total of 71,811 dosage units). See id. During the portion of 2004 in which CMC remained in business,[3] Respondent wrote 2,519 prescriptions for alprazolam (for a total of 245,130 dosage units) and 1,806 prescriptions for diazepam (for a total of 126,925 dosage units). See id.

During the last six months of 2003, Respondent wrote 7,939 prescriptions for hydrocodone (for a total of 1,021,146 dosage units) and 44 prescriptions for Lortab (for a total of 5,730 dosage units). See id. During the period of 2004 in which CMC remained in business, Respondent wrote 14,129 prescriptions for hydrocodone (for a total of 1,840,355 dosage units) and 97 prescriptions for Lortab (for a total of 12,330 dosage units). See id. Finally, the analysis found that on May 10, 2004, and May 11, 2004 (the last two days for which there was data), CMC filled respectively 358 and 242 prescriptions for controlled substances that were written by Respondent. Id.

On October 15, 2004, the Government also executed a search warrant at Respondent's residence. The only documents found were scheduling charts. No patient records were found. Tr. 407.

The Government also called three other persons who testified as to the circumstances surrounding their obtaining prescriptions for controlled substances from Respondent. Mr. A.W. testified that he submitted a medical record, on which he altered the date; the record had been prepared by a physician, who had since died, and contained the physician's name, address and phone number. Id. at 24–26. A.W. gave testimony consistent with that of the DI as to the process required to register with SMG. Id. at 28–33. A.W. further testified that upon receiving his identification number and password, he went to the ''repeat patient medical history form'' and requested a prescription for Xanax (alprazolam) and Norco, a product containing hydrocodone and acetaminophen. Id. at 33–34.

A.W. obtained a time for a phone consultation with Respondent and called him. Id. at 40. As a result of the consultation, which lasted ''no more than four or five minutes,'' Respondent prescribed for A.W. a month's supply of both hydrocodone and Xanax with two refills. Id. at 33–34, 41.

A.W. had several additional ''consultations'' with Respondent at three month intervals, each of which lasted approximately four to five minutes. Id. at 41. The conversations typically involved Respondent asking A.W. how he was feeling, whether everything was o.k., whether he wanted the same drugs, and if there was anything else Respondent could do for him. Id. at 42. Respondent never required A.W. to submit any other medical records to him. Id.

Moreover, Respondent never asked A.W. if he had previously been addicted to drugs, never took a medical history, and never asked what drugs he had previously taken or what other drugs he was then taking. See ALJ at 23 (citing Tr. 42–43). Most significantly, Respondent never performed a physical exam on A.W. and did not require that he obtain a physical exam from another physician. Tr. 43. Furthermore, A.W. never saw Respondent ''in person.'' Id. at 43. Respondent also never suggested alternative treatments for A.W.'s condition, and other than to mention that the drugs he prescribed could be addictive, never discussed the benefits and risks of taking controlled substances. Id. at 44.

A.W. further testified that all of the prescriptions written for him by Respondent were filled by CMC, id. at 52, that he was not allowed to have the prescriptions filled at another pharmacy, and that he could not use his insurance to pay for the drugs and instead had to pay with cash. Id. at 97–98. According to the data obtained during the search of CMC, A.W. received from CMC prescriptions for 140 hydrocodone tablets and 60 alprazolam tablets, which were authorized by Respondent on a monthly basis from October 2003 through April 2004. See Govt. Ex. 27, at 5–6. A.W. further testified that the 140 hydrocodone tablets he received each month ''was more than any doctor ever gave'' him in his entire life. Tr. 44. A.W. also testified that he was addicted to drugs when he became a ''patient'' of SMG. Id. at 84. I credit A.W.'s testimony.

The Government also called as a witness Ms. B.B. I, like the ALJ, credit her testimony.

Consistent with the testimony of the DI and A.W., B.B. testified that she registered with SMG by going to its Web site and completing its new patient registration form and submitting a copy of her driver's license and medical records. See ALJ at 25–26. B.B.'s medical record indicated that she had been treated by a chiropractor for ''tennis elbow'' with heat therapy and ''electrolysis.'' Tr. 123, 132. The medical record did not indicate that B.B. had been treated with controlled substances, and the chiropractor had not prescribed controlled substances for her condition. See ALJ at 26 (citing Tr. 131–32).

In completing SMG's ''repeat patient medical history form,'' B.B. requested a prescription for hydrocodone 10/500 to treat her condition. See id. (citing Tr. 135–36). B.B. then selected a time for her consultation with Respondent. See id. (citing Tr. 137). After the first consultation, Respondent prescribed 90 hydrocodone tablets for B.B. See id. at 27 (citing Tr. 140 & 142).[4] B.B. had three

[3] While the document states that the data covered the ''[f]irst 5 months of 2004,'' in fact, the last date that the data was available for was May 11, 2004. See Gov. Ex. 65. CMC was shut down following the execution of the search warrant.

[4] TDI Pharmacy initially filled the prescriptions B.B. obtained from Respondent. ALJ at 28 (citing Tr. 147–48). At some point thereafter, CMC started filling the prescriptions B.B. obtained from Respondent. See id. (citing Tr. 147–48).

consultations with Respondent, each of which lasted for two to ''three minutes tops.'' Tr. 139. According to B.B., the consultations involved Respondent asking her ''what can I do for you, what do you need?'' Id. While Respondent and B.B. did discuss her condition, id. at 144, after B.B. told Respondent what she wanted, Respondent ''always ask[ed] is there anything else I can do for you or get for you?'' Id. at 139. The ALJ further found that ''B.B. credibly testified that every time she talked to the Respondent, she got the controlled substances she requested.'' ALJ at 27 (citing Tr. 147).

B.B. testified that following the first consultation she found out from an Internet message board that Respondent was giving other persons prescriptions for 120 hydrocodone tablets. Id. (citing Tr. 142–43). B.B. subsequently asked Respondent to increase her prescription and Respondent did so. Id. (citing Tr. 142–43).

B.B. testified that she never saw Respondent ''face to face,'' that Respondent never performed a physical exam on her, and never took a complete medical history. Tr. 125. Moreover, Respondent never ordered any medical tests (such as an x-ray or mri) or asked her to submit any previous test results. Id. at 125–26. Respondent also did not discuss with B.B. alternative treatments or the benefits and risks of taking controlled substances. Id. at 126. Nor did Respondent discuss with B.B. a timetable for her use of controlled substances. Id. Respondent also never asked B.B. if she was obtaining prescriptions from another doctor or using other Internet pharmacies. Id. at 180. Finally, Respondent never asked B.B. whether she had previously been addicted. Id.

B.B. paid SMG a fee of $ 120.00 for these consultations. Id. at 133. B.B. further testified that Respondent never gave her a paper prescription that she could take to another pharmacy. Id. at 148–49.

B.B. testified that at the same time that she was obtaining prescriptions from Respondent, she was able to obtain hydrocodone from ten other Internet pharmacies and was taking ''up to 40'' hydrocodone tablets a day. Id. at 145. B.B. became addicted, ''contemplate[ed] suicide,'' and could not function without the drug. Id. at 145–46. She also lost her house and means of transportation and did not have money to care for her children. Id.

The Government also called as a witness Mr. B.H., who at the time was incarcerated for possession of a forged instrument and was about to plead guilty to this offense. Tr. 215–16. B.H. also admitted that he had been convicted of two misdemeanor theft offenses, one misdemeanor drug offense, and one felony drug offense for which he was given youthful offender status. Id. at 216–17. Moreover, B.H. testified that in exchange for his testimony in this proceeding, local law enforcement officials had promised not to prosecute him for conduct related to his obtaining controlled substances over the Internet. Id. at 207. B.H. also testified that he had been drug dependent since 1998. Id. at 188. The ALJ credited B.H.'s testimony and I find no reason to disturb this finding. See *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 494–96 (1951).

B.H. testified that in 2002, he found SMG's Web site while searching the Internet. Tr. 189. B.H. ''filled out the paperwork'' and faxed to SMG a copy of his driver's license and a medical record that he had obtained from another person. Id. at 189–90. B.H. altered the medical record, which indicated that he had a problem with his L–4 & L–5 disk and suffered from severe anxiety, by placing his name, date of birth and social security number on it. Id. at 190. The record also indicated that B.H. had previously been prescribed Lortab and Xanax. Id. at 191.

After obtaining his ''patient ID,'' B.H. logged on to SMG's Web site and requested hydrocodone and Xanax. Id. at 191–92. He also obtained an appointment for a telephone consultation with Respondent. Id. at 192. SMG did not provide B.H. with a choice of physicians, and throughout his association with SMG, B.H. always dealt with Respondent. Id.

B.H. testified that all of his consultations with Respondent followed the same pattern and took ''about three or four minutes, maybe, if that.'' Id. at 194. According to B.H., Respondent would state that ''it says here you need hydrocodone and it said here you need this. He'd write the prescription and you hang up.'' Id. B.H. further testified that ''I would call up at my certain time and tell [Respondent] what I wanted, and he would say okay. That would be it.'' Id. at 196–97.[5]

Indeed, the ALJ specifically found that ''during the initial call, the Respondent and B.H. never discussed B.H.'s medical condition.'' ALJ at 31 (citing Tr. 197). During the first consultation, Respondent gave B.H. a prescription for 150 hydrocodone tablets and either 120 Xanax or its generic equivalent alprazolam; B.H. subsequently received these drugs on a monthly basis. Tr. 193.

Throughout this period, Respondent never took B.H.'s complete medical history, never met with B.H. and performed a physical exam, never asked B.H. about prior medical tests, and never ordered any medical tests. Id. at 194–95. Respondent also never discussed a treatment plan or alternative treatments. Id. at 195. Nor did he ever discuss with B.H. the benefits and risks of taking controlled substances, or a time table for taking the drugs. Id. at 195–96. Finally, Respondent never asked B.H. whether he was seeing any other doctors, if he was obtaining prescriptions from any other online pharmacies, or asked whether he had ever been addicted to controlled substances. Id. at 196. Other than when B.H. asked for a Schedule II drug, Respondent never refused a request by B.H. for a controlled substance. Id. at 195.

B.H. was obtaining controlled substances from other online pharmacies at the same time he was obtaining prescriptions from Respondent. Id. at 208. B.H. sold the hydrocodone he received from Respondent's prescriptions to buy Oxycontin, but took the Xanax. Id. at 207.

B.H. never received from Respondent a prescription form that he could take to a pharmacy. Id. at 209. He also showed several other persons how to obtain prescriptions from SMG; these individuals then obtained controlled substances which were prescribed to them by Respondent. Id. at 198–200. B.H. testified that these individuals had not previously obtained controlled substances from a physician for a medical condition. Id. at 202.

The Government also called Dr. Richard Weinberg, a physician who is board certified in internal medicine, as well as hospice and palliative medicine. Tr. at 383. Dr. Weinberg testified as an expert in internal medicine. See ALJ at 16. I credit all of his testimony which is summarized as follows.

Dr. Weinberg reviewed a list of the prescriptions Respondent issued and that were filled by CMC. See Tr. 386, Gov. Exhs. 28 & 30. He also reviewed various documents related to the DEA DI's obtaining controlled substances prescriptions from Respondent including transcripts of the telephone conversations, the medical ''documentation'' the DI submitted, and the various SMG Web pages that the DI filled out in order to obtain the prescriptions. Tr. 386.

[5] B.H. acknowledged on cross-examination that he ''probably'' asked Respondent to prescribe Oxycontin and Percodan (which contain oxycodone, a Schedule II controlled substance, 21 CFR 1308.12(b)), but Respondent told him he could not prescribe these drugs. Tr. 214–15.

Dr. Weinberg testified that based on the above, Respondent did not establish a valid doctor-patient relationship with the DI and did not conduct an ''adequate assessment'' or ''evaluation'' to justify Respondent's prescribing the controlled substances (hydrocodone and Valium) which he did for the DI. Tr. 389. Dr. Weinberg further testified that to establish a valid doctor-patient relationship, ''[a] physician must have a direct and immediate observation of the patient,'' which ''should be person-to-person.'' Id. at 393.

Dr. Weinberg testified that in treating pain, a physician must obtain a medical history which includes ''what the origin of the pain was, the history of it, previous treatments, attempts at physical therapy, and other modalities for treatment of pain.'' Id. The physician must further do ''a direct physical exam'' and create ''a plan for further evaluation and treatment [with] reassessment at an appropriate interval.'' Id. Moreover, a physician must ''inquire as to whether there is a risk of chemical dependency before initiating the use of drugs that are commonly associated with addiction, including all opiates and benzodiazepines.'' Id. at 400.

As for treating anxiety, Dr. Weinberg testified that the physician must take ''an extensive history to understand the appropriate background, whether the patient is experiencing any depression, any psycho-social stresses, [has] a history of panic disorder, et cetera.'' Id. at 393. According to Dr. Weinberg, this ''can only be done on a face-to-face basis and, again, requires that a patient be followed over time.'' Id.

Dr. Weinberg further testified that he has ''been involved with addiction medicine throughout [his] career,'' id. at 403, that he was currently ''the head of the addiction task force'' at a hospital and that he is familiar with some of the street terminology used by drug dependent persons. Id. at 403–04. More specifically, Dr. Weinberg testified that ''Vikes'' is street talk for Vicodin, id. at 402, and that if he received a questionnaire which indicated that a patient had been taking ''Vikes'' and was told by the patient that he got the drug from a friend (as the DI did in obtaining prescriptions from Respondent), he would not prescribe the drug. Id. at 404. Dr. Weinberg added that ''obtaining controlled substances from acquaintances [or] friends [is] a warning sign that this is someone who is chemically dependent or certainly involved with illicit use.'' Id. Dr. Weinberg further added that a sedating medication such as Valium should not be prescribed to a person who reports that he has anxiety from hauling dynamite. Id. at 405.

Dr. Weinberg also reviewed the prescription data seized from CMC. While acknowledging that there was ''a scattering of other prescriptions,'' Dr. Weinberg noted that ''[i]n every instance in this database, patients [were] prescribed substantial quantities of short-acting opiates * * * and, in most cases, patients are also prescribed benzodiazepine[s], either diazepam or alprazolam.'' Id. at 393–94. According to Dr. Weinberg, ''[i]t would be a highly unusual relationship with a set of patients that every single patient with whom you have an encounter would be prescribed these agents.'' Id. at 394. Moreover, it would also be ''extraordinary to have up to 120 patients receive prescriptions in a single day.'' Id. According to Dr. Weinberg, ''[i]t's impossible for any clinician to have an appropriate evaluation of that volume of patients in any short period of time.'' Id.

The Government also called as a witness Dr. James M. Tolliver, a DEA employee who holds a Ph.D. in Pharmacology. See Gov. Ex. 34. Dr. Tolliver has also served as a scientific advisor to the World Health Organization (WHO) and has been involved in the preparation of various documents used by the WHO in recommending that various drugs of abuse be controlled under international conventions. See id. at 2.

Specific to this case, Dr. Tolliver explained that hydrocodone is ''a narcotic drug similar to morphine,'' which produces euphoria and ''has a potency similar to morphine.'' Tr. 275. Hydrocodone is ''a substitute for heroin'' and ''heroin users like'' the drug. Id. at 275–76. Moreover, over time hydrocodone users develop a tolerance to the drug and thus require increased doses ''to produce the same effect.'' Id. at 277. In 2002, the abuse of hydrocodone combination products resulted in ''over 27,000 emergency room episodes.'' Id. at 279. Hydrocodone was thus among ''the top six to seven controlled substances'' found in persons seeking treatment for drug abuse in emergency rooms. Id.

Dr. Tolliver also testified regarding the abuse of benzodiazepines such as alprazolam (Xanax) and diazepam (Valium). According to Dr. Tolliver, ''[a]lprazolam is the number one prescription drug that is abused by our youth in the United States.'' Id. at 283. Alprazolam was number five on the list of drugs most frequently abused by persons who require treatment in emergency rooms. Id. at 284. Moreover, other benzodiazepines such as diazepam also rank in the top twenty of drugs abused by persons requiring treatment in emergency rooms. Id. Furthermore, benzodiazepines ''severely impact[]'' a user's psychomotor control, thus affecting the ability to drive or operate machinery.[6] Id. at 285.

Discussion

At the outset, this case presents a substantial question as to whether this proceeding is moot. Respondent's registration expired on March 31, 2006, after the hearing in this case and the ALJ's issuance of her decision. Moreover, Respondent apparently has not submitted a renewal application.

Under DEA precedent, ''[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration number expires and there is nothing to revoke.'' *Ronald J. Riegel*, 63 FR 67132, 67133 (1998). In *Riegel*, the registrant sought a hearing upon being served with a Show Cause Order; his registration, however, expired several months before the hearing was held and the registrant did not submit a renewal application. Id. at 67132.

Following the hearing in *Riegel*, the Government discovered that the respondent's registration had expired and moved to either order the respondent to submit a renewal application or to terminate the proceeding as moot. Id. The respondent did not respond to the motion. Id. The ALJ, however, denied the motion concluding that the proceeding was not moot under existing agency precedent. Id. While my predecessor concluded that the matter was ''moot because there [was] no viable registration to revoke,'' he nonetheless reasoned that ''it would be unfair to * * * terminate the proceedings without resolution'' because the Government's position was based on a ''deviation'' from agency precedent and was not raised until after the hearing was held. Id. at 67133. He thus decided the case on the merits and ordered the revocation of the respondent's registration. *See id.* at 67133–35.

Having carefully considered this precedent, as well as authorities discussing the mootness doctrine in both the judicial and administrative settings, I conclude that Riegel is not controlling. '' '[A]n administrative agency is not bound by the constitutional requirement of a ''case or controversy'' that limits the authority of article III courts to rule on moot issues.' '' *RT Communications, Inc.* v.

[6] Respondent neither testified on his own behalf nor put on any witnesses.

FCC, 201 F.3d 1264, 1267 (10th Cir. 2000) (quoting *Climax Molybdenum Co.* v. *Secretary of Labor*, 703 F.2d 447, 451 (10th Cir. 1983)); see also *Metropolitan Council of NAACP Branches* v.*FCC*, 46 F.3d 1154, 1161 (D.C. Cir. 1995) (''case or controversy requirement'' does not apply to an agency). As the Tenth Circuit has explained, ''an agency has 'substantial discretion' to decide whether to hear issues which might be precluded by mootness'' if litigated in an Article III court. *RT Communications*, 201 F.3d at 1267 (quoting *Climax Molybdenum*, 703 F.2d at 451).

Moreover, my decision to issue a final order in this matter finds ample support in the mootness doctrine applied by the courts. Under long settled principles, '' 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice,' '' because '' 'if it did, the courts would be compelled to leave ''[t]he defendant * * * free to return to his old ways.' '' *Friends of the Earth, Inc.*, v. *Laidlaw Env. Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquit*e v. *Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.10 (1982) (quoting United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953))). Most significantly, the standard ''for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: 'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.' '' *Friends of the Earth*, 528 U.S. at 189 (quoting *United States* v. *Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)).

Finally, a case remains a live dispute when ''collateral consequences'' attach to a proceeding which otherwise would be moot. *In re Surrick*, 338 F.3d 224, 230 (3d Cir. 2003). As several courts have noted in cases involving sanctions against licensed professionals such as attorneys, even a temporary suspension followed by a reinstatement does not moot a challenge to the initial suspension because the action ''is harmful to a [professional's] reputation, and 'the mere possibility of adverse collateral consequences is sufficient to preclude a finding of mootness.' '' Id. (quoting *Dailey* v. *Vought Aircraft Co.*, 141 F.3d 224, 228 (5th Cir. 1998)). See also id. (quoting *Kirkland*v. *National Mortgage Network, Inc.*, 884 F.2d 1367, 1370 (11th Cir. 1989) (''attorney's appeal of the revocation of his pro hac vice status was not moot following dismissal of the underlying case because 'the brand of disqualification on grounds of dishonesty and bad faith could well hang over his name and career for years to come' '').

Relying on these cases for guidance, I hold that this case is not moot. As an initial matter, I note that neither party has moved to dismiss the proceeding on mootness grounds. Moreover, while Respondent has not submitted a renewal application, he has submitted no evidence (such as a declaration) establishing that he intends to permanently cease the practice of medicine. Cf. 21 CFR 1301.52(a) (''Any registrant who * * * discontinues business or professional practice shall notify the Administrator promptly of such fact.''). Indeed, under DEA's regulations, Respondent can apply for a new registration at any time and could re-engage in the practice at issue here. It is thus not '' 'absolutely clear that [Respondent's] allegedly wrongful behavior could not reasonably be expected to recur.' '' *See, e.g., Friends of the Earth*, 528 U.S. at 189 (quoting *Concentrated Phosphate*, 393 U.S. at 203).

Moreover, the Government (as did Respondent) expended substantial resources in litigating this case; the ALJ also committed an extensive amount of time to preparing her decision. To dismiss this proceeding without making the findings which the evidence in this case compels would prejudice the public interest. I thus conclude that Respondent's failure to submit a renewal application does not preclude the entry of a final order in this matter.

Furthermore, this case is not moot because of the collateral consequences that attach to the immediate suspension of Respondent's registration. As explained above, the immediate suspension was imposed based on my preliminary finding that Respondent's continued registration ''would constitute an imminent danger to the public health and safety'' because he was diverting large amounts of controlled substances. Show Cause Order at 10. It is indisputable that when the Agency is forced to take this extraordinary step to protect public health and safety, a registrant's reputation is harmed. Moreover, it is likely that Respondent would be required to report the Immediate Suspension were he to apply for a renewal of his state medical licenses. Finally, were Respondent to apply for a new DEA registration at some point in the future, he would be required to disclose the suspension that is at issue here. See DEA Form-224, Section 5; DEA Form-224A, Section 4.[7]

As the forgoing demonstrates, the issuance of an immediate suspension creates collateral consequences beyond those that are present when the Government serves a Show Cause Order but allows a registrant to continue to handle controlled substances throughout the litigation. Therefore, I conclude that *Riegel* is not controlling and that this case is not moot. I thus proceed to analyze the merits of this case under the standards of section 304.

The Statutory Factors

Section 304(a) of the Controlled Substances Act provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. Id.

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' Id. Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); see also *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

[7] Furthermore, pursuant to 21 U.S.C. 824(f), DEA personnel who serve an immediate suspension are directed to seize and place under seal all controlled substances possessed by a registrant. See, e.g., Show Cause Order at 10. Under federal law, title to any such property is dependent upon the outcome of the proceeding. 21 U.S.C. 824(f). Thus, while there is no evidence in the record as to whether DEA investigators seized any controlled substances when they served the order on Respondent, most cases which begin with the issuance of an immediate suspension present this additional collateral consequence.

Finally, section 304(d) provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d). In this case I conclude that Factors Two, Four and Five establish that allowing Respondent to handle controlled substances would be inconsistent with the public interest. Analyzing these factors, I also conclude that Respondent's conduct created ''an imminent danger to public health or safety,'' id., and thus sustain the immediate suspension of his registration.

Factors Two and Four—Respondent's Experience In Dispensing Controlled Substances and Respondent's Compliance With Applicable Laws

As the ALJ noted, the key issue in this case is whether the prescriptions Respondent issued to the persons who were referred to him through the SMG Web site complied with Federal law. As explained below, the evidence conclusively demonstrates that Respondent used his prescribing authority to act as a drug pusher; the only difference between him and a street dealer was that he did not physically distribute the drugs to SMG's clients.

Under DEA regulations, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' Id. As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon*, 126 S.Ct. 904, 925 (2006) (citing *Moore*, 423 U.S. 122, 135 (1975)).

It is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to be acting ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' As Doctor Weinberg, the Government's expert explained, existing professional standards require that to establish a bonafide doctor-patient relationship, a physician must first obtain a medical history which establishes the origin of the patient's complaint, its history and previous attempts to treat the condition. Tr. 393, 400. Moreover, the physician must conduct a physical examination which involves the ''direct and immediate observation of the patient'' and should be on an in-person basis. Id. at 393. Furthermore, before prescribing controlled substances, the physician must determine whether there is a risk of chemical dependency or the patient is engaged in the illicit use of drugs. Id. at 400. The physician should also develop ''a plan for further evaluation and treatment [with] reassessment at an appropriate interval.'' Id. at 393.

The American Medical Association's *Guidance for Physicians on Internet Prescribing* explains the ''components'' of a bonafide doctor-patient relationship. Gov. Ex. 48. The AMA instructs that a ''physician shall'':

> i. obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided; ii. have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s); iii. as appropriate, follow up with the patient to assess the therapeutic outcome; iv. maintain a contemporaneous medical record that is readily available to the patient and * * * to his * * * other health care professionals; and v. include the electronic prescription information as part of the patient medical record.

Id .

To similar effect are the guidelines issued by the Federation of State Medical Boards of the United States, Inc. See Gov. Ex. 50 (Model Guidelines for the Appropriate use of the Internet in Medical Practice). According to the Guidelines, ''[t]reatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. *Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptable standard of care.*'' Id. at 4 (emphasis added). Cf. DEA, Dispensing and Purchasing Controlled Substances over the Internet, 66 FR 21181, 21183 (2001) (guidance document) (''Completing a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship.'').[8]

Under the standards of the medical profession, it is clear that Respondent did not establish a bonafide doctor-patient relationship with any of the four material witnesses in this case and thus, none of the prescriptions he issued to them complied with federal law. Respondent never obtained a reliable medical history from these persons—indeed, in this case there is substantial evidence that he simply accepted whatever documents were provided by these individuals without verifying their validity. In doing so, he ignored the potential for fraud inherent in the scheme, which was obvious in light of the fact that SMG allowed its ''patients'' to request a particular drug.

Most significantly, he did not physically examine any of these four persons, direct that they be examined by another physician, or order medical testing to verify their reported medical complaints. Furthermore, he did not discuss with any of these persons the existence of alternative treatments, generally failed to discuss the risks/benefits of taking the various controlled substances he prescribed, never developed a timetable for using controlled substances or a treatment plan, and never attempted to determine whether any of these persons had a history of addiction to the drugs or were obtaining them from other sources. It is thus indisputable that none of the prescriptions Respondent issued for these four persons were for a legitimate medical purpose.

Indeed, there is ample evidence suggesting that Respondent knew that his ''patients'' were seeking the drugs to abuse them. Several witnesses testified that they requested specific drugs. Moreover, at least three of the witnesses stated that during their conversations with Respondent, he would ask them whether there was anything else he could do for them. This is not the type of question that a physician normally asks a patient during the course of providing medical treatment. Indeed, several of the witnesses testified that they interpreted Respondent's question as an offer to supply additional controlled substances. See Tr. 301 (testimony of DI); id. at 140 (testimony of B.B.).

The evidence in this case further demonstrates the danger to public health and safety created by Respondent

[8] The guidance document reflects this Agency's understanding of what constitutes a bonafide doctor-patient relationship under state laws and existing professional standards. 66 FR 21182–83.

and other Internet prescribers. B.B. testified that while she was obtaining controlled substances from Respondent and CMC, she was also able to obtain them from ten other Internet pharmacies. B.B. acknowledged that she was taking as many as 40 hydrocodone tablets a day, that she became addicted, and that she considered suicide. Relatedly, B.H. testified that he sold the hydrocodone he obtained from Respondent's prescriptions in order to buy Oxycontin, a stronger and more addictive controlled substance. He also related that he showed several acquaintances how to obtain controlled substances from SMG, which were prescribed to them by Respondent. B.H. further testified that these persons had not previously been prescribed controlled substances for a medical condition. He (along with the DI) also testified to the ease of obtaining their prescriptions by submitting fraudulent medical records. Obviously, Respondent's prescribing practices invited fraud. Cf. 66 FR at 21183 (''A consumer can more easily provide false information in a questionnaire than in a face-to-face meeting with a doctor.'').

The prescription data further supports the conclusion that Respondent was engaged in drug dealing rather than the legitimate practice of medicine. Among other things, the evidence suggests that in a single day (on or about May 10, 2004), Respondent issued as many as 358 prescriptions for controlled substances. The assembly line nature of this activity refutes any suggestion that Respondent was engaged in the legitimate practice of medicine. See Tr. 394 (testimony of Dr.Weinberg) (noting that it would be ''extraordinary to have up to 120 patients receive prescriptions in a single day'').

The ALJ also reasoned that ''the sheer volume of the Respondent's prescriptions also puts into question his medical practices.'' ALJ at 40–41. As found above, during the first four and half months of 2004 (before CMC was shut down), Respondent issued and CMC filled 14,219 prescriptions for hydrocodone, 2,519 prescriptions for alprazolam, and 1,806 prescriptions for diazepam. According to the ALJ, this Agency has previously held ''that the numbers of prescriptions for controlled substances, alone, do not create a regulatory violation.'' See ALJ at 41 (citing *Paul W. Saxton*, 64 FR 25073 (1999)). I need not decide, however, whether Saxton supports this broad proposition. As the ALJ also noted, there the respondent justified his prescribing by presenting evidence as to the medical needs of his patients. See 64 FR 25075–76.

Here, by contrast, Respondent presented no such evidence. Moreover, the geographical location of SMG's customers demonstrates the substantial likelihood that most, if not all, of the prescriptions were issued by Respondent without the establishment of a bonafide doctor-patient relationship and while acting outside of the usual course of professional practice. Indeed, one of the Government's exhibits (# 25) shows that Respondent prescribed to persons in every State as well as the District of Columbia. Perhaps some of these patients actually visited Respondent at his Florida residence, but given his lack of licensure in that state, as well as the cost and time involved for patients to travel there, the nature of SMG's scheme (which offered the ability to obtain prescriptions based on a short telephone conversation), and the absence of any medical records during the search of his residence, it is most improbable that any ''patients'' did.

Respondent also violated the CSA for the additional reason that he did not possess lawful authority to prescribe controlled substance in Florida, the State in which he was practicing medicine. He also did not hold a DEA registration authorizing him to dispense from his Florida address.

The CSA defines the term ''practitioner'' as ''a physician . . . licensed, registered, or otherwise permitted, by the United States *or the jurisdiction in which he practices* . . ., to distribute, dispense . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21) (emphasis added). Under the CSA, the term ''dispense'' includes the act of ''prescribing'' a controlled substance. Id. § 802(10).

As the ALJ noted, this Agency has consistently interpreted the CSA as prohibiting a practitioner from handling controlled substances unless authorized to do so under the law of the state in which he engages in professional practice. See ALJ at 37–38 (collecting cases). See also Sheran Arden Yeates, 71 FR 39130, 39131 (2006). Also relevant to this case is section 302 of the CSA, which expressly provides that ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant . . . distributes, or dispenses controlled substances.'' 21 U.S.C. 822(e).

Here, there is substantial evidence that Respondent issued the prescriptions from his residence in Florida. This includes the addresses Respondent used in renewing his N.J. and N.Y. medical licenses, the address Respondent used in his June 28, 2003 correspondence to SMG's head, the address used on the Rx forms found during the search of CMC, the Florida phone number which the DI used for his consultation, and the address at which Respondent was living when the Show Cause Order and Immediate Suspension was served on him. Finally, there is also the evidence that Respondent had not practiced at the address of his DEA registered location for at least four years prior to the service of the Show Cause Order. Respondent did not, however, hold a Florida medical license and did not possess a DEA registration for his Florida address. See Tr. 236; Gov. Ex. 1 & 2. His prescribing thus violated the CSA for these reasons as well.

I thus conclude that Respondent's experience in dispensing controlled substances and his history of non-compliance with applicable laws amply demonstrate that Respondent could not be entrusted with a DEA registration. I further affirm the preliminary finding that Respondent's conduct constituted an ''imminent danger to the public health or safety,'' 21 U.S.C. 824(d), and justified the immediate suspension of his registration.

Factor Five—Other Conduct Which Threatens Public Health and Safety

The ALJ also found this factor applicable because Respondent ''failed to maintain adequate patient records.'' ALJ at 41. As the ALJ explained, when the Government executed the search warrant at Respondent's residence, no patient records were found notwithstanding that he issued a substantial number of prescriptions from this address. Id. at 42. I agree with the ALJ's conclusion.

As explained above under Factor Two, under existing professional guidelines, a physician should ''maintain a contemporaneous medical record.'' Gov. Ex. 48. Documenting the prescribing of controlled substances would seem to be essential to a physician's effective monitoring of a patient to ensure that the patient is not abusing the drugs or has become addicted to them. Furthermore, it seems clear that when a patient with a legitimate medical complaint needs to see a specialist, the specialist needs accurate information pertaining to the patient's use of controlled substances before recommending treatment options. Finally, if a person engages in ''doctor shopping,'' accurate records could help the new doctor assess the legitimacy of the person's medical complaint. I thus conclude that Respondent's failure to maintain patient records constitutes conduct that threatens public health and

safety. *See James S. Bischoff*, 70 FR 12734 (2005).

It is not surprising that Respondent did not maintain patient records because he was not engaged in anything remotely bordering on the legitimate practice of medicine. Rather, Respondent was a drug dealer. As I have previously noted, ''[l]egally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription.'' *Mario Avello, M.D.*, 70 FR 11695, 11697 (2005) (citing *Floyd A. Santner, M.D.*, 55 FR 37581 (1990)). The use of a DEA registration to engage in such conduct manifestly creates ''an imminent danger to the public health or safety'' and justifies the immediate suspension of a registration. 21 U.S.C. 824(d).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100 & 0.104, the order of immediate suspension of DEA Certificate of Registration, BL6779005, issued to William R. Lockridge, M.D., is hereby affirmed. The Office of Diversion Control is further directed to cancel Respondent's DEA number. This order is effective January 26, 2007.

Dated: December 8, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–22105 Filed 12–26–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,941 and TA–W–59,941A]

Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, OH, Including Employees of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, OH, Located in Sprague, CT; 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 Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 20, 2006, applicable to workers of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, Ohio. The notice will soon be published in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Rittman, Ohio facility of Caraustar Mill Group, Inc., Rittman Paperboard Division located in Sprague, Connecticut.

Mr. Tom Loeb and Mr. Bill Clark provided technical service and sales function services for the production of coated recycled boxboard produced by the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Rittman, Ohio facility of Caraustar Mill Group, Inc., Rittman Paperboard Division located in Sprague, Connecticut.

The intent of the Department's certification is to include all workers of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, Ohio who were adversely affected by increased company imports.

The amended notice applicable to TA–W–59,941 is hereby issued as follows:

''All workers of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, Ohio (TA–W–59,941), and including employees located in Sprague, Connecticut (TA–W–59,941A), who became totally or partially separated from employment on or after August 17, 2005, through September 20, 2008, 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 18th day of December, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–22130 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of December 11 through December 15, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group

eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,465; Emerson electric Company, Appliance Solutions Div., Switches Department, Paragould, AR: November 20, 2005.

TA–W–60,410; Ames True Temper, Formerly, Union Tools, Delaware, OH: November 10, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,250; Senco Products, Inc., Plant 1, Cincinnati, OH: February 6, 2006.

TA–W–60,250A; Senco Products, Inc., Plant 2, Cincinnati, OH: February 6, 2006.

TA–W–60,381; CEP Products, Canton, OH: November 6, 2005.

TA–W–60,462; St. Louis Braid Co., St. Louis, MO: November 21, 2005.

TA–W–60,467; Hubbell Lighting, Formerly Know as Spaulding Lighting, Outdoor and Industrial, Cincinnati, OH: November 20, 2005.

TA–W–60,472; Camillus Cutlery Co., Camillus, NY: November 16, 2005.

TA–W–60,513; Cadence Innovation, LLC, Injection Tool Construction, Secondary Equipment, Almont, MI: November 27, 2005.

TA–W–60,528; Sherwood Harsco Gasserv, Niagara Falls, NY: December 4, 2005.

TA–W–60,246; Weyerhaeuser, Cellulose Fiber Div., SRI Technologies, Cosmopolis, WA: October 12, 2005.

TA–W–60,360; Yakima Resources, LLC, Yakima, WA: October 31, 2005.

TA–W–60,443; Vacumet Corporation, Wayne, NJ: November 14, 2005.

TA–W–60,457; NewPage Corporation, Luke Paper Company, Luke, MD: November 20, 2005.

TA–W–60,275; Statton Furniture, Hagerstown, MD: October 23, 2005.

TA–W–60,367; Ford Motor Company, Norfolk Assembly Plant, Vehicle Operations, Norfolk, VA: October 31, 2005.

TA–W–60,435; Ford Motors Company, Twin Cities Assembly Plant, Vehicle Operations, St. Paul, MN: November 14, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,385; Maxtor Corporation, Longmont, CO: November 6, 2005.

TA–W–60,397; Dana Corporation, Thermal Products Division, Sheffield, PA: November 9, 2005.

TA–W–60,424; Creative Engineered Products, LLC, Corporation Office, Akron, OH: November 7, 2005.

TA–W–60,448; VF Jeanswear Limited Partnership, Winston Salem, NC: November 14, 2005.

TA–W–60,428; Boc Edwards, Inc., Philadelphia, PA: November 6, 2005.

TA–W–60,431; Wolverine Tube, Inc., Jackson, TN: November 6, 2005.

TA–W–60,522; Michaels of Oregon, SOS Staffing, People Check and Pro People, Meridian, ID: December 1, 2005.

TA–W–60,554; Spectrum Brands, Inc., Fennimore, WI: December 6, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,376; Creative Engineered Polymer Products, LLC, Carlisle Engineered, Rubber Operation, Alliance Staff, Middlefield, OH: November 7, 2005.

TA–W–60,425; Steed Sales Company, Inc., Bowdon, GA: November 13, 2005.

TA–W–60,470; Lanxess Corporation, Deutshland, Textile Processing Chemicals, Wellford, SC: November 10, 2005.

TA–W–60,510; BHK of America, South Boston, VA: November 29, 2005.

TA–W–60,526; Hardwick Knitted Fabrics, West Warren, MA: November 30, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,465; Emerson electric Company, Appliance Solutions Div., Switches Department, Paragould, AR.

TA–W–60,410; Ames True Temper, Formerly, Union Tools, Delaware, OH.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,544; Schiffer Dental Care Products, LLC, Agawam, MA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,328; Johnson Controls Battery Group, Inc., Fullerton Distribution Center, Fullerton, CA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,117; KBA North America, Web Press Div., York, PA.

TA–W–60,555; Beard Hosiery, Inc., Lenoir, NC.

TA–W–60,450; Richards Apex, Inc., Morgantown, PA.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,415; United Healthcare Services, Inc., Contract Administration, Chico, CA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of December 11 through December 15, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 19, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–22128 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,390]

Everett Charles Technologies, a Subsidiary of Dover Corporation, FSG San Jose, San Jose, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14 2006 in response to a petition filed on behalf of workers at Everett Charles Technologies, a subsidiary of Dover Corporation, FSG San Jose, San Jose, California.

The petition regarding the investigation has been deemed invalid. One of the petitioners was separated over a year prior to the date of the petition. A petition filed by workers requires three (3) valid signatures. Consequently, the investigation under this petition has been terminated.

Signed at Washington, DC this 15th day of December 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–22132 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 8, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 8, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

Appendix—TAA Petitions Instituted Between 12/11/06 and 12/15/06

TA–W	Subject Firm (Petitioners)	Location	Date of Institution	Date of Petition
60568	Fiberweb/Reemay, Inc. (Comp)	Bethune, SC	12/11/06	12/08/06
60569	Metaldyne (Comp)	Solon, OH	12/11/06	12/05/06
60570	Sanyo Manufacturing Corporation (State)	Forrest City, AR	12/11/06	12/08/06
60571	Caribe General Electric (State)	Humacao, PR	12/11/06	12/13/06
60572	Senco Products, Inc. (Wkrs)	Cincinnati, OH	12/11/06	11/16/06
60572A	Senco Products, Inc. (Wkrs)	Cincinnati, OH	12/11/06	11/16/06
60573	Teva Pharmaceuticals (State)	Cidra, PR	12/11/06	11/22/06
60574	Finegoods Molding, Inc. (State)	Carson, CA	12/11/06	11/29/06
60575	Store Room Solutions (State)	Conshohocken, PA	12/12/06	12/11/06
60576	Schnadig Corporation (Comp)	Belmont, MS	12/12/06	11/30/06
60577	Dixie Regency (Wkrs)	Hickory, NC	12/12/06	11/28/06
60578	Loud Technologies (Comp)	Whitinsville, MA	12/12/06	12/11/06
60579	Dana Corporation (Wkrs)	Danville, KY	12/12/06	12/06/96
60580	Lear Corporation (IAMAW)	Zanesville, OH	12/12/06	11/30/06
60581	Jeanne Skin Care Cosmetics Ltd. (Wkrs)	New York City, NY	12/12/06	11/28/06
60582	Harodite Industries, Inc. (State)	Travelers Rest, SC	12/13/06	12/11/06
60583	Pulaski Furniture Corporation (Comp)	Pulaski, VA	12/13/06	12/12/06
60584	Hart and Cooley, Inc. (IAMAW)	Holland, MI	12/13/06	12/11/06
60585	A.M. Todd Company (Comp)	Eugene, OR	12/13/06	12/11/06
60586	Dyno Nobel, Inc. (Comp)	Wolf Lake, IL	12/13/06	11/21/06
60587	Federal Mogul/National Seal Division (USW)	Van Wert, OH	12/13/06	12/11/06
60588	Clayson Knitting Company, Inc. (Comp)	Star, NC	12/13/06	12/08/06
60589	Ace Industries, LLC (Comp)	Lineville, AL	12/13/06	12/11/06
60590	Unifi Plant 4 (Comp)	Reidsville, NC	12/13/06	12/08/06
60591	Leggett and Platt, Inc. (Comp)	Phoenix, AZ	12/13/06	12/05/06
60592	South End Manufacturing (Comp)	Lawrenceburg, TN	12/13/06	12/06/06
60593	Paul Lavitt Mills, Inc. (Comp)	Lincolnton, NC	12/14/06	12/12/06
60594	Ampac (Wkrs)	Spanish Fork, VT	12/14/06	12/12/06
60595	Berkline Benchcraft, LLC (Wkrs)	Blue Mountain, MS	12/14/06	12/08/06
60596	TTM Technologies (State)	Dallas, OR	12/14/06	12/08/06
60597	Mason County Forest Products (Wkrs)	Shelton, WA	12/14/06	11/29/06
60598	Checkpoint Caribbean Ltd. (State)	Ponce, PR	12/14/06	01/13/06
60599	E. S. Sutton dba Swak, LLC (Wkrs)	Ridgewood, NY	12/14/06	12/08/06
60600	Creative Apparel (Wkrs)	Eastport, ME	12/14/06	12/12/06
60601	Weyerhaeuser Company (State)	Mountain Pine, AR	12/14/06	12/12/06
60602	Photocircuits Corporation (Comp)	Glen Cove, NY	12/14/06	12/02/06
60603	Wetherill Assoc., Inc. (Wkrs)	Royersford, PA	12/14/06	12/07/06
60604	T.A. Service Corporation (State)	Newark, NJ	12/15/06	12/01/06
60605	Robetex, Inc. (Comp)	Lumberton, NC	12/15/06	10/02/06
60606	Pfizer, Inc. (Wrks)	Kalamazoo, MI	12/15/06	11/07/06
60607	Stimson Lumber Company (LPIW)	Bonner, MT	12/15/06	12/05/06
60608	Valley Mills (Comp)	Valley Head, AL	12/15/06	12/13/06
60609	Roseburg Forest Products (Comp)	Coquille, OR	12/15/06	12/13/06
60610	Southampton Textile Co. (Wrks)	Emporia, VA	12/15/06	12/05/06
60611	B.M.C.I. Rodgers Molding Corp. (Wrks)	El Paso, TX	12/15/06	12/13/06
60612	Riley Creek Lumber Company (Wrks)	Moyie Springs, ID	12/15/06	12/13/06
60613	Stanley Furniture Company (Comp)	Robbinsville, NC	12/15/06	12/13/06
60614	Weyerhaeuser Company (State)	West Memphis, AR	12/15/06	12/13/06
60615	The York Group Metal Casket (Comp)	Marshfield, MO	12/15/06	12/12/06
60616	APW (State)	Anaheim, CA	12/15/06	12/14/06
60617	Dana Corporation (Wrks)	Danville, KY	12/15/06	12/04/06
60618	Lockheed Martin (IUE)	Moorestown, NJ	12/15/06	12/07/06
60619	Alcan Packaging, Inc. (State)	Lincoln Park, NJ	12/15/06	12/01/06
60620	Point Technologies (Wrks)	Wheeling, IL	12/15/06	11/17/06
60621	Lighting By Renee (Wrks)	West Memphis, AR	12/15/06	12/13/06
60622	Arvin Meritor OE, LLC (Wrks)	Mullins, SC	12/15/06	12/05/06
60623	Holiday Housewares, Inc. (State)	Leominster, MA	12/15/06	11/22/06

[FR Doc. E6–22133 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of December 4 through December 8, 2006.

In order for an affirmative determination to be made for workers of

a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,412; Kwikset Corporation, Lever Finishing Department, Denison, TX: October 25, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met. *None.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met. *None.*

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,105; Samtech Corporation, Building, McAllen, TX: September 19, 2005.

TA–W–60,417; Whirlpool Corporation, Evansville Manufacturing Division, Evansville, IN: November 7, 2005.

TA–W–60,432; Visteon Systems LLC, North Penn Electronics Facility, Lansdale, PA: November 20, 2005.

TA–W–60,484; Pioneer Furniture Mfg. Co., Athens, TN: November 25, 2005.

TA–W–60,487; Staff Mark, Working on Site at Maytag Corp, Searcy, AR: November 27, 2005.

TA–W–60,153; Saint Gobain Containers, El Monte, CA: September 19, 2005.

TA–W–60,255; Textron Fastening Systems, Wytheville, VA: October 16, 2005.

TA–W–60,277A; Creative Engineered Products, Carlisle Engineered, Livonia Div., Livonia, MI: October 23, 2005.

TA–W–60,362; Blederlack of America Corporation, Cumberland, MD: October 13, 2005.

TA–W–60,363; Guide Corporation, Technology and Customer Center, Pendleton, IN: November 3, 2005.

TA–W–60,364; New Page Corporation, Rumford Paper Company, Rumford, ME: November 3, 2005.

TA–W–60,380; Delta Mills, Inc., Division of Delta Woodside Industries, Beattie Plant, Fountain Inn, SC: December 17, 2006.

TA–W–60,380A; Delta Mills, Inc., Division of Delta Woodside Industries, Delta Plant #3, Wallace, SC: December 17, 2006.

TA–W–60,380B; Delta Mills, Inc., Division of Delta Woodside Industries, Pamplico Plant, Pamplico, SC: December 17, 2006.

TA–W–60,380C; Delta Mills, Inc., Division of Delta Woodside Industries, Sales Office, New York, NY: December 17, 2006.

TA–W–60,380D; Delta Mills, Inc., Division of Delta Woodside Industries, Sales Office, Atlanta, GA: December 17, 2006.

TA–W–60,380E; Delta Mills, Inc., Division of Delta Woodside Industries, Sales Office, Dallas, TX: December 17, 2006.

TA–W–60,380F; Delta Mills, Inc., Division of Delta Woodside Industries, Sales Office, San Francisco, CA: December 17, 2006.

TA–W–60,440; Excelsior Automobile Electronics Product, Inc., Yonkers, NY: November 14, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,359; Affinia Group, Brake Parts, Inc., Cuba, MO: October 29, 2005.

TA–W–60,368; Ross Mould, Inc., Washington, PA: November 20, 2006.

TA–W–60,382; Guide Anderson LLC, Anderson, IN: November 7, 2005.

TA–W–60,391; TI Group Automotive Systems, LLC, Washington Courthouse, OH: June 24, 2006.

TA–W–60,406; A.O. Smith Electrical Products Co., Prototypes Department, Scottsville, KY: November 9, 2005.

TA–W–60,439; Freudenberg—Nok, Brakes Division, Scottsburg, IN: November 14, 2005.

TA–W–60,483; AccuMed QCIV Laminating, Inc., formerly known as GCIV Laminating Co., Inc., Danville, PA: November 21, 2005.

TA–W–60,498; Anvil Knitwear, Inc., Swannanoa, NC: November 28, 2005.

TA–W–60,501; AET Films, Inc., Terre Haute Plant, Terre Haute, IN: November 20, 2005.

TA–W–60,374; Alarama Jewelry, Inc., Long Island City, NY: November 3, 2005.

TA–W–60,396; Suntec Industries, Inc., Glasgow, KY: November 9, 2005.

TA–W–60,412; Kwikset Corporation, Lever Finishing Department, Denison, TX: October 25, 2005.

TA–W–60,414; Print, Inc., A Subsidiary of Pitney Bowes, Inc., Gilbert, AZ: November 13, 2005.

TA–W–60,427; Tyson Bearing Co., Inc., Roller Bearing Co. of America, Inc., Glasgow, KY: October 30, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,395; Wellman, Inc., Johnsonville, SC: October 27, 2005.

TA–W–60,401; Pimalco, Inc., Alcoa Global Extruded Products, Chandler, AZ: November 9, 2005.

TA–W–60,468; USR Metals, Inc., Bloomsburg, PA: November 20, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–60,412; Kwikset Corporation, Lever Finishing Department, Denison, TX.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations For Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,033; Northern Hardwoods, Woodlands Department, South Range, MI.

TA–W–60,369; Hoover Precision Products, Inc., East Granby, CT.

TA–W–60,383; Bernard Chaus, Inc., aka Josephine Chaus, New York, NY.

TA–W–60,503; Sourcing Connection., Inc., Statesville, NC.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,174; Tyson Fresh Meats, Inc., Beef Division, Wallula, WA.

TA–W–60,479; Omnova Solutions, Inc., Decorative Products Division, Auburn, PA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,313; DeFrancesco and Sons, Firebaugh, CA.

TA–W–59,643; Graham Packaging Company LP, Reinholds Drive Plant, Cincinnati, OH.

TA–W–60,000; Dyer Specialty Co., Inc., Lake Havasu City, AZ.

TA–W–60,277; Creative Engineered Products, Carlisle Engineered, Belleville Div., Belleville, MI.

TA–W–60,282; International Truck and Engine Corp., Indianapolis Engine Plant, Indianapolis, IN.

TA–W–60,309; Tactical Armor Products, Rutledge, TN.

TA–W–60,313; Fairystone Fabrics, Burlington, NC.

TA–W–60,349; Versa Tech Machining, Inc., Union, SC.

TA–W–60,384; Roanoke Furniture, Columbus, OH.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,361; Meadwestvaco Calmar, Colton, CA.

TA–W–60,375; Paramount Cards, Huntersville, NC.

TA–W–60,493; Progressive Logistics, Working On-Site at Continental Tires, Mayfield, KY.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of December 4 through December 8, 2006.

Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 18, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–22134 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,126]

Michelin North America Inc., BF Goodrich Tire Manufacturing, Opelika, AL; Notice of Revised Determination on Reconsideration

By application dated November 1, 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 and former workers of the subject firm. The Notice of Affirmative Determination Regarding Application for Reconsideration was issued on November 15, 2006 and published in the **Federal Register** on November 24, 2006 (71 FR 67917).

The initial determination was based on the Department's finding that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by the Trade Act of 1974. The subject workers produce passenger and light truck tires and are not separately identifiable by product line.

Based on new information provided by the subject firm during the reconsideration investigation, the Department determined that, during the relevant period, a significant number or proportion of the workers at the subject firm was separated.

The Department further determines that the subject firm's sales and production of tires declined absolutely during the relevant period.

The subject firm's reliance on imported tires increased during the same period that the subject firm's tire production decreased.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained in the reconsideration investigation, I determine that workers of Michelin North America Inc., BF Goodrich Tire Manufacturing, Opelika, Alabama qualify as adversely affected primary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

''All workers of Michelin North America Inc., BF Goodrich Tire Manufacturing, Opelika, Alabama, who became totally or partially separated from employment on or after September 20, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 18th day of December, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–22131 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,329]

Optical Electro Forming a Division of Oracle Lens Manufacturing, Sola International and Carl Zeiss Vision Clearwater, FL; 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 June 1, 2006, applicable to workers of Optical Electro Forming, a division of Oracle Lenses, Clearwater, Florida. The notice was published in the **Federal Register** on June 22, 2006 (71 FR 35949).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of optical molds and inserts.

New information shows that Optical Electro Forming is a division of Oracle Lens Manufacturing, a division of SOLA International, in turn a division of Carl Zeiss Vision. Workers separated from employment at the subject firm had their wages reported under four separate unemployment insurance (UI) tax accounts: Optical Electro Forming, Oracle Lens Manufacturing, SOLA International, and Carl Zeiss Vision.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Optical Electro Forming and its parent companies, Clearwater, Florida, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–59,329 is hereby issued as follows:

''All workers of Optical Electro Forming, a division of Oracle Lens Manufacturing, SOLA International and Carl Zeiss Vision, Clearwater, Florida, who became totally or partially separated from employment on or after May 2, 2005, through June 1, 2008, 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 19th day of December 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–22129 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: [06–100].

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Information is needed to guide implementation of GLOBE (Global Learning and Observations to Benefit the Environment) based on feedback from participating teachers, students, and partners in order to help meet the Program's goal of improving student achievement in mathematics and science.

II. Method of Collection

The GLOBE Partner survey is Web-based on-line instrument. The survey gathers data on all activities related to GLOBE implementation for the year prior to administration of the survey.

III. Data

Title: GLOBE Program Evaluation.
OMB Number: 2700–0114.
Type of review: Extension of currently approved collection.
Affected Public: State, Local, or Tribal Government; Individuals or households; and Not-for-profit institutions.
Number of Respondents: 258.
Responses Per Respondent: 1.
Annual Responses: 258.
Hours Per Request: 2.
Annual Burden Hours: 516.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary L. Cox,
Deputy Chief Information Officer (Acting).

[FR Doc. E6–22151 Filed 12–26–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 06–099]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council. The agenda for the meeting includes updates from each of the Council committees, including discussion and deliberation of potential recommendations. The Council Committees address NASA interests in the following areas: Aeronautics, Audit and Finance, Space Exploration, Human Capital, Science, and Space Operations.

DATES: Thursday, February 8, 2007, 8 a.m.–4 p.m.

ADDRESSES: Capital Ballroom, Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Blackerby, Designated Federal Official, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4688.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: December 19, 2006.

Diane Rausch,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E6–22070 Filed 12–26–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act Systems of Records Notice

AGENCY: National Credit Union Administration.

ACTION: Notification of revisions of systems of records.

SUMMARY: The National Credit Union Administration (NCUA) is revising its Privacy Act Systems of Records (SOR) Notice. As part of the periodic review of agency regulations, staff determined the need to update and revise its SOR Notice. The review identified several changes requiring revision to the SOR Notice including changes in recordkeeping practices, agency organizational changes, and new systems of records not previously identified. In some systems, NCUA staff identified minor changes to routine uses. No new exemptions from provisions of the Privacy Act of 1974 were required. The revisions reflect the changes, clarify, and update the SOR Notice.

DATES: *Effective Date:* The revised system notices will be effective without further notice on January 26, 2007 unless comments received before that date cause a contrary decision. Based on NCUA's review of comments received, if any, NCUA will publish a new final notice if it determines to make changes to the system notices.

FOR FURTHER INFORMATION CONTACT: Sheila A. Albin, Associate General Counsel for Operations & Senior Agency Official for Privacy, or Linda Dent, Staff Attorney, Division of Operations, Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 requires, *inter alia*, that all federal agencies publish a notice of any system of records maintained about individuals and, further, requires that the notice provide certain information. NCUA last published a revised notice in 2000. 65 FR 3486 (January 21, 2000). The Privacy Act, as well as guidance from the Office of Management and Budget, provides for periodic review and updating of an agency's SOR Notice, and NCUA's privacy regulation also requires review and revision as necessary to its SOR Notice. 12 CFR part 792, subpart E.

NCUA is adding four new systems to its SOR Notice: Personal Identity Verification (PIV) Files, Leave Transfer Program Case Files, AMAC Contract Employee Pay and Leave Records, and

Bank of America Electronic Access Government Ledger System. While the previous System 6 is described as containing information used to create employee identification cards, the new PIV Files, identified as System 16 is significantly different in that it specifically describes a new system being established to meet the requirements of Homeland Security Presidential Directive 12.

NCUA is also making several relatively minor changes to existing systems to correct and update information. For example, regarding storage, access, and retrieval, many of the existing systems now provide for electronic storage and retrieval in addition to maintaining hard copies of records and, as such, have additional security measures restricting access. In addition, the system managers or the titles for the system managers have changed in some instances due to organization changes within the agency or changes in duties for employee positions. In addition, Appendix B is revised to reflect that NCUA now has five rather than six regional offices and addresses of two of the regional offices have changed, as well as the states for which each regional office has jurisdiction.

With these changes, NCUA's revised SOR Notice, along with the appendices, are published in their entirety below.

National Credit Union Administration

Systems of Records Notice

List of Systems

1. Employee Suitability and Security Investigations Containing Adverse Information
2. Grievance Records
3. Payroll Records System
4. Travel Advance and Voucher Information System
5. Unofficial Personnel and Employee Development/Correspondence Records
6. Emergency Information (Employee) File
7. Employee Injury File
8. Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union
9. Freedom of Information Act and Privacy Act Requests and Invoices
10. Liquidating Credit Union Records
11. Office of Inspector General (OIG) Investigative Records
12. Consumer Complaints Against Federal Credit Unions
13. Litigation Case Files
14. Bank of America Electronic Access Government Ledger System (EAGLS)
15. Contract Employee Pay and Leave Records
16. Leave Transfer Files
17. Personal Identity Verification Files
Appendix A–Standard Routine Uses Applicable to NCUA Systems of Records
Appendix B–List of Regional Offices with Addresses and States Covered by Each Region

NCUA–1

SYSTEM NAME:

Employee Suitability and Security Investigations Containing Adverse Information

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA. 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

NCUA employees on whom a routine Office of Personnel Management (OPM) background investigation has been conducted, the results of which contain adverse information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Arrest records and/or information on moral character, integrity, or loyalty to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Records maintained pursuant to OPM requirements. A separate notice is published because these records are maintained separately to provide extraordinary safeguards against unwarranted access and disclosures.

PURPOSE:

The information in this system of records is used to assist in the determination of the suitability of the effected individual for initial or continued NCUA employment, or other necessary action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are reviewed by the NCUA Security Officer (the Director of Human Resources). If the records are determined to be of a substantive nature, they are referred to the appropriate Associate Regional Director or Office Director for whatever action, if any, is deemed necessary. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file cabinet accessible only to the Security Officer and his/her designated assistant.

RETENTION AND DISPOSAL:

If the investigation is favorable to the employee, the record is destroyed. If the investigation uncovers adverse information, the record is held for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction, along with supporting justification showing why the record is not accurate, timely, or complete.

RECORD SOURCE CATEGORIES:

OPM Security Investigations Index, FBI headquarters investigative files, fingerprint index of arrest records, Defense Central Index of Investigations, employers within the last five years, listed references, and personal associates, school registrars and responsive law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In addition to any exemption to which this system is subject by Notices published by or regulations promulgated by the OPM, the system is subject to a specific exemption pursuant to 5 U.S.C. 552a(k)(5) to the extent that disclosures would reveal a source who furnished information under an express promise of confidentiality, or prior to September 27, 1975, under an express or implied promise of confidentiality.

NCUA–2

SYSTEM NAME:

Grievance Records

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with NCUA in accordance with part 771 of the OPM's regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision with related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 10987; 3 CFR 1959–1963 Comp., p. 519.

PURPOSE:

The information in this system is used in the Agency's formal grievance process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations. (2) Information is used by any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested. (3) Information is used by a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. (4) Information is used by the congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual. (5) Information is used by another Federal agency or by a court when the government is party to a judicial proceeding before the court. (6) Information is used by the National Archives and Records Administration (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. (7) Information is used by NCUA in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference. (8) Information is used by officials of the Office of Personnel Management, the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties. (9) Information (that is relevant to the subject matter involved in a pending judicial or administrative proceeding) is used to respond to a request for discovery or for appearance of a witness. (10) Information is used by officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions. (11) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrievable by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are disposed of three (3) years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Request to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; testimony of witness; agency officials; related correspondence from organization or persons.

NCUA–3

SYSTEM NAME:

Payroll Records System.

SYSTEM LOCATION:

(1) Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. (2) General Services Administration, Region VI, Kansas City, Missouri. (3) Regional offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of NCUA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Salary and related payroll data, including time and attendance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 703; 44 U.S.C. 3301.

PURPOSE:

This system documents time and attendance and ensures that employees receive proper compensation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used to ensure proper compensation to all NCUA employees and to formulate financial reports and plans used within the agency or is sent to the General Services Administration (GSA). (2) Also, information is used to document time worked and provide a record of attendance to support payment of salaries and use of annual, sick, and nonpaid leave. (3) Users of the time and attendance information include the

employee's supervisor, the office's timekeeper the payroll officer, and the GSA National Payroll Center in Kansas City, Missouri. (4) Further information in this system is used to make reports to state and local taxing authorities. (5) The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish or modify orders of child support, identify sources of income and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104-193). (6) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and electronically on computer systems.

RETRIEVABILITY:

Records are retrieved by name or social security number.

SAFEGUARDS:

Records are maintained in secured offices, accessible by written authorization only.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with GSA policy.

SYSTEM MANAGER(S) AND ADDRESS:

PRIMARY:

Payroll Officer, Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

SECONDARY:

Office Timekeepers, National Credit Union Administration, Central Office (1775 Duke Street, Alexandria, Virginia 22314–3428) and Regional Offices (see Appendix B for Regional Offices' addresses).

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Information is primarily obtained from the individual whom the record concerns, the Office of Personnel Management, and the GSA. Also, time and attendance information is prepared and submitted by the timekeeper in a given employee's office.

NCUA–4

SYSTEM NAME:

Travel Advance and Voucher Information System.

SYSTEM LOCATION:

Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Some relocation files are maintained in the Office of Administration, at the same address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NCUA employees who have traveled or relocated in the course of performing their duty and who have been reimbursed for the expense of such travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information from the following forms: Travel Vouchers (NCUA 1012), Relocation Travel Order (NCUA 1617) Application for Travel Advance (NCUA 1371), and Travel Voucher Cover Sheet (NCUA 1364), Agreement to Remain in Federal Service (NCUA 1030), Statement of Difference (NCUA 1310), Repayment of Travel Advance (NCUA 1372).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5752; Executive Order 11609 (July 22, 1971); Executive Order 11012 (March 27, 1962); 5 U.S.C. 4101–4118; Federal Travel Regulations, FPMR 101–7, Chapter 2, Section 6.3.

PURPOSE

The purpose of this system is to provide documentary support for reimbursements to employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are used to provide documentary support for reimbursements to employees for on-the-job and relocation travel expenses. (2) Users of the information include first and second line supervisors, NCUA accounting staff, and budgeting staff. (3) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper hard copy form and in a computer system.

RETRIEVABILITY:

Records are retrievable by social security number.

SAFEGUARDS

The paper hard copy records are maintained in secured offices. The computer disc is located in a secured office and its access is limited to user employees who know the logical identification access number.

RETENTION AND DISPOSAL

Records are maintained in the Division of Accounting Services until the annual GAO audit is completed. After the audit, the paper hard copy records are stored in a Federal Records Center for a minimum of three years and the computer disc is purged.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Accounting Services Division, Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Records are prepared by the individual whom the record concerns.

NCUA–5

SYSTEM NAME:

Unofficial Personnel and Employee Development and Correspondence Records

SYSTEM LOCATION:

For employees of a regional office, the system is located at the regional office where the employee is assigned, National Credit Union Administration, (See appendix B for addresses of Regional Offices). For employees of the central office, the system is located at the assigned office, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on NCUA employees assigned to the particular regional or central office related to some or all of the following areas: name; address; telephone number; birthdate; ethnicity and gender codes; cu grade; employee identification number; work performance appraisals; district management; chartering efforts; reactions from credit union officials; individual development plans; supply and equipment information; for new examiners, bi-weekly training reports, training progress reports and training evaluations; work product samples; suggestions; awards; data on time and attendance, leave and pay; memos or notations and evaluations by superiors or others; benefit elections and designations of beneficiaries; and copies of personnel, travel and grievance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301.

PURPOSE:

Information is used for recording time, attendance and leave, controlling equipment inventories, contacting employees; evaluating and training staff, evaluating work progress; and for general administrative matters. Information may also be used to determine eligibility for retention or promotion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this system may be disclosed to the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the General Services Administration or an arbitrator or agent, to the extent the disclosure is needed to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions, or to obtain information. (2) The information in this system may be disclosed to federal, state, local or professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of a licensed individual or an individual seeking to be licensed. (3) This information is used to generate a telephone directory for all NCUA employees. (4) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy as well as electronically on computer systems or other database applications.

RETRIEVABILITY:

Records are indexed alphabetically by name or Social Security number.

SAFEGUARDS:

Physical security consists of maintaining records in locked metal file cabinets within secured offices and password protected computer systems.

RETENTION AND DISPOSAL:

Current and relevant information is maintained generally for a period of two years. Obsolete material is maintained in the same file cabinets and is periodically purged and destroyed after two years or upon employees' separation.

SYSTEM MANAGER(S) AND ADDRESS:

For employees assigned to a regional office the system manager is the Director of Management Services, Regional Office, National Credit Union Administration. (See appendix B for addresses of Regional Offices). For employees assigned to an office within the central office, the system manager is the Office Director, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the Regional Director or Office Director will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the Regional Director or Office Director.

RECORD SOURCE CATEGORIES:

Sources may include the individual whom the record concerns, supervisors of the individual, fellow employees, credit union officials, administrative officer or office assistant, and other persons whom the individual may encounter in the course of work performance. For payroll- and personnel-related information, the sources may include the General Service Administration and Office of Human Resources.

NCUA–6

SYSTEM NAME:

Emergency Information (Employee) File.

SYSTEM LOCATION:

For employees of a regional office, the system is located at the regional office where the employee is assigned, National Credit Union Administration, (See appendix B for addresses of Regional Offices). For employees of the central office, the system is located at the assigned office, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees; individuals designated by employees as emergency contacts; family members of employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains personal information about NCUA employees, such as height, weight, hair color, eye color, current address, and telephone number, and in some locations may also have a personal cell telephone number and personal email address. Also, this system identifies the individual to contact in case of an emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

The information in this system is used to maintain employee identification information in case of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information on the individual to contact in cases of emergency may be disclosed in case of emergency to any federal, state or local authority

responding to the emergency. (2) In the event of an emergency, the information may be disclosed to the individual listed as a contact in case of emergency, or other person identified as a family member of the employee. This list is updated as necessary. The listed information is used to contact the employee if there is a national emergency. (3) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper hard copy and may also be stored electronically.

RETRIEVABILITY:

Records are indexed alphabetically by name and, where stored electronically as part of a computer system, are subject to electronic safeguards.

SAFEGUARDS:

Records are maintained in locked file drawers or stored electronically as part of a computer database.

RETENTION AND DISPOSAL:

Records are disposed of after an employee is separated from the agency.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For employees of a regional office, the system manager is the regional director of the regional office where the employee is assigned, National Credit Union Administration, (See appendix B for addresses of Regional Offices). For employees of the central office, the system manager is the Office Director of the assigned office, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428. (2) Security Officer, Administrative Office, at the same address above.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the appropriate system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the appropriate system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

NCUA–7

SYSTEM NAME:

Employee Injury File.

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee who has sustained a job-related injury or disease.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports submitted by an individual who has sustained a job-related injury or disease. Copies of any further claims made regarding the same injury or disease or any other material required for documenting and adjudicating the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act of 1970, 29 CFR part 1960.

PURPOSE:

This information is maintained to provide data to the Department of Labor, when needed, for adjudication of a claim, and to prepare reports as required by the Department of Labor.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is disclosed to the Department of Labor. (2) Standard routine use as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in file cabinets.

RETRIEVABILITY:

Records are indexed by NCUA Region, and date of injury.

SAFEGUARDS:

Records are maintained in locked file drawer.

RETENTION AND DISPOSAL:

Records are disposed five years after the year to which they relate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, then individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; superiors of individual; individual's physician; hospital attending individual; Department of Labor.

NCUA–8

SYSTEM NAME:

Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against A Credit Union.

SYSTEM LOCATION:

Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Computerized records of Suspicious Activity Reports (SAR), with status updates, are managed by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, pursuant to a contractual agreement, and are stored in Detroit, Michigan. Authorized personnel at NCUA's Central Office and regional offices have on-line access to the computerized database managed by FinCEN through individual work stations linked to the database central computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers, committee members, employees, agents, and persons participating in the conduct of the affairs of federally insured credit unions who are reported to be involved in suspected criminal activity or suspicious financial transactions and are referred to law enforcement officials; and other individuals who have been involved in irregularities, violations of law, or unsafe or unsound practices referenced in documents received by the NCUA in the course of exercising its supervisory functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inter- and intra-agency correspondence, memoranda and

reports. The SAR contains information identifying the credit union involved, the suspected person, the type of suspicious activity involved, and any witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1786 and 1789.

PURPOSE(S):

The overall system serves as a NCUA repository for investigatory or enforcement information related to its responsibility to examine and supervise federally insured credit unions. The system maintained by FinCEN serves as the database for the cooperative storage, retrieval, analysis, and use of information relating to Suspicious Activity Reports made to or by the NCUA Board, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, (collectively, the federal financial regulatory agencies), and FinCEN to various law enforcement agencies for possible criminal, civil, or administrative proceedings based on known or suspected violations affecting or involving persons, financial institutions, or other entities under the supervision or jurisdiction of such federal financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Information in these records may be used to: (1) Determine if any further agency action should be taken. (2) Provide the federal financial regulatory agencies and FinCEN with information relevant to their operations; (3) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (4) With regard to formal or informal enforcement actions; release information pursuant to 12 U.S.C. 1786(s), which requires the NCUA Board to publish and make available to the public final orders and written agreements, and modifications thereto; and (5) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records will be maintained in electronic data processing systems and paper files.

RETRIEVABILITY:

Computer output and file folders are retrievable by indexes of data fields, including name of the credit union, NCUA Region, and individuals' names.

SAFEGUARDS:

Paper records and word processing discs are stored at the NCUA in lockable metal file cabinets. The database maintained by FinCEN complies with applicable security requirements of the Department of the Treasury. On-line access to the information in the database is limited to authorized individuals who have been designated by each federal financial regulatory agency and FinCEN, and each such individual has been issued a nontransferable identifier or password.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the System Manager as noted above.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORDS PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information received by the NCUA Board from various sources, including, but not limited to law enforcement and other agency personnel involved in sending inquiries to the NCUA Board, NCUA examiners, credit union officials, employees, and members. The information maintained by FinCEN is compiled from SAR and related historical and updating forms compiled by financial institutions, the NCUA Board, and the other federal financial regulatory agencies for law enforcement purposes.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4) (G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

NCUA–9

SYSTEM NAME:

Freedom of Information and Privacy Act Requests and Invoices

SYSTEM LOCATION:

For requests processed by the central office, the system is located at the Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. For requests processed by the Office of Inspector General, the system is located in the Office of the Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records includes information pertaining to any Freedom of Information Act (FOIA) or Privacy Act requester.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain the requester's name, company name or organization, address, date of request, invoice number, amount due, phone number, social security or tax identification number, description of information requested and documents located or result of search for documents.

Authority for maintenance of the system: 12 U.S.C. 1789, 5 U.S.C. 552, 5 U.S.C. 552a.

PURPOSE:

Records in this system are used to process requests received. These records may be used by the NCUA for collection of the amount due, as well as to identify subsequent requests made by the same individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information may be disclosed to a consumer reporting agency. The information disclosed to a consumer reporting agency is limited to: (a) Information necessary to establish the identity of the individual, including name, address, and social security or taxpayer identification number; (b) the amount, status, and history of the claim; and (c) the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy and computer disk.

RETRIEVABILITY:

Records in this system are retrievable by requester's name, company name or organization, date of request, category of requester, request number, or invoice number.

SAFEGUARDS:

Physical security consists of storing records on a password protected

computer database and a hard copy secured in a metal file cabinet which is accessible only to those individuals responsible for processing requests and collecting outstanding payments.

RETENTION AND DISPOSAL:

Records are retained for various periods depending on the determination made on the request, but normally no greater than six years following the year in which the request was processed.

SYSTEM MANAGER(S) AND ADDRESS:

For requests processed at the central office, the system manager is the Freedom of Information Act Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314. For requests processed by the Office of Inspector General, the system manager is the Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

The sources of records for this system of records are the FOIA and Privacy Act request files.

NCUA–10

SYSTEM NAME:

Liquidating Credit Union Records System.

SYSTEM LOCATION:

Information within this system of records is located at the Asset and Management Assistance Center (AMAC) 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members, employees and creditors of liquidating federally-insured credit unions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Share and account records; personal data regarding income and debts; payment or employment history; accounts payable records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1787.

PURPOSE:

The information in this system is used to determine insurance, collect loan amounts due and for all purposes necessary to close out the affairs of the liquidated credit union.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used for payment of insurance claims to shareholders in liquidating federally-insured credit unions. (2) Information is used in the collection of outstanding loans, which may include referral of information to third party servicer providers or potential purchasers of the loans. (3) Information is used for all purposes necessary to close out the affairs of the liquidated credit union and carry out all appropriate liquidation-related functions of NCUA. (4) Information may be disclosed to address locators or a surety company in pursuit of a fidelity bond claim. (5) Information on unclaimed insured shares is included in a database on the NCUA web site after other efforts to locate account holders have failed. (6) Information may be disclosed to the appropriate federal, state or local government agency, such as the Internal Revenue Service, if required by law or regulation or upon appropriate request. (7) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

This information is maintained on computer databases and hard copy. Copies of share and loan documents, incoming payments, and loan portfolios may also be maintained on microfilm copy.

RETRIEVABILITY:

Information is indexed by name of individual and by name of closed insured credit union.

SAFEGUARDS:

Information is maintained in secured offices and in password protected computer databases.

RETENTION AND DISPOSAL:

Information is maintained for six years following the appointment of the NCUA Board as liquidating agent of an insured credit union after which the system manager may destroy any records that the system manager determines are unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency or prohibited by law.

SYSTEM MANAGER(S) AND ADDRESS:

President, AMAC, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains information pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no information on the individual, the individual will be so advised. Written inquiries should include name of inquirer, name of closed insured credit union of which inquirer was a member, and share and loan account numbers, if known.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available information.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above. Record source categories: information is obtained from outside address locators; share and loan account files of the liquidating credit union of which the individual was a member; third party service providers; and credit bureaus.

NCUA–11

SYSTEM NAME:

Office of Inspector General (OIG) Investigative Records.

SYSTEM LOCATION:

Office of Inspector General, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of investigation, complainants, and witnesses referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is comprised of paper files of all OIG and some predecessor Office of Internal Auditor reports, correspondence, cases, matters, cross-indices, memoranda, materials, legal papers, evidence, exhibits, data, and workpapers pertaining to all closed and pending investigations and inspections.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App.3; 12 U.S.C. 1766.

PURPOSE:

Records in this system document the investigative work of the Office of Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The National Credit Union Administration Office of Inspector General (OIG) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses. (1) The OIG may disclose information from this system of records as a routine use to any public or private source, including a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, but only to the extent necessary for the OIG to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry. (2) The OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary to obtain its legal advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG. (3) The OIG may disclose information to other federal entities, such as other Offices of Inspector General, to the General Accounting Office, or to a private party with which the OIG or the NCUA has contracted or with which it contemplates contracting, for the purpose of auditing or reviewing the performance or internal management of the OIG's investigative program, or for performing any other functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information. (4) The OIG may disclose information from this system of records to any Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an OIG decision concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit. (5) The OIG may disclose information in this system to federal, state, local or professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of a licensed individual or an individual seeking to be licensed. (6) The OIG may disclose information from this system of records for the purposes set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually in files.

RETRIEVABILITY:

Information is retrieved in files by case number, general subject matter, or name of the subject of investigation.

SAFEGUARDS:

Case reports and workpapers are maintained in approved security containers and locked filing cabinets in a locked room. Associated paper records are stored in locked metal filing cabinets, safes, or similar secure facilities.

RETENTION AND DISPOSAL:

Investigative Case Files 1. Case files are normally destroyed when they are 5 years old. 2. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

This System of Records is generally exempt from the notice, access, and amendment requirements of the Privacy Act. However, the NCUA will entertain written requests to the systems manager on a case by case basis for notification regarding whether this system of records contains information about an individual. Requests should be marked ''Privacy Act request,'' and should state the name and address of the requester, and provide a notarized statement, or other documentation, e.g., copy of a driver's license, attesting to the individual's identity. Requests submitted on behalf of other persons must include their written authorizations. Such requests in the form prescribed may also be presented in person at the Office of Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Simultaneously with requesting notification of inclusion in this system of records, the individual may request record access as described in this section.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The OIG collects information from many sources, including the subject individuals, employees of the NCUA, other government employees, and witnesses and informants, and non-governmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Pursuant to 5 U.S.C. 552(k)(2), to the extent that the system contains investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), this system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (G), (H), and (I), and (f). The exemption rule is contained in 12 CFR 792.66 of the NCUA regulations.

NCUA–12

SYSTEM NAME:

Consumer Complaints Against Federal Credit Unions.

SYSTEM LOCATION:

Information is maintained in NCUA's regional offices (see Appendix B for regional office locations).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit complaints concerning operating federal credit unions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaint letters, investigation reports, and related correspondence concerning the complainants and the federal credit union involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766(i)(1) and 1789(a)(7); 5 U.S.C. 301; 15 U.S.C. 1601–1693.

PURPOSE:

This system documents the number and type of consumer complaints received and processed by NCUA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be disclosed to officials of federal credit unions and other persons mentioned in a complaint or identified during an investigation. (2) Disclosures may be made to the Federal Reserve Board, other federal financial regulatory agencies, the Federal Financial Institutions Examination Council, the White House Office of Consumer Affairs, and the Congress, or any of its authorized committees in fulfilling reporting requirements or assessing implementation of applicable laws and regulations. (Such disclosures will be made in a nonidentifiable manner when feasible and appropriate.) (3) Referrals may also be made to other federal and nonfederal supervisory or regulatory authorities when the subject matter is a complaint or inquiry which is more properly within such agency's jurisdiction. (4) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper or computer database.

RETRIEVABILITY:

Records are retrievable from files by federal credit union name, by complainant name, or assigned control number.

SAFEGUARDS:

Records are maintained in secured offices in either a file cabinet or on a password protected computer system.

RETENTION AND DISPOSAL:

Records are retained for three years and then destroyed. Consumer's name, federal credit union's name, subject of complaint, date received, and date resolved are kept until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the Regional Director in the regional office where the complaint was processed. (See Appendix B for Regional Office addresses.)

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Request to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Complainant (and his or her representative, which may include, e.g., a member of Congress or an attorney); federal credit union officials; employees and members of the credit union involved; and NCUA examiners and central files on federal credit unions.

NCUA–13

SYSTEM NAME:

Litigation Case Files.

SYSTEM LOCATION:

Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained in files by the case name of individuals who are: the subject of NCUA investigations made in contemplation of legal action; involved in civil litigation with NCUA or involved in administrative proceedings; involved in litigation of interest to NCUA; or pursuing tort claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in case files include: Investigative reports relating to possible felonies or violations of the Federal Credit Union Act; transcripts of testimony or affidavits; documents and other evidentiary matters, pleadings and other documents filed in court; orders filed or issued in civil, administrative or criminal proceedings; correspondence relating to investigatory or litigation matters; information provided by the individual under investigation or from a federal credit union; and other memoranda gathered and prepared by staff in performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766, 1786, 1787, and 1789; 28 U.S.C. 2671–2680.

PURPOSE:

This system documents the preparation and progress of legal proceedings and investigations conducted by the Office of General Counsel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The staff of the Office of General Counsel may use such records to render legal advice concerning investigations or courses of legal action; to represent NCUA in all judicial and administrative proceedings in which NCUA or any of its employees who, within the scope of employment and in an official capacity, is a party; or to intervene as an amicus curiae. (2) The information in this system may be disclosed to federal, state, local or professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications or fitness of a licensed individual or an individual seeking to be licensed. (3) Standard routine uses set forth in Appendix A.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Record source categories vary depending upon the legal issue but generally are obtained from the following: NCUA staff and internal agency memoranda; federal employees and private parties involved in torts; contracts; federal credit union files or officials; general law texts and sources; law enforcement officers; witnesses and others; administrative and court pleadings, transcripts or judicial orders/decisions; evidence gathered in connection with the matter involved; and from individuals to whom the records relate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is subject to the specific exemption provided by 5 U.S.C. 552a(k)(2), as the system of records is investigatory material compiled for law enforcement purposes.

NCUA–14

SYSTEM NAME:

Bank of America Electronic Access Government Ledger System (EAGLS).

SYSTEM LOCATION:

Bank of America Government Card Services (Norfolk, Virginia).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of NCUA with individually billed government travel cards and/or centrally billed government travel cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

NCUA employee credit card data, including name and address, and past and present charges to account.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Travel Regulations, Travel and Transportation Reform Act of 1998 (Pub. L. 105–264).

PURPOSE:

The purpose of this system is for the Office of the Chief Financial Officer (OCFO) to monitor the usage of the government travel card by NCUA employees and to assure timely payments of accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The system can be used by individual cardholders to access their own account information to monitor charges, payments, change their address, etc. It is also used by OCFO to provide oversight of the travel card program by monitoring card usage in order to reduce card misuse, abuse, and delinquencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a database that is accessible by Internet over a 128-bit encryption secure connection.

RETRIEVABILITY:

Records are retrieved by name or account number.

SAFEGUARDS:

Records are maintained in a secure database that can only be accessed with a username and password provided by Bank of America after receipt of an application submitted by the OCFO. Only authorized staff in OCFO can access multiple employee records, all other employees can only access their own account information within the EAGLS system.

RETENTION AND DISPOSAL:

All account activity (charges, payments, credits, etc.) is retained in the EAGLS system for 36 months. All information on closed accounts (name, address, activity) is retained for 36 months before it is permanently removed from the EAGLS system.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Financial Officer, Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire about his/her personal account information by accessing the EAGLS system with a username and password provided to them by Bank of America or by written request to OCFO.

RECORD ACCESS PROCEDURES:

Upon approval of the cardholder application and issuance of the government travel card by BOA, a username and password is also submitted to the cardholder for access to their account information in EAGLS.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be submitted online through the EAGLS system or submitted in writing to OCFO.

RECORD SOURCE CATEGORIES:

Records are prepared by the individual whom the record concerns by submission of an application to Bank of America and by the subsequent activity to the individual's account.

NCUA–15

SYSTEM NAME:

Contract Employee Pay and Leave Records.

SYSTEM LOCATION:

Information within this system of records is located at the Asset Management and Assistance Center (AMAC) 4807 Spicewood Springs Road, Suite 5100, Austin TX 78759, and the payroll processor, Paychex of San Antonio, Texas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contract employees hired by the Agent for the Liquidating Agent for work on liquidation cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Wages and related payroll data, including leave records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Fair Labor Standards Act.

PURPOSE:

This system documents employee information and ensures that employees receive proper compensation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information is used to document time worked and provide a record of attendance to support payment of wages and use of leave. Users of the system include the payroll officer (financial analyst), the employee's supervisor, and Paychex.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are maintained in a secured file cabinet, accessible only to the payroll officer and division manager.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the Fair Labor Standards Act.

SYSTEM MANAGER(S) AND ADDRESS:

Primary: Financial Analyst, Asset Management and Assistance Center (4807 Spicewood Springs Road, Suite 5100, Austin TX 78759).

Secondary: Division of Accounting Service Director, Asset Management and Assistance Center (4807 Spicewood Springs Road, Suite 5100, Austin TX 78759).

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

NCUA–16

SYSTEM NAME:

Leave Transfer Program Case Files.

SYSTEM LOCATION:

Office of Human Resources, 1775 Duke Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees who submitted applications to become leave recipients under the provisions of the Leave Transfer program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave transfer program applications, leave requests, and medical documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 630.913.

PURPOSE:

To administer the NCUA leave transfer program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records are used to administer the NCUA leave transfer program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and filed in metal file cabinets.

RETRIEVABILITY:

The records are retrieved by the names of the employee.

SAFEGUARDS:

These files are kept in a locked room and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained in accordance with NARA General Records Schedules 1 (Civilian Personnel Records). Disposal of manual records is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

An individual or an individual's authorized representative may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

NCUA–17

SYSTEM NAME:

Personal Identity Verification Files.

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to federal facilities, information technology systems, or information classified in the interest of national security, including applicants for employment or contracts, federal employees, contractors, students, interns, volunteers, affiliates, individuals authorized to perform or use services provided in NCUA facilities and individuals formerly in any of these positions. The system also includes individuals accused of security violations or found in violation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, former names, birth date, birth place, Social Security number, home address, phone numbers, employment history, residential history, education and degrees earned, names of associates and references and their contact information, citizenship, names of relatives, birthdates and places of relatives, citizenship of relatives, names of relatives who work for the federal government, criminal history, mental health history, drug use, financial information, fingerprints, summary report of investigation, results of suitability decisions, level of security clearance, date of issuance of security clearance, requests for appeal, witness statements, investigator's notes, tax return information, credit reports, security violations, circumstances of violation, and agency action taken. Copies of background investigation forms such as the SF–85, SF–85P, SF–86, or SF–87 may also be included in this file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive orders 10450, 10865, 12333, and 12356; sections 3301 and 9101 of title 5, U.S. Code; sections 2165 and 2201 of title 42, U.S. Code; sections 781 to 887 of title 50, U.S. Code; parts 5, 732, and 736 of title 5, Code of Federal Regulations; and Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004.

PURPOSE(S):

The records in this system of records are used to document and support decisions regarding clearance for access to classified information, the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, including students, interns, or volunteers to the extent their duties require access to federal facilities, information, systems, or applications. The records may be used to document security violations, employee access and attendance, and supervisory actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information maintained in this system is collected from PIV Applicants, the individuals to whom a PIV card is issued. The PIV Applicant may be a current or prospective Federal hire, a Federal employee or a contractor. The information is used in each step of the PIV Process for example, conducting a background investigation, completing the identity proofing and registration process, creating an employee record in the Comprehensive Human Resources Integrated System (CHRIS), issuing a PIV card and the determination of physical and logical access. Additionally, the information such as card expiration date, PIV Registrar Approval, etc. is maintained in this file and is used to assist in the production of the PIV card. (2) The information in this system may be disclosed to the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the General Services Administration or an arbitrator or agent to the extent the disclosure is needed to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions, or to obtain information. (3) The information in this system may be disclosed to federal, state, local or professional licensing boards or boards of Medical Examiners, when such records reflect on the qualifications of a licensed individual or individual seeking to be licensed. (4) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and electronically in a secure location.

RETRIEVABILITY:

Files are retrieved by name or Social Security number (SSN), employee name, and employee identification number.

SAFEGUARDS:

For paper records: Comprehensive paper records are kept in a secure room at NCUA Central Office, Office of Human Resources. Limited paper records may be kept at NCUA regional offices in locked file cabinets in locked rooms. Access to the records is limited to those employees who have a need for

them in the performance of their official duties.

For electronic records: Comprehensive electronic records are kept at the NCUA Central Office, Office of Human Resources. Access to the records is restricted to those with a specific role in the PIV process that requires access to information to perform their duties, and who have been given a password to access that part of the system. Controls are in place to identify unauthorized access. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information. Electronic records of security badge and parking pass usage for access to the Central Office and access to parking are accessible by selected staff in the Division of Procurement and Facilities Management.

RETENTION AND DISPOSAL:

Records are destroyed upon notification of death or not later than five years after separation or transfer of employee to another agency, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to the individual by addressing a request in writing to the system manager listed above. If there is no record on the individual, the individual will be so advised.

When requesting notification of or access to records covered by this system, an individual should provide at a minimum his/her full name, date of birth, office and duty location in order to establish identity.

RECORDS ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the employee, contractor, or applicant via use of the SF–85, SF–85P, or SF–86 and personal interviews; employers' and former employers' records; FBI criminal history records and other databases; financial institutions and credit reports; medical records and health care providers; educational institutions; interviews of witnesses such as neighbors, friends, co-workers, business associates, teachers, landlords, or family members; tax records; and other public records. Security violation information is obtained from a variety of sources, such as witnesses or supervisor's reports. Electronic records are created based on use of security badges and parking passes at readers at entrances and exits to parking at the Central Office, building entrances, and building elevators.

Appendix A—Standard Routine Uses Applicable to NCUA Systems of Records

1. If a record in a system of records indicates a violation or potential violation of civil or criminal law or a regulation, and whether arising by general statute or particular program statute, or by regulation, rule, or order, the relevant records in the system or records may be disclosed as a routine use to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

2. A record from a system of records may be disclosed as a routine use to a federal, state, or local agency which maintains civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from a system of records may be disclosed as a routine use to a federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

4. A record from a system of records may be disclosed as a routine use to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. Further, a record from any system of records may be disclosed as a routine use to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

5. A record from a system of records may be disclosed as a routine use to officers and employees of a federal agency for purposes of audit.

6. A record from a system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

7. A record from a system of records may be disclosed as a routine use to the officers and employees of the General Services Administration (GSA) in connection with administrative services provided to this Agency under agreement with GSA.

8. Records in a system of records may be disclosed as a routine use to the Department of Justice, when: (a) NCUA, or any of its components or employees acting in their official capacities, is a party to litigation; or (b) Any employee of NCUA in his or her individual capacity is a party to litigation and where the Department of Justice has agreed to represent the employee; or (c) The United States is a party in litigation, where NCUA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and NCUA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, NCUA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

9. Records in a system of records may be disclosed as a routine use in a proceeding before a court or adjudicative body before which NCUA is authorized to appear (a) when NCUA or any of its components or employees are acting in their official capacities; (b) where NCUA or any employee of NCUA in his or her individual capacity has agreed to represent the employee; or (c) where NCUA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and NCUA determines that use of such records is relevant and necessary to the litigation, provided, however, NCUA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Appendix B—List of Regional Offices with Addresses and States Covered by Each Region

NCUA Region I Regional Office: 9 Washington Square, Washington Square Extension, Albany, NY, 12205, Phone (518) 472–4554. States covered: Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York, Rhode Island, and Vermont.

NCUA Region II Regional Office: 1775 Duke Street, Suite 4206, Alexandria, VA 22314, Phone: (703) 519–4600. States covered: Delaware, District Of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia.

NCUA Region III Regional Office: 7000 Central Parkway, Suite 1600, Atlanta, GA 30328, Phone: (678) 443–3000. States covered: Alabama, Florida, Georgia, Indiana, Kentucky, Mississippi, North Carolina, Puerto Rico, Ohio, South Carolina, Tennessee, and Virgin Islands.

NCUA Region IV Regional Office: 4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759, Phone: (512) 342–5600. States covered: Arkansas, Illinois Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin.

NCUA Region V Regional Office: 1230 West Washington Street, Suite 301, Tempe, AZ 85281, Phone: (602) 302–6000. States covered: Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

By the National Credit Union Administration Board on December 20, 2006.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E6–22101 Filed 12–26–06; 8:45 am]

BILLING CODE 7535–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION:

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 8, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2006 deadline.

2. *Date:* January 9, 2007.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Miscellaneous Humanities Projects at the November 15, 2006 deadline.

3. *Date:* January 10, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2006 deadline.

4. *Date:* January 16, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2006 deadline.

5. *Date:* January 22, 2007.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2006 deadline.

6. *Date:* January 23, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in European Studies, submitted to the Division of Research Programs at the November 1, 2006 deadline.

7. *Date:* January 29, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Archaeology, Old World, submitted to the Division of Research Programs at the November 1, 2006 deadline.

8. *Date:* January 30, 2007
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Africa and Asia, submitted to the Division of Research Programs at the November 1, 2006 deadline.

9. *Date:* January 31, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions in British and American Editions, submitted to the Division of Research Programs at the November 1, 2006 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E6–22172 Filed 12–26–06; 8:45 am]

BILLING CODE 7536–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services of New Member States of the European Communities (Romania and the Republic of Bulgaria)

AGENCY: Office of the United States Trade Representative.

ACTION: Determination Regarding Waiver of Discriminatory Purchasing Requirements under the Trade Agreements Act of 1979.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476.

SUPPLEMENTARY INFORMATION: The European Communities (''EC'') is a party to the World Trade Organization (''WTO'') Agreement on Government Procurement (''GPA'') and has assumed rights and obligations under the GPA on behalf of its Member States. On January 1, 2007, Romania and the Republic of Bulgaria (collectively, the ''new Member States'') will accede to the EC. In light of that accession, the EC has committed to assume rights and obligations on behalf of these new Member States under the GPA. On December 8, 2006, the WTO Committee on Government Procurement approved the application

of the GPA to Romania and the Republic of Bulgaria. The United States, which is also a party to the GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of the Romania and the Republic of Bulgaria, beginning on January 1, 2007.

Section 1–201 of Executive Order 12260 of December 31, 1980 delegated the functions of the President under sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Determination: In conformity with sections 301 and 302 of the Trade Agreements Act, and in order to carry out U.S. obligations under the GPA, I hereby determine that:

1. The European Communities, including its new Member States (Romania and the Republic of Bulgaria), is an instrumentality that: (A) Is a party to the GPA; and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and services and suppliers of such products and services. In accordance with section 301(b)(1) of the Trade Agreements Act, the European Communities is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. Accordingly, beginning on January 1, 2007, with respect to eligible products (namely, those goods and services covered under the GPA for procurement by the United States) of the Romania and the Republic of Bulgaria and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) To United States products and suppliers of such products, or

(B) To eligible products of another foreign country or instrumentality which is a party to the GPA and suppliers of such products, shall be waived. This waiver shall be applied by all entities listed in United States Annexes 1 and 3 of GPA Appendix 1.

3. The Trade Representative may modify or withdraw the designation in paragraph 1 and the waiver in paragraph 2.

4. This notice shall not affect the treatment to be accorded to eligible products of any country that was a Member State of the European Communities before January 1, 2007.

Dated: December 19, 2006.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E6–22173 Filed 12–26–06; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS345]

WTO Dispute Settlement Proceeding Regarding United States—Customs Bond Directive for Merchandise Subject to Anti-Dumping/ Countervailing Duties

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on November 21, 2006, the Dispute Settlement Body, at India's request, established a panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement''). That request may be found at *http://www.wto.org* contained in a document designated as WT/DS345/6. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 28, 2006 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to *FR0624@ustr.eop.gov*, Attn: ''India Bond Dispute (DS345)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

FOR FURTHER INFORMATION CONTACT: Elissa Alben, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9622.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (''DSU''). The panel will hold its meetings in Geneva, Switzerland. Note that some of the issues described below were also raised in a request for the establishment of a panel submitted by Thailand, see 71 FR 59542 (October 10, 2006).

Major Issues Raised by India

On February 1, 2005 the Department of Commerce published an antidumping duty order covering certain frozen warm water shrimp from India (70 FR 5147). In its request for establishment of a panel, India alleges that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of frozen warmwater shrimp imported by the importer in the preceding year. It alleges that Customs Bond Directive 99–3510–004, as amended on July 9, 2004 (and any clarifications and amendments thereof), as well as the laws and regulations of the United States pursuant to which the requirement was adopted (including 19 U.S.C. 1484, 1502, 1505, 1623, and 1673g, and 19 CFR 113.13, 113.40, 113.62, and 142.2) as such constitute specific action against dumping and subsidization not in accordance with Article VI:2 and 3 of the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), as well as Articles 1, and 18.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''AD Agreement'') and Articles 10 and 32.1 of the Agreement on Subsidies and Countervailing Measures (''Subsidies Agreement''), that they result in charges in excess of the margin of dumping or amount of subsidy that are not in accordance with GATT 1994 Articles VI:2 and VI:3, and that the simultaneous imposition of the continuous bond requirement and the obligation to provide bonds or make cash deposits for the payment of anti-dumping or countervailing duty is unreasonable as security for payment of antidumping and countervailing duties and therefore inconsistent with Note Ad paragraphs 2 and 3 of GATT 1994 Article VI. India further alleges that they are inconsistent with Articles 7.1, 7.2, 7.4, and 7.5 of the AD Agreement and Articles 17.1, 17.2, 17.4, and 17.5 of the Subsidies Agreement to the extent that they are applied prior to the imposition of definitive antidumping or countervailing duties, and that they are inconsistent with Articles 2.2, 2.3, 2.4, 9.1, 9.2 and 9.3 of the AD Agreement and Articles 1, 14, 19.2, 19.3 and 19.4 of the Subsidies Agreement. India further states that because the amended

directive was not published in the **Federal Register** or the Customs Bulletin of the United States, it is inconsistent with GATT 1994 Article X:1 and X:2, AD Agreement Article 18.5, and Subsidies Agreement Article 32.5. India alleges that the amended bond directive is inconsistent with GATT 1994 Article XI as a restriction other than a duty, tax or other charge and GATT 1994 Article XIII to the extent it is applied in a discriminatory manner, or, alternatively, is inconsistent with GATT 1994 Article I and II as a charge in excess of that imposed or mandatorily required by legislation on the date of entry into force of the GATT. India also states that the application of the continuous bond requirement to imports of frozen warmwater shrimp from India is inconsistent with Articles I:1, II:1(a) and (b), VI:2 (including Note 1 Ad Paragraphs 2 and 3 of Article VI) XI, and XIII of the GATT, and Articles 1, 2.2, 2.3, 2.4, 7.1, 7.2, 7.4, 7.5, 9.1, 9.2, 9.3, 9.3.1 and 18.1 of the AD Agreement. Finally, it states that the application of the continuous bond requirement only to importers of subject merchandise from India and five other countries is inconsistent with GATT 1994 Article X:3(a).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) Electronically, to *FR0624@ustr.eop.gov*, Attn: ''India Bond Dispute (DS345)'' in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–345, India Bond Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E6–22185 Filed 12–26–06; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS344]

WTO Dispute Settlement Proceeding Regarding Antidumping Measures on Stainless Steel Sheet and Strip Coils From Mexico

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on October 26, 2006, the Dispute Settlement Body established, at the request of Mexico, a panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) concerning certain U.S. antidumping orders against stainless steel sheet and strip coils (Department of Commerce Case No. A–201–822). That request may be found at *http://www.wto.org* contained in a document designated as WT/SD344/4. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 28, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to FR0620@ustr.eop.gov, with ''Mexico Zeroing II (DS344)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Elizabeth V. Baltzan, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel.

Major Issues Raised by Mexico

On October 12, 2006, Mexico requested the establishment of a panel regarding the Department of Commerce's use of ''zeroing'' in investigations and administrative reviews. Mexico challenges the following determinations:

- Final results of the anti-dumping investigation and antidumping order, entitled ''Final Determination Of Sales At Less Than Fair Value: Stainless steel sheet and strip in coils from Mexico,'' published in 64 **Federal Register** (FR) 30790 of 8 June 1999 (investigation) and its amendments and order, 64 FR 40560 of 27 July 1999;
- Final results of the determination of anti-dumping duties for the period from January 1999 to June 2000, entitled ''Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet And Strip In Coils From Mexico,'' published in 67 FR 6490 of 12 February 2002 (final results of the

determination of duties 1999–2000) and its amendments, 67 FR 15542 of 2 April 2002);

- Final results of the determination of antidumping duties for the period from July 2000 to June 2001, entitled ''Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet And Strip In Coils From Mexico,'' published in 68 FR 6889 of 11 February 2003 (final results of the determination of duties 2000–2001), and amendments, 68 FR 13686 of 20 March 2003.
- Final results of the determination of antidumping duties for the period from July 2001 to June 2002, entitled ''Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet And Strip In Coils From Mexico,'' published in 69 FR 6259 of 10 February 2004 (final results of the determination of duties 2001–2002);
- Final results of the determination of antidumping duties for the period from July 2002 to June 2003, entitled ''Final Results Of Antidumping Duty Administrative Review: Stainless Steel Sheet And Strip In Coils From Mexico,'' published in 69 FR 3677 of 26 January 2005 (final results of the determination of duties 2002–2003);
- Final results of the determination of antidumping duties for the period from July 2003 to June 2004, entitled ''Final Results Of Antidumping Duty Administrative Review: Stainless Steel Sheet And Strip In Coils From Mexico,'' published in 70 FR 73444 of 12 December 2005 (final results of the determination of duties 2003–2004).

Mexico also challenges:

- Sections 736, 751, 771(35)(A) and (B), and section 777A(c) and (d) of The Tariff Act of 1930, as amended;
- The Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. I;
- USDOC regulations codified at Title 19 of the United States Code of Federal Regulations, sections 351.212(b), 351.414(c), (d) and (e); and
- The Import Administration Antidumping Manual (1997 edition), including the computer program(s) to which it refers.

In addition, Mexico challenges the methodologies used to calculate dumping margins in original investigations and periodic reviews.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) Electronically, to *FR0620@ustr.eop.gov*, with ''Mexico Zeroing II (DS344)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above. USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and BUSINESS CONFIDENTIAL must be marked at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter

(1) Must clearly so designate the information or advice;

(2) must clearly mark the material as SUBMITTED IN CONFIDENCE at the top and bottom of the cover page and each succeeding page; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–344 Mexico Zeroing II) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E6–22186 Filed 12–26–06; 8:45 am]

BILLING CODE 3190–W7–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54961; File No. SR–Amex–2006–101]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of Shares of Funds of the ProShares Trust

December 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 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, II, and III below, which Items have been substantially prepared by the Exchange. On November 22, 2006, Amex submitted Amendment No. 1 to the proposed rule change.[3] On December 8, 2006, Amex submitted Amendment No. 2 to the proposed rule change.[4] 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 list and trade the shares (the ''Shares'') of eighty-one (81) funds of the ProShares Trust (the ''Trust'') based on numerous underlying securities indexes. The text of the proposal is available on Amex's Internet Web site (*http://www.amex.com*), at Amex's principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex proposed to list and trade the shares of twenty-four (24) additional funds of the Trust (as defined herein) and made certain clarifying changes with respect to the trading of the Shares (as defined herein). Amendment No. 1 replaced the original filing in its entirety.

[4] In Amendment No. 2, Amex made additional changes to clarify certain defined terms, the creation and redemption of the Shares, and the criteria for continued listing of the Shares. Amendment No. 2 replaced Amendment No. 1 in its entirety.

office, 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, as amended. 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

Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940 (''1940 Act''), as well as under the Act. Index Fund Shares are defined in Amex Rule 1000A(b)(1) as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

Recent amendments adopting Amex Rule 1000A(b)(2) now permit the Exchange to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance.

The Exchange proposes to list under amended Amex Rule 1000A the Shares of eighty-one (81) new funds of the Trust that are designated as Ultra Funds, Short Funds, and UltraShort Funds (the ''Funds''). Each of the Funds will have a distinct investment objective. Each Fund will attempt, on a daily basis, to achieve its investment objective by corresponding to a specified multiple of the performance, or the inverse performance, of a particular equity securities index as briefly described below. The Funds are based on the following benchmark indexes: [5] (1) S&P Small Cap 600 Index, (2) S&P500/Citigroup Value Index, (3) S&P500/Citigroup Growth Index, (4) S&P MidCap 400/Citigroup Value Index, (5) S&P MidCap 400/Citigroup Growth Index, (6) S&P SmallCap 600/Citigroup Value Index, (7) S&P SmallCap 600/Citigroup Growth Index, (8) Dow Jones U.S. Basic Materials Index, (9) Dow Jones U.S. Consumer Services Index, (10) Dow Jones U.S. Consumer Goods Index, (11) Dow Jones U.S. Oil and Gas Index, (12) Dow Jones U.S. Financials Index, (13) Dow Jones U.S. Health Care Index, (14) Dow Jones U.S. Industrials Index, (15) Dow Jones U.S. Real Estate Index, (16) Dow Jones U.S. Semiconductor Index (17) Dow Jones U.S. Technology Index, (18) Dow Jones U.S. Utilities Index (19) Russell 2000® Index, (20) Russell Midcap® Index, (21) Russell Midcap® Growth Index, (22) Russell Midcap® Value Index, (23) Russell 1000® Index, (24) Russell 1000® Growth Index, (25) Russell 1000® Value Index, (26) Russell 2000® Growth Index, and (27) Russell 2000® Value Index (each index individually referred to as the ''Underlying Index,'' and all Underlying Indexes collectively referred to as the ''Underlying Indexes'').[6] Certain Funds (the ''Ultra Funds'' or ''Bullish Funds'') seek daily investment results, before fees and expenses that correspond to twice (200%) the daily performance of the Underlying Indexes. The net asset value (''NAV'') of the Shares of each of these Ultra Funds, if successful in meeting its objective, should increase, on a percentage basis, approximately twice as much as the respective Fund's Underlying Index gains when the prices of the securities in such Underlying Index increase on a given day, and should decrease approximately twice as much as the respective Underlying Index loses when such prices decline on a given day.

In addition, the Exchange proposes to list and trade Shares of certain Funds (the ''Short Funds'') that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes. If each of these Short Funds is successful in meeting its objective, the NAV of the Shares of each Short Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day.

Finally, the Exchange proposes to list and trade Shares of certain Funds (the ''UltraShort Funds'') that seek daily investment results, before fees and expenses, that correspond to twice the inverse (−200%) of the daily performance of the Underlying Indexes. If each of these UltraShort Funds is successful in meeting its objective, the NAV of the Shares of each UltraShort Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day. The Short Funds and UltraShort Funds each have investment objectives that seek investment results corresponding to an inverse performance of the Underlying Indexes and are collectively referred to as the ''Bearish Funds.''

The Commission recently approved the listing and trading of certain Ultra Funds, Short Funds, and UltraShort Funds based on the S&P 500 Index, Nasdaq-100 Index, Dow Jones Industrial Average Index, and S&P MidCap 400 Index.[7] Each of the existing Ultra Funds is expected to gain, on a percentage basis, approximately twice as much as the benchmark Underlying Index and should lose approximately twice as much as the Underlying Index when such prices decline. Each of the existing Short Funds is expected to achieve investment results, before fees and

[5] A complete list of the Funds is set forth in Exhibit A to Amendment No. 2, which is available on Amex's Internet Web site (http://www.amex.com).

[6] The Statement of Additional Information (''SAI'') for the Funds discloses that each Fund reserves the right to substitute a different Underlying Index. Substitutions can occur if an Underlying Index becomes unavailable, no longer serves the investment needs of shareholders, the Fund experiences difficulty in achieving investment results that correspond to the applicable Underlying Index, or for any other reason determined in good faith by the Board (as defined herein). In such instance, the substitute index will attempt to measure the same general market as the current Underlying Index. Shareholders will be notified (either directly or through their intermediary) if a Fund's current Underlying Index is replaced. In the event a Fund substitutes an Underlying Index with another, different index, the Exchange will file with the Commission a Form 19b–4, which the Commission would have to approve to permit continued trading of the product based on the substitute index. See infra note 63 and accompanying text.

[7] *See* Securities Exchange Act Release No. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005). *See also* Securities Exchange Act Release No. 54040 (June 23, 3006), 71 FR 37629 (June 30, 2006) (approving Amex's proposal to list and trade shares of funds of the Trust based on certain other benchmark indexes).

expenses, that correspond to the inverse or opposite of the daily performance (−100%) of an Underlying Index. In addition, each of the existing UltraShort Funds is expected to achieve investment results, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (−200%) of an Underlying Index.

ProShare Advisors LLC is the investment advisor (the ''Advisor'') to each Fund. The Advisor is registered under the Investment Advisers Act of 1940.[8] While the Advisor will manage each Fund, the Trust's Board of Trustees (the ''Board'') will have overall responsibility for the Funds'' operations. The composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act.

SEI Investments Distribution Company (the ''Distributor''), a broker-dealer registered under the Act, will act as the distributor and principal underwriter of the Shares. JPMorgan Chase Bank, N.A. will act as the index receipt agent (''Index Receipt Agent'') for which it will receive fees. The Index Receipt Agent will be responsible for transmitting the Deposit List (as defined herein) to the National Securities Clearing Corporation (''NSCC'') and for the processing, clearance, and settlement of purchase and redemption orders through the facilities of the Depository Trust Company (''DTC'') and NSCC on behalf of the Trust. The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and the NSCC.

Shares of the Funds issued by the Trust will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund.[9] The Shares will be registered in book-entry form only, and the Trust will not issue individual share certificates. The DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC participants.

Underlying Indexes

The Exchange represents that the Underlying Index components comply with the generic listing standards set forth in Commentary .02 to Amex Rule 1000A.

S&P SmallCap 600 Index. The S&P SmallCap 600 Index is a measure of small-cap company U.S. stock market performance. It is a float-adjusted, market capitalization-weighted index of 600 U.S. operating companies. Securities are selected for inclusion in the index by a committee of Standard & Poor's through a non-mechanical process that factors criteria such as liquidity, price, market capitalization, financial viability, and public float. This Underlying Index[10] has been approved for options trading and is also the basis for an exchange traded fund (''ETF'').[11]

S&P 500/Citigroup Value Index. The S&P 500/Citigroup Value Index is designed to provide a comprehensive measure of large-cap U.S. equity ''value'' performance. It is an unmanaged, float-adjusted, and market capitalization-weighted index comprised of stocks representing approximately half the market capitalization of the S&P 500 Index that have been identified as being on the value end of the growth-value spectrum. This Underlying Index[12] is the basis for an ETF.

S&P 500/Citigroup Growth Index. The S&P 500/Citigroup Growth Index is designed to provide a comprehensive measure of large-cap U.S. equity ''growth'' performance. It is an unmanaged, float-adjusted, and market capitalization-weighted index comprised of stocks representing approximately half the market capitalization of the S&P 500 Index that have been identified as being on the growth end of the growth-value spectrum. This Underlying Index[13] is the basis for an ETF.

S&P MidCap 400/Citigroup Value Index. The S&P MidCap 400/Citigroup Value Index is designed to provide a comprehensive measure of mid-cap U.S. equity ''value'' performance. It is an unmanaged, float-adjusted, and market capitalization-weighted index comprised of stocks representing approximately half the market capitalization of the S&P MidCap 400 Index that have been identified as being on the value end of the growth-value spectrum. This Underlying Index[14] has been approved for options trading and is also the basis for an ETF.[15]

S&P MidCap 400/Citigroup Growth Index. The S&P MidCap 400/Citigroup Growth Index is designed to provide a comprehensive measure of mid-cap U.S. equity ''growth'' performance. It is an unmanaged, float-adjusted, and market capitalization-weighted index comprised of stocks representing approximately half the market capitalization of the S&P MidCap 400 Index that have been identified as being on the growth end of the growth-value spectrum. This Underlying Index[16] has been approved for options trading and is also the basis for an ETF.[17]

S&P Small Cap 600/Citigroup Value Index. The S&P SmallCap 600/Citigroup Value Index is designed to provide a comprehensive measure of small-cap U.S. equity ''value'' performance. It is an unmanaged, float-adjusted, and market capitalization-weighted index comprised of stocks representing approximately half the market capitalization of the S&P SmallCap 600 Index that have been identified as being on the value end of the growth-value spectrum. This Underlying Index[18] has been approved for options trading and is also the basis for an ETF.[19]

S&P SmallCap 600/Citigroup Growth Index. The S&P SmallCap 600/Citigroup Growth Index is designed to provide a comprehensive measure of small-cap U.S. equity ''growth'' performance. It is an unmanaged, float-adjusted, and market capitalization-weighted index comprised of stocks representing approximately half the market capitalization of the S&P SmallCap 600 Index that have been identified as being on the growth end of the growth-value spectrum. This Underlying Index[20]has been approved for options trading and is also the basis for an exchange-traded fund ETF.[21]

Dow Jones U.S. Basic Materials Index. The Dow Jones U.S. Basic Materials Index measures the performance of the basic materials industry of the U.S. equity market. Component companies are involved in the production of aluminum, steel, non ferrous metals, commodity chemicals, specialty chemicals, forest products, paper products, as well as the mining of

[8] The Trust, Advisor, and Distributor (''Applicants'') have filed with the Commission an Amended Application for an Order under Sections 6(c) and 17(b) of the 1940 Act (the ''Application'') for the purpose of exempting the Funds of the Trust from various provisions of the 1940 Act (File No. 812–12354).

[9] The Trust is registered as a business trust under the Delaware Corporate Code.

[10] The shares of the iShares S&P SmallCap 600 Index Fund are traded on the Exchange.

[11] *See* Securities Exchange Act Release No. 35532 (March 24, 1995), 60 FR 16518 (March 30, 1995).

[12] 12 The shares of the iShares S&P 500 Value Index Fund are traded on the Exchange.

[13] The shares of the iShares S&P 500 Growth Index Fund are traded on the Exchange.

[14] The shares of the iShares S&P MidCap 400 Value Index Fund are traded on the Exchange.

[15] *See* Securities Exchange Act Release 30290 (January 27, 1992), 57 FR 4072 (February 3, 1992).

[16] The shares of the iShares S&P MidCap 400 Growth Index Fund are traded on the Exchange.

[17] *See supra* note 15.

[18] The shares of the iShares S&P SmallCap 600 Value Index Fund are traded on the Exchange.

[19] *See supra* note 11.

[20] The shares of the iShares S&P SmallCap 600 Growth Index Fund are traded on the Exchange.

[21] *See supra* note 11.

precious metals and coal. This Underlying Index [22] has been approved for options trading and is also the basis for an ETF.

Dow Jones U.S. Consumer Goods Index. The Dow Jones U.S. Consumer Goods Index measures the performance of consumer spending in the goods industry of the U.S. equity market. Component companies include manufacturers of automobiles and automobile parts and tires, brewers and distillers, farming and fishing operations, durable and non-durable household product manufacturers, cosmetic companies, and companies related to food and tobacco products, clothing, accessories, and footwear. This Underlying Index [23] is the basis for an ETF.

Dow Jones U.S. Consumer Services Index. The Dow Jones U.S. Consumer Services Index measures the performance of consumer spending in the services industry of the U.S. equity market. Component companies include airlines, broadcasting and entertainment companies, apparel and broadline retailers, food and drug retailers, media agencies, publishing companies, gambling companies, hotels, restaurants and bars, and travel and tourism companies. This Underlying Index [24] is the basis for an ETF.

Dow Jones U.S. Financials Index. The Dow Jones U.S. Financials Index measures the performance of the financial services industry of the U.S. equity market. Component companies include regional banks, major U.S. domiciled international banks, full line, life, and property and casualty insurance companies, companies that invest, directly or indirectly, in real estate, diversified financial companies such as Fannie Mae, credit card issuers, check cashing companies, mortgage lenders, and investment advisers, securities brokers and dealers, including investment banks, merchant banks, and online brokers, and publicly traded stock exchanges. This Underlying Index [25] is the basis for an ETF.

Dow Jones U.S. Health Care Index. The Dow Jones U.S. Health Care Index measures the performance of the healthcare industry of the U.S. equity market. Component companies include health care providers, biotechnology companies, medical supply companies, and companies related to advanced medical devices and pharmaceuticals. This Underlying Index [26] is the basis for an ETF.

Dow Jones U.S. Industrials Index. The Dow Jones U.S. Industrials Index measures the performance of the industrial industry of the U.S. equity market. This Underlying Index includes component companies in sectors related to building materials, heavy construction, factory equipment, heavy machinery, industrial services, pollution control, containers and packaging, industrial diversified, air freight, marine transportation, railroads, trucking, land-transportation equipment, shipbuilding, transportation services, advanced industrial equipment, electronic components and equipment, and aerospace. This Underlying Index [27] is the basis for an ETF.

Dow Jones U.S. Oil & Gas Index. The Dow Jones U.S. Oil & Gas Index measures the performance of the oil and gas industry of the U.S. equity market. Component companies include oil drilling equipment and service companies, oil companies-major, oil companies-secondary, pipeline companies, liquid, solid, or gaseous fossil fuel producers, and related service companies. This Underlying Index [28] is the basis for an ETF.

Dow Jones U.S. Real Estate Index. The Dow Jones U.S. Real Estate Index measures the performance of the real estate sector of the U.S. equity market. Component companies include those that invest directly or indirectly in the development, management, or ownership of shopping malls, apartment buildings and housing developments, and real estate investment trusts (''REITs''), which invest in apartments and office and retail properties. REITs are passive investment vehicles that invest primarily in income-producing real estate or real estate related loans or interests. This Underlying Index [29] has been approved for options trading and is also the basis for an ETF.

Dow Jones U.S. Semiconductor Index. The Dow Jones U.S. Semiconductor Index measures the performance of the semiconductor sub-sector of the U.S. equity market. Component companies are engaged in the production of semiconductors and other integrated chips, as well as other related products such as semiconductor capital equipment and mother-boards.[30]

Dow Jones U.S. Technology Index. The Dow Jones U.S. Technology Index measures the performance of the technology industry of the U.S. equity market. Component companies include those involved in computers and office equipment, software, communications technology, semiconductors, diversified technology services, and Internet services. This Underlying Index [31] is the basis for an ETF.

Dow Jones U.S. Utilities Index. The Dow Jones U.S. Utilities Index measures the performance of the utilities industry of the U.S. equity market. Component companies include electric utilities, gas utilities, and water utilities. This Underlying Index [32] is the basis for an ETF.

Russell 2000® Index. The Russell 2000® Index is a measure of small-cap U.S. stock market performance. It is an adjusted, market capitalization-weighted index containing approximately 2,000 of the smallest companies in the Russell 3000® Index or approximately 8% of the total market capitalization of the Russell 3000® Index, which in turn represents approximately 98% of the investable U.S. equity market. All U.S. companies listed on the New York Stock Exchange (''NYSE''), Amex, or The Nasdaq Stock Market meeting an initial minimum ($1) price are considered for inclusion. Reconstitution occurs annually. Securities are not replaced if they leave the index; however, new issue securities meeting other membership requirements may be added on a quarterly basis. This Underlying Index [33] has been approved for options trading and is also the basis for an ETF.

Russell Midcap® Index. The Russell Midcap® Index measures the performance of the 800 smallest companies in the Russell 1000® Index, which represent approximately 30% of the total market capitalization of the Russell 1000® Index. As of the latest reconstitution, the average market

[22] The shares of the iShares Dow Jones U.S. Basic Materials Sector Index Fund are traded on the Exchange.

[23] The shares of the iShares Dow Jones U.S. Consumer Goods Sector Index Fund are traded on the Exchange.

[24] The shares of the iShares Dow Jones U.S. Consumer Services Sector Index Fund are traded on the Exchange.

[25] The shares of the iShares Dow Jones U.S. Financial Services Index Fund are traded on the Exchange.

[26] The shares of the iShares Dow Jones U.S. Healthcare Sector Index Fund are traded on the Exchange.

[27] The shares of the iShares Dow Jones U.S. Industrial Sector Index Fund are traded on the Exchange.

[28] The shares of the iShares Dow Jones U.S. Energy Sector Index Fund are listed and traded on the Exchange.

[29] The shares of the iShares Dow Jones U.S. Real Estate Index Fund are listed and traded on the Exchange.

[30] Amex represents that the Dow Jones U.S. Semiconductor Index meets the Exchange's generic standards under Amex Rule 1000A, Commentary .02.

[31] The shares of the iShares Dow Jones U.S. Technology Sector Index Fund are listed and traded on the Exchange.

[32] The shares of the iShares Dow Jones U.S. Utilities Sector Index Fund are traded on the Exchange.

[33] The shares of the iShares Russell 2000 Index Fund are traded on the Exchange.

capitalization was approximately $5.2 billion; the median market capitalization was approximately $3.9 billion. The largest company in the index had an approximate market capitalization of $14.8 billion. This Underlying Index is the basis for an ETF.[34]

Russell Midcap® Growth Index. The Russell Midcap® Growth Index measures the performance of those Russell Midcap companies with higher price-to-book ratios and higher forecasted growth values. The stocks are also members of the Russell 1000® Growth Index. This Underlying Index[35] is the basis for an ETF .

Russell Midcap® Value Index. The Russell Midcap® Value Index measures the performance of those Russell Midcap companies with lower price-to-book ratios and lower forecasted growth values. The stocks are also members of the Russell 1000® Value Index. This Underlying Index[36] is the basis for an ETF .

Russell 1000® Index. The Russell 1000® Index measures the performance of the 1,000 largest companies in the Russell 3000® Index, which represents approximately 92% of the total market capitalization of the Russell 3000® Index. As of the latest reconstitution, the average market capitalization was approximately $13.8 billion; the median market capitalization was approximately $4.9 billion. The smallest company in the index had an approximate market capitalization of $1.9 billion. This Underlying Index[37] is the basis for an ETF .

Russell 1000® Growth Index. The Russell 1000® Growth Index measures the performance of those Russell 1000 companies with higher price-to-book ratios and higher forecasted growth values. This Underlying Index[38] is the basis for an ETF .

Russell 1000® Value Index. The Russell 1000® Value Index measures the performance of those Russell 1000 companies with lower price-to-book ratios and lower forecasted growth values. This Underlying Index[39] is the basis for an ETF .

Russell 2000® Growth Index. The Russell 2000® Growth Index measures the performance of those Russell 2000 companies with higher price-to-book ratios and higher forecasted growth values. This Underlying Index[40] is the basis for an ETF .

Russell 2000® Value Index. The Russell 2000® Value Index measures the performance of those Russell 2000 companies with lower price-to-book ratios and lower forecasted growth values. This Underlying Index[41] is the basis for an ETF .

Investment Objective of the Funds

Each Bullish Fund will seek investment results that correspond, before fees and expenses, to twice (200%) the daily performance of an Underlying Index and will invest its assets based upon the same strategies as conventional index funds. Rather than holding positions in equity securities and certain financial instruments intended to create exposure to 100% of the daily performance of an Underlying Index, these Funds will hold positions in equity securities and certain financial instruments designed to create exposure equal to twice (200%), before fees and expenses, the daily performance of an Underlying Index. These Bullish Funds generally will hold at least 85% of their assets in the component equity securities of the relevant Underlying Index. The remainder of assets will be devoted to certain financial instruments[42] and money market instruments[43] that are intended to create the additional needed exposure to such Underlying Index necessary to pursue its investment objective.

The Bearish Funds will seek daily investment results, before fees and expenses, of the inverse or opposite (−100%) of the Underlying Index, in the case of the Short Funds, or twice the inverse or opposite (−200%) of the daily performance of the Underlying Index, in the case of the UltraShort Funds. Each of these Bearish Funds will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Underlying Index. Each Bearish Fund will rely on establishing positions in Financial Instruments that provide, on a daily basis, the inverse or opposite of, or twice the inverse or opposite of, as the case may be, the performance of the relevant Underlying Index. Normally, 100% of the value of the portfolios of each Bearish Fund will be devoted to Financial Instruments and Money Market Instruments.

While the Advisor will attempt to minimize any ''tracking error'' between the investment results of a particular Fund and the performance (and specified multiple thereof) or the inverse performance (and specified multiple thereof) of its Underlying Index, certain factors may tend to cause the investment results of a Fund to vary from such relevant Underlying Index or specified multiple thereof.[44] The Bullish Funds are expected to be highly correlated to each respective Underlying Index and investment objective (0.95 or greater). The Bearish Funds are expected to be highly inversely correlated to each respective Underlying Index and investment objective (−0.95 or greater).[45] In each case, the Funds are expected to have a daily tracking error of less than 5% (500 basis points) relative to the specified multiple or inverse multiple of the performance of the relevant Underlying Index.

[34] The shares of the iShares Russell Midcap Index Fund are traded on the Exchange.

[35] The shares of the iShares Russell Midcap Growth Index Fund are traded on the Exchange.

[36] The shares of the iShares Russell Midcap Value Index Fund are traded on the Exchange.

[37] The shares of the iShares Russell 1000 Index Fund are traded on the Exchange.

[38] The shares of the iShares Russell 1000 Growth Index Fund are traded on the Exchange.

[39] The shares of the iShares Russell 1000 Value Index Fund are traded on the Exchange.

[40] The shares of the iShares Russell 2000 Growth Index Fund are traded on the Exchange.

[41] The shares of the iShares Russell 2000 Value Index Fund are traded on the Exchange.

[42] The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors, as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (the ''Financial Instruments'').

[43] Money market instruments include U.S. government securities and repurchase agreements (the ''Money Market Instruments''). Repurchase agreements held by the Funds will be consistent with Rule 2a–7 of the 1940 Act, *i.e.*, remaining maturities of 397 days or less and rated investment-grade.

[44] Several factors may cause a Fund to vary from the relevant Underlying Index and investment objective including: (1) A Fund's expenses, including brokerage fees (which may be increased by high portfolio turnover) and the cost of the investment techniques employed by that Fund; (2) less than all of the securities in the benchmark index being held by a Fund and securities not included in the benchmark index being held by a Fund; (3) an imperfect correlation between the performance of instruments held by a Fund, such as futures contracts, and the performance of the underlying securities in the cash market; (4) bid-ask spreads (the effect of which may be increased by portfolio turnover); (5) holding instruments traded in a market that has become illiquid or disrupted; (6) a Fund's share prices being rounded to the nearest cent; (7) changes to the benchmark Underlying Index that are not disseminated in advance; (8) the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements; and (9) early and unanticipated closings of the markets on which the holdings of a Fund trade, resulting in the inability of the Fund to execute intended portfolio transactions.

[45] Correlation is the strength of the relationship between (1) the change in a Fund's NAV and (2) the change in the benchmark Underlying Index (investment objective). The statistical measure of correlation is known as the ''correlation coefficient.'' A correlation coefficient of +1 indicates a perfect positive correlation while a value of −1 indicates a perfect negative (inverse) correlation. A value of zero would mean that there is no correlation between the two variables.

The Portfolio Investment Methodology

The Advisor will seek to establish an investment exposure in each portfolio corresponding to each Fund's investment objective based on its ''Portfolio Investment Methodology,'' as described below. The Exchange states that the Portfolio Investment Methodology is a mathematical model based on well-established principles of finance that are widely used by investment practitioners, including conventional index fund managers.

As set forth in the Application, the Portfolio Investment Methodology was designed to determine for each Fund the portfolio investments needed to achieve its stated investment objectives. The Portfolio Investment Methodology takes into account a variety of specified criteria and data, the most important of which are: (1) Net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day, (2) the amount of required exposure to the Underlying Index, and (3) the positions in equity securities, Financial Instruments, and/or Money Market Instruments at the beginning of each trading day. The Advisor pursuant to the methodology will then mathematically determine the end-of-day positions to establish the required amount of exposure to the Underlying Index (the ''Solution''), which will consist of equity securities, Financial Instruments, and/or Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of equity securities, Financial Instruments, and/or Money Market Instruments that must be bought or sold for the day. The Solution represents the required exposure and, when necessary, is converted into an order or orders to be filled that same day.

Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trade is made. Therefore, the NAV calculated for a Fund on a given day should reflect the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades will then be reflected in the NAV for that Fund that is calculated as of 4 p.m. Eastern Time (''ET'') on Tuesday.

The timeline for the Portfolio Investment Methodology is as follows. Authorized Participants (''APs'' or ''Authorized Participants'')[46] have a 3 p.m. ET cut-off for orders submitted by telephone, facsimile, and other electronic means of communication and a 4 p.m. ET cut-off for orders received via mail. AP orders by mail are exceedingly rare. Orders are received by the Distributor and relayed to the Advisor within ten (10) minutes. The Advisor will know by 3:10 p.m. ET the number of creation/redemption orders by APs for that day. Orders are then placed at approximately 3:40 p.m. ET as market-on-close orders. At 4 p.m. ET, the Advisor will again look at the exposure to make sure that the orders placed are consistent with the Solution, and as described above, the Advisor will execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

Description of Investment Techniques

In attempting to achieve its individual investment objectives, a Fund may invest its assets in equity securities, Financial Instruments, and Money Market Instruments. The Bullish Funds will hold between 85–100% of their total assets in the equity securities contained in the relevant Underlying Index. The remainder of assets, if any, will be devoted to Financial Instruments and Money Market Instruments that are intended to create additional needed exposure to such Underlying Index necessary to pursue the Bullish Funds' investment objectives. The Bearish Funds generally will not invest in equity securities related to the applicable Underlying Index, but rather will hold only Financial Instruments and Money Market Instruments. To the extent, applicable, each Fund will comply with the requirements of the 1940 Act with respect to ''cover'' for Financial Instruments and thus may hold a significant portion of its assets in liquid instruments in segregated accounts.

Each Fund may engage in transactions in futures contracts on designated contract markets where such contracts trade and will only purchase and sell futures contracts traded on a U.S. futures exchange or board of trade. Each Fund will comply with the requirements of Rule 4.5 of the regulations promulgated by the Commodity Futures Trading Commission (the ''CFTC'').[47]

Each Fund may enter into swap agreements and/or forward contracts for the purposes of attempting to gain exposure to the equity securities of its Underlying Index without actually transacting such securities. The Exchange states that the counterparties to the swap agreements and/or forward contracts will be major broker-dealers and banks. The creditworthiness of each potential counterparty is assessed by the Advisor's credit committee pursuant to guidelines approved by the Board. Existing counterparties are reviewed periodically by the Board. Each Fund may also enter into repurchase and reverse repurchase agreements with terms of less than one year and will only enter into such agreements with (i) members of the Federal Reserve System, (ii) primary dealers in U.S. government securities, or (iii) major broker-dealers. Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as ''cover'' for Financial Instruments, as described above, or to earn interest.

The Trust will adopt certain fundamental policies consistent with the 1940 Act, and each Fund will be classified as ''non-diversified'' under the 1940 Act. Each Fund, however, intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a ''regulated investment company'' or ''RIC'' for purposes of the Internal Revenue Code (the ''Code''), in order to relieve the Trust and the Funds of any liability for Federal income tax to the extent that its earnings are distributed to shareholders.[48]

Availability of Information about the Shares and Underlying Indexes

The Trust's Internet Web site (*http://www.proshares.com*), which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (a) The prior business day's closing NAV, the reported closing price, and a calculation

[46] An Authorized Participant is either (1) a broker-dealer or other participant in the continuous net settlement system of the NSCC or (2) a DTC participant who has entered into a participant agreement with the Distributor.

[47] The CFTC Rule 4.5 provides an exclusion for investment companies registered under the 1940 Act from the definition of the term ''commodity pool operator'' upon the filing of a notice of eligibility with the National Futures Association.

[48] In order for a Fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851 (b)(4)(B) of the Code) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other RICs).

of the premium or discount of such price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts, (c) its prospectus and product description, and (d) other quantitative information, such as daily trading volume. The prospectus and/or product description for each Fund will inform investors that the Trust's Internet Web site has information about the premiums and discounts at which the Fund's Shares have traded.[49]

The Amex will disseminate for each Fund on a daily basis by means of the Consolidated Tape Association (''CT'') and CQ High Speed Lines information with respect to an Indicative Intra-Day Value (the ''IIV'') (as defined and discussed herein), recent NAV, shares outstanding, and the estimated cash amount and total cash amount per Creation Unit. The Exchange will make available on its Internet Web site at *http://www.amex.com* daily trading volume, the closing price, the NAV, and the final dividend amounts to be paid for each Fund.

Each Fund's total portfolio composition will be disclosed on the Internet Web site of the Trust (*http://www.proshares.com* or another relevant Internet Web site as determined by the Trust) and/or the Exchange (*http://www.amex.com*). The Trust expects that Internet Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the names and number of shares held of each specific equity security, the specific types of Financial Instruments and characteristics of such Financial Instruments, and the cash equivalents and amount of cash held in the portfolio of each Fund. This public Internet Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the ''IIV File'' (as described below) and the portfolio composition file or ''PCF'' (as described below). Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Internet Web site as well as in the IIV File and PCF provided to Authorized Participants. The format of the public Internet Web site disclosure and the IIV File and PCF will differ because the public Internet Web site will list all portfolio holdings, while the IIV File and PCF will similarly provide the portfolio holdings, but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit.[50] Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Internet Web site, at *http://www.proshares.com*, and/or at the Exchange's Internet Web site at *http://www.amex.com.*

Beneficial owners of Shares (''Beneficial Owners'') will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual Fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of Fund distributions, and Form 1099–DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Internet Web sites, such as at *http://www.bloomberg.com.* Data regarding each Underlying Index is also available from the respective Underlying Index provider to subscribers. Several independent data vendors also package and disseminate Underlying Index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only). The value of each Underlying Index will be updated intra-day on a real time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated at least every 15 seconds throughout the trading day by Amex or another organization authorized by the relevant Underlying Index provider in accordance with Commentary .02(c) to Amex Rule 1000A.

Creation and Redemption of Shares

Each Fund will issue and redeem Shares only in aggregations of at least 50,000 (''Creation Units''). Purchasers of Creation Units will be able to separate the Creation Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each of the Bullish Funds and Bearish Funds is expected to be in the range of $50–$250.

At the end of each business day, the Trust will prepare the list of names and the required number of shares of each Deposit Security (as defined herein) to be included in the next trading day's Creation Unit for each Bullish Fund (the ''Deposit List''). The Trust will then add to the Deposit List the cash information effective as of the close of business on that business day and create a PCF for each Fund, which it will transmit to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an ''IIV File,'' which it will use to disclose the Funds'' holdings of Financial Instruments.[51] The IIV File will contain, for each Bullish Fund (to the extent that it holds Financial Instruments) and Bearish Fund, information sufficient by itself or in connection with the PCF and other available information for market participants to calculate a Fund's IIV and effectively arbitrage such Fund.

For example, the following information would be provided in the IIV File for a Bullish Fund holding equity securities and Financial Instruments such as swaps and futures contracts and a Bearish Fund holding swaps and futures contracts: (A) The total value of the equity securities held by the Bullish Fund, (B) the notional value of the swaps held by such Funds (together with an indication of the Underlying Index on which such swap is based and whether the Funds' position is long or short), (C) the most

[49] The Application requests relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, if a product description is being provided in lieu of a prospectus, Commentary .03 of Amex Rule 1000A requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Furthermore, any sales material will reference the availability of such circular and the prospectus.

[50] The composition will be used to calculate the NAV later that day.

[51] The Trust or the Advisor will post the IIV File to a password-protected Internet Web site before the opening of business on each business day, and all Authorized Participants and the Exchange will have access to a password and the Internet Web site containing the IIV File. The Funds, however, will disclose each business day to the public identical information, but in a format appropriate to public investors, at the same time the Funds disclose the IIV File and PCF, as applicable, to industry participants.

recent valuation of the swaps held by the Funds, (D) the notional value of any futures contracts (together with an indication of the Underlying Index on which such contract is based, whether the Funds' position is long or short and the contract's expiration date) held by the Funds, (E) the number of futures contracts held by the Funds (together with an indication of the Underlying Index on which such contract is based, whether the Funds' position is long or short and the contract's expiration date), (F) the most recent valuation of the futures contracts held by the Funds, (G) the total assets and total shares outstanding of each Fund, and (H) a ''net other assets'' figure reflecting expenses and income of the Funds to be accrued during and through the following business day and accumulated gains or losses on the Funds' Financial Instruments through the end of the business day immediately preceding the publication of the IIV File. To the extent that any Bullish or Bearish Fund holds cash or cash equivalents about which information is not available in a PCF, information regarding such Fund's cash and cash equivalent positions will be disclosed in the IIV File for such Fund.

The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for Bearish Funds and, together with the information on equity securities contained in the PCF, will be sufficient for calculation of the IIV for Bullish Funds, during such next business day. The IIV File, together with the applicable information in the PCF in the case of Bullish Funds, will also be the basis for the next business day's NAV calculation.

Under normal circumstances, the Bullish Funds will be created and redeemed either entirely for cash and/or for a deposit basket of equity securities (''Deposit Securities''), *plus* a Balancing Amount (as defined herein), as described below. Under normal circumstances, the Bearish Funds will be created and redeemed entirely for cash. The IIV File published before the open of business on a business day will, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit , and the amount of cash that will be paid upon redemption of a Creation Unit, for each Bearish Fund for that business day.

For the Bullish Funds, the PCF will be prepared by the Trust after 4 p.m. ET and transmitted by the Index Receipt Agent to the NSCC by 6:30 p.m. ET. All Authorized Participants and the Exchange will have access to the Internet Web site containing the IIV File. The IIV File will reflect the trades made on behalf of a Bullish Fund that business day and the creation/redemption orders for that business day. Accordingly, by 6:30 p.m. ET, Authorized Participants will know the composition of the Bullish Fund's portfolio for the next trading day.

Creation of the Bullish Funds. Typically, persons [52] purchasing Creation Units from a Bullish Fund must make an in-kind deposit of a basket of Deposit Securities consisting of the securities selected by the Advisor from among those securities contained in the Fund's portfolio, together with an amount of cash specified by the Advisor (the ''Balancing Amount''), plus the applicable transaction fee (the ''Transaction Fee''). The Deposit Securities and the Balancing Amount collectively are referred to as the ''Creation Deposit.'' The Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit. The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.[53]

The Balancing Amount will be determined shortly after 4 p.m. ET each business day. Although the Balancing Amount for most exchange-traded funds is a small amount reflecting accrued dividends and other distributions, for the Bullish Funds it is expected to be larger due to changes in the value of the Financial Instruments, *i.e.*, daily mark-to-market. For example, assuming a basket of Deposit Securities is valued at $5 million for a Bullish Fund, if the market increases 10%, such basket of Deposit Securities would be equal to $5.5 million at 4 p.m. ET. The value of the Bullish Fund shares would increase by 20% or $1 million to equal $6 million total. With such basket of Deposit Securities valued at $5.5 million, the Balancing Amount would be $500,000. The values of the next day's basket of Deposit Securities and Balancing Amount are announced between 5:30 p.m. ET and 6 p.m. ET each business day.

The Balancing Amount may, at times, represent a significant portion of the aggregate purchase price (or in the case of redemptions, the redemption proceeds). This may occur because the mark-to-market value of the Financial Instruments held by the Bullish Funds, if any, is included in the Balancing Amount. The Transaction Fee is a fee imposed by the Bullish Funds on investors purchasing (or redeeming) Creation Units.

The Trust will make available through the DTC or the Distributor on each business day, prior to the opening of trading on the Exchange, the Deposit List indicating the Deposit Securities to be included in the Creation Deposit for each Bullish Fund.[54] The Trust also will make available on a daily basis information about the previous day's Balancing Amount.

The Bullish Funds reserve the right to permit or require an Authorized Participant to substitute an amount of cash and/or a different security to replace any prescribed Deposit Security.[55] Substitutions might be permitted or required, for example, because one or more Deposit Securities may be unavailable, or may not be available in the quantity needed to make a Creation Deposit. Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit are expected to be immaterial, and in any event, the Adviser may adjust the relevant Transaction Fee to ensure that the Fund collects the extra expense from the purchaser. Orders to create or redeem Shares of the Bullish Funds must be placed through an Authorized Participant.

As noted below, the Exchange will disseminate through the facilities of the CT, at least every 15 seconds during the Exchange's regular trading hours, the IIV on a per Fund Share basis. The Exchange states that the Funds will not be involved in, or responsible for, the calculation or dissemination of any such amount and will make no warranty as to its accuracy.

[52] Authorized Participants are the only persons who may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are exempt from registration as broker-dealers to engage in securities transactions and who are participants in DTC. *See supra* note 46.

[53] While not typical, if the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount will be a negative number, in which case the Balancing Amount will be paid by the Bullish Fund to the purchaser, rather than vice-versa.

[54] In accordance with the Advisor's Code of Ethics, personnel of the Advisor with knowledge about the composition of a Creation Deposit will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

[55] In certain limited instances, a Bullish Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Advisor might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases.

Redemption of the Bullish Funds. Bullish Fund Shares in Creation Unit-size aggregations will be redeemable on any day on which the NYSE is open in exchange for a basket of securities (''Redemption Securities''). As it does for Deposit Securities, the Trust will make available to Authorized Participants on each business day prior to the opening of trading a list of the names and number of shares of Redemption Securities for each Fund. The Redemption Securities given to redeeming investors in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.[56] Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit will either receive from or pay to the Bullish Fund a cash amount equal to the difference (the ''Redemption Balancing Amount''). In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount will be equal to the Balancing Amount described above in the creation process involving Deposit Securities. The redeeming investor also must pay to the Bullish Fund a transaction fee (''Redemption Transaction Fee'') to cover transaction costs.[57]

A Bullish Fund has the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered at the time of tender, and the Redemption Balancing Amount. The Adviser currently contemplates that Creation Units of each Bullish Fund will be redeemed principally in kind with respect to the Redemption Securities and the Redemption Balancing Amount in cash largely resulting from the value of the Financial Instruments included in the Bullish Fund.

In order to facilitate delivery of Redemption Securities, each redeeming Authorized Participant, acting on behalf of a Beneficial Owner or a DTC participant, must have arrangements with a broker-dealer, bank, or other custody provider in each jurisdiction in which any of the Redemption Securities are customarily traded. If neither the redeeming Beneficial Owner nor the Authorized Participant has such arrangements, and it is not otherwise possible to make other arrangements, the Bullish Fund may, in its discretion, redeem the Bullish Fund Shares for cash.

Creation and Redemption of the Bearish Funds. The Bearish Funds will be purchased and redeemed entirely for cash (''All-Cash Payments''). The use of an All-Cash Payment for the purchase and redemption of Creation Unit aggregations of the Bearish Funds is due to the limited transferability of Financial Instruments.

The Exchange believes that Shares will not trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of a Share deviates enough from the Creation Unit, on a per share basis, to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy Shares at a discount, immediately cancel them in exchange for the Creation Unit, and sell the underlying securities in the cash market at a profit, or sell Shares short at a premium and buy the Creation Unit in exchange for the Shares to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.[58]

Placement of Creation Unit Purchases and Redemption Orders. Creation Unit aggregations of the Funds will be purchased at NAV, *plus* a Transaction Fee. For the Bearish Funds, the purchaser will make a cash payment by 12 p.m. ET on the third business day following the date on which the request was made (T+3). For the Bullish Funds, the purchaser will make an in-kind payment and/or all cash payment generally on the third business day following the date on which the request was made (T+3). Purchasers of either Fund in Creation Unit aggregations must satisfy certain creditworthiness criteria established by the Advisor and approved by the Board, as provided in the participation agreement (''Participation Agreement'') between the Trust and Authorized Participants.

Creation Unit aggregations of the Bullish Funds will be redeemable either in-kind or all in cash equal to the NAV, *less* the Redemption Transaction Fee. Creation Unit aggregations of the Bearish Funds will be redeemable for an All-Cash Payment equal to the NAV, *less* the Redemption Transaction Fee. A Bullish Fund has the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered for redemption at the time of tender.[59]

Dividends

Dividends, if any, from net investment income will be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Certain Funds may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year.

Dividends and other distributions on the Shares of each Fund will be distributed, on a *pro rata* basis to Beneficial Owners of such Shares. Dividend payments will be made through the DTC and the DTC participants to Beneficial Owners then of record with proceeds received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the ''Dividend Reinvestment Service'') available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make a Dividend Reinvestment Service available to Beneficial Owners.

[56] There may be circumstances, however, where the Deposit Securities and Redemption Securities could differ. For example, if ABC stock were replacing XYZ stock in a Fund's Underlying Index at the close of a day's trading session, the day's prescribed Deposit Securities might include ABC, but not XYZ, while the day's prescribed Redemption Securities might include XYZ but not ABC.

[57] Redemptions in which cash is substituted for one or more Redemption Securities may be assessed a higher Redemption Transaction Fee to offset the transaction cost to the Fund of selling those particular Redemption Securities. This Redemption Transaction Fee is expected to be between $500 and $1,000.

[58] In their 1940 Act Application, the Applicants stated that they do not believe that All-Cash Payments will affect arbitrage efficiency. This is because the Applicants believe it makes little difference to an arbitrageur whether Creation Unit aggregations are purchased in exchange for a basket of securities or cash. The important function of the arbitrageur is to bid the share price of any Fund up or down until it converges with the NAV. Applicants note that this can occur regardless of whether the arbitrageur is allowed to create in cash or with a basket of Deposit Securities. In either case, the arbitrageur can effectively hedge a position in a Fund in a variety of ways, including the use of market-on-close contracts to buy or sell the Financial Instruments.

[59] The Exchange states that, in the event an Authorized Participant has submitted a redemption request in good order and is unable to transfer all or part of a Creation Unit aggregation for redemption, a Fund may nonetheless accept the redemption request in reliance on the Authorized Participant's undertaking to deliver the missing Fund Shares as soon as possible, which undertaking shall be secured by the Authorized Participant's delivery and maintenance of collateral. The Authorized Participant's Participation Agreement will permit the Fund to buy the missing Shares at any time and will subject the Authorized Participant to liability for any shortfall between the cost to the Fund of purchasing the Shares and the value of the collateral.

The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of such a service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the service, and such investors should ascertain from their broker such necessary details. Shares acquired pursuant to such service will be held by the Beneficial Owners in the same manner and subject to the same terms and conditions as for original ownership of Shares. Brokerage commissions, charges, and other costs, if any, incurred in purchasing Shares in the secondary market with the cash from the distributions generally will be an expense borne by the individual Beneficial Owners participating in reinvestment through such service.

Dissemination of Indicative Intra-Day Value (IIV)

In order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, the Exchange will disseminate through the facilities of the CT: (i) Continuously throughout the trading day, the market value of a Share, and (ii) at least every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or ''IIV'' [60] as calculated by the Exchange (the ''IIV Calculator''). [61] Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator (the Exchange) will calculate an IIV for each Fund in the manner discussed below. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex is expected to be close to the most recently calculated Fund NAV on a per share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

IIV Calculation for the Bullish Funds. The IIV Calculator (the Exchange) will disseminate the IIV throughout the trading day for the Bullish Funds holding equity securities and Financial Instruments, if any. The IIV Calculator (the Exchange) will determine such IIV by: (i) Calculating the estimated current value of equity securities held by such Fund by (a) calculating the percentage change in the value of the Deposit Securities indicated on the Deposit List (as provided by the Trust) and applying that percentage value to the total value of the equity securities in the Fund as of the close of trading on the prior trading day (as provided by the Trust) or (b) calculating the current value of all of the equity securities held by the Fund (as provided by the Trust); (ii) calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (iii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iv) adding the values from (i), (ii), and (iii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value; and (v) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

IIV Calculation for the Bearish Funds. The IIV Calculator (the Exchange) will disseminate the IIV throughout the trading day for the Bearish Funds. The IIV Calculator (the Exchange) will determine such IIV by: (i) Calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (ii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iii) adding the values from (i) and (ii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value; and (iv) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares under Amex Rule 1002A. A minimum of two Creation Units (at least 100,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange, pursuant to Amex Rule 1002A(a)(ii), will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per share for each Fund will be calculated daily and made available to all market participants at the same time.

The continued listing criteria provides for the delisting or removal from listing of the Shares under any of the following circumstances:

- If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Index Fund Shares, there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; or
- If the value of the applicable Underlying Index or portfolio is no longer calculated or available on at least a 15-second delayed basis through one or more major market data vendors during the time the Shares trade on the Exchange; or
- The IIV is no longer made available on at least a 15-second delayed basis;[62] or
- If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Additionally, the Exchange will file a proposed rule change pursuant to Rule

[60] The IIV is also referred to by other issuers as an ''Estimated NAV,'' ''Underlying Trading Value,'' ''Indicative Optimized Portfolio Value (IOPV),'' and ''Intraday Value'' in various places such as the prospectus and marketing materials for different exchange-traded funds.

[61] The Exchange will calculate the IIV for each Fund.

[62] In the event an IIV is no longer calculated or disseminated by one or more major market data vendors, the Exchange will immediately contact the Commission.

19b–4 under the Act seeking approval to continue trading the Shares of a Fund and, unless approved, the Exchange will commence delisting the Shares of such Fund if:

- The Underlying Index provider substantially changes either the Underlying Index component selection methodology or the weighting methodology; or
- A successor or substitute index is used in connection with the Shares.[63]

Furthermore, Amex Rule 1002A(b)(ii) establishes that, if the IIV or the Underling Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Exchange represents the Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares.

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding shares in all Funds of the Trust listed on the Exchange.

Amex Trading Rules

The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, and account opening and customer suitability (Amex Rule 411).[64]

Stop and Stop Limit Orders. Amex Rule 154, Commentary .04(c), provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may, with the prior approval of a floor official, be elected by a quotation, as set forth in Commentary .04(c)(i)–(v). The Exchange has designated Index Fund Shares, including the Shares, as eligible for this treatment.[65]

Amex Rule 190. Amex Rule 190, Commentary .04, applies to Index Fund Shares listed on the Exchange, including the Shares. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security or securities that can be subdivided or converted into the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations of the application of Commentary .03 of Amex Rule 1000A to the Funds. The Circular will further inform members and member organizations of the prospectus and/or product description delivery requirements that apply to the Funds. The Application included a request that the exemptive order also grant relief from Section 24(d) of the 1940 Act. Any product description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the Application.[66]

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of the Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the Advisor will be made by phone, facsimile, or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in shares of the Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

As noted above, Amex Rule 1002A(b)(ii) sets forth the trading halt parameters with respect to Index Fund Shares. If the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Suitability and Information Circular

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules.

This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's

[63] If the Trust uses a successor or substitute index, the Exchange's filing will address, among other things, the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

[64] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, Nyieri Nazarian, Assistant General Counsel, Amex, and Edward Cho, Special Counsel, Division of Market Regulation, Commission, on December 14, 2006 (clarifying Amex trading rules applicable to the Shares).

[65] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[66] *See supra* note 49 and accompanying text.

investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, Amex members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Hours of Trading/Minimum Price Variation

The Funds will trade on the Exchange until 4:15 p.m. ET each business day. Shares will trade with a minimum price variation of $.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[67] in general, and furthers the objectives of Section 6(b)(5),[68] in particular, in that it 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 transaction in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change, as amended, will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[67] 15 U.S.C. 78f(b).

[68] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change, as amended, at the end of a 15-day comment period.[69]

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*. Please include File Number SR–Amex–2006–101 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–2006–101. 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 information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–101 and should be submitted on or before January 11, 2007.

[69] Amex has requested accelerated approval of this proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[70]

Nancy M. Morris,

Secretary.

[FR Doc. E6–22093 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[70] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54963; File No. SR–CHX–2006–30]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Permit Routing From the Matching System to a Destination Selected by a Participant

December 19, 2006.

I. Introduction

On October 19, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit CHX participants to identify a destination to which an order should be routed when its execution would improperly trade through other markets or its display would improperly lock or cross other markets. The proposed rule change was published for comment in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the **Federal Register** on October 30, 2006.[3] The Commission received no comments regarding the proposal.

II. Description of the Proposal

The proposal would allow the Exchange to follow a participant's instructions to route an order to a destination of the participant's choice instead of cancelling the order back to the participant when an execution could not take place in the Matching System because the execution would improperly trade through another market[4] or the display of an order would improperly lock or cross another market.[5] The Exchange proposes to provide these routing services pursuant to a separate agreement between the Exchange and each participant on whose behalf orders would be routed. The participant would be responsible for ensuring that it has a relationship with its chosen destination to permit the requested access. The Exchange would not be involved in the execution of the order nor would the Exchange take responsibility for handling of the order by the destination selected by the participant.[6] The Exchange, however, would report any execution or cancellation of the order by the destination to the participant that submitted the order and would notify the destination of any cancellations or changes to the order submitted by the order-sending participant. The Exchange's routing service would be a facility of the Exchange subject to the Exchange's rules and fees. The destinations chosen by each participant would not constitute Exchange facilities.

III. Discussion

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 national securities exchange, and in particular, with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[8]

The Commission believes that the proposed rule change may increase the efficiency of CHX participants in seeking to execute their customers' orders that are ineligible for execution or display in the CHX Matching System. In particular, orders that otherwise would be cancelled back to a participant may be sent directly to a destination chosen by the participant for handling. The Commission notes that fees and charges for the Exchange's routing service must be consistent with the Act,[9] and the Exchange must provide its routing service in compliance with, among other things, the provisions of the Act requiring the rules of a national securities exchange not to permit unfair discrimination between customers, issuers, brokers, or dealers.[10]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2006–30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22082 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 54642 (October 23, 2006), 71 FR 63372.

[4] The Exchange's rules currently provide that the Exchange's Matching System will not execute an order if its execution would cause an improper trade-through of another ITS market or, when Regulation NMS is implemented, if its execution would be improper under Rule 611 of Regulation NMS (together, an ''improper trade-through''). *See* CHX Article 20, Rule 5; *see also* 17 CFR 242.611.

[5] The Exchange's rules currently provide that the Matching System will not display an order if its display would improperly lock or cross other markets. *See* CHX Article 20, Rule 6.

[6] *See* CHX Article 20, Rule 5, proposed Interpretation and Policy .03(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this 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).

[9] *See* 15 U.S.C. 78f(b)(4).

[10] *See* 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78S(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54964; File No. SR–FICC–2006–16]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Replace the Government Securities Division Clearing Fund Calculation Methodology With a Yield-Driven Value-at-Risk Methodology

December 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 4, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on November 14, 2006, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to replace the Government Securities Division (''GSD'') margin calculation methodology with a value-at-risk (''VaR'') methodology.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Netting members of FICC's GSD are required to maintain clearing fund deposits. Each member's required clearing fund deposit is calculated daily to ensure that enough funds are available to cover the risks associated with that member's activities.

The purposes served by the clearing fund are to: (i) have on deposit from each member clearing fund sufficient to satisfy any losses that may be incurred by FICC or its members resulting from the default by a member and the resultant close out of that member's settlement positions and (ii) ensure that FICC has sufficient liquidity at all times to meet its payment and delivery obligations.

FICC proposes to replace the current clearing fund methodology, which uses haircuts and offsets, with a VaR methodology that is expected to better reflect market volatility and more thoroughly distinguish the levels of risk presented by individual securities. Specifically, FICC is proposing to

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

replace the existing GSD margin calculation methodology with a yield-driven VaR model. VaR is defined to be the maximum amount of money that may be lost on a portfolio over a given period of time within a given level of confidence. With respect to the GSD, FICC is proposing a 99 percent three-day VaR.[3]

The changes to the components that comprise the current clearing fund calculation compared to the proposed VaR methodology in relation to the risks addressed by the components are summarized below.

Existing methodology	Risk addressed	Proposed methodology[4]
Receive/Deliver component using margin factors.	Fluctuation in security prices	Interest rate or index-driven model, as appropriate[5]
Repo Volatility component	Fluctuation in repo interest rates	Repo index-driven model[6]
Funds Adjustment Deposit component (based on the average size of the member's 20 highest funds-only settlement amounts over the most recent 75 business days).	Uncertainty of whether a member will satisfy its funds-only settlement obligation.	Margin Requirement Differential ("MRD") (a portion of which is based on the historical size of a member's funds-only settlement obligation)
Average Post Offset Margin Amount component (based on the 20 highest margin amounts derived from all outstanding net settlement positions over the most recent 75 business days).	Uncertainty of whether a member will satisfy its next clearing fund call.	MRD (a portion of which is based on the historical variability a member's clearing fund requirement)
Not specifically covered	Intraday risk and additional exposure due to portfolio variation and potential loss in unlikely situations beyond the model's effective range.	Coverage Component (if necessary, applies additional minimum charge to bring coverage to the applicable confidence level)

[4] Under the current GSD rules, Category 1 Inter-Dealer Brokers are subject to a $5 million clearing fund requirement. This proposed rule change does not alter that requirement.

[5] FICC would have the discretion to not apply the interest rate model to classes of securities whose volatility is less amenable to statistical analysis, which is usually due to a lack of pricing history. In lieu of such a calculation, the required charge with respect to such positions would be determined based on a historic index volatility model.

[6] FICC is proposing a new definition for "Term Repo Transaction" to clarify the types of transactions covered by this component. As proposed, Term Repo Transaction would mean, on any particular Business Day, a Repo Transaction for which settlement of the Close Leg "is scheduled to occur two or more Business Days after the scheduled settlement of the Start Leg." In addition, the existing definition for "Term GCF Repo Transaction" is being revised to conform to the proposed language for "Term Repo Transaction" as the new definition provides greater clarity as to transactions covered.

In addition, FICC may include in a member's clearing fund requirement a "special charge" as determined by FICC based on such factors as it determines to be appropriate from time to time such as price fluctuations, volatility, or lack of liquidity of any security.

The proposed VaR methodology, if approved, would necessitate a change to the risk management consequences of the late allocation of repo substitution collateral.[7] Because offset classes and margin rates will no longer be present in the GSD's rules as proposed, FICC would base the margining for such a generic CUSIP on the same calculation as that used for securities whose volatility is less amenable to statistical analysis.

The VaR methodology will not include calculations that are incorporated in the GSD's current cross-margining programs with The Clearing Corporation ("TCC") and the Chicago Mercantile Exchange ("CME"). In order to provide for continuity of cross-margining following the implementation of the VaR methodology and because certain key calculations required for cross-margining are unique to cross-margining, the GSD will continue to perform the applicable cross-margining calculations outside of the VaR model. The GSD would then adjust the cross-margining clearing fund calculation using a scaling ratio of the VaR clearing fund calculation to the cross-margining clearing fund calculation so that the clearing fund amount available for cross-margining is appropriately aligned with the VaR model. The proposed changes described herein would necessitate amendments to FICC's cross-margining agreements with TCC and CME as follows:

1. The definition of FICC's "Margin Rate" in each of the agreements would be amended to reflect that the margin rate will no longer be based on margin factors published in the current rules (as these would no longer be applied under the VaR methodology). Instead, they would be determined based on a percentage that would be determined using the same parameters and data (*e.g.*, confidence level and historic indices) as those used to generate margin factors in the current rules.

2. Section 5(a) of each cross-margining agreement would be amended to state that FICC's residual margin amount would be calculated as specified in the agreement and would be adjusted, if necessary, to correct for differences between the methodology of calculating the residual margin amount as described in the agreement and the VaR methodology. This change is necessary to account for the deletion of relevant margin factor and disallowance schedules (which, like the margin factors, are incorporated into the agreements by reference) from the GSD rules and to adjust for the possibility that the new VaR methodology could generate a charge that would otherwise allow for a cross-margining reduction that is greater than the margin requirement.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to FICC because it should assure the safeguarding of securities and funds in FICC's custody or control or for which it is responsible by enabling FICC to more effectively manage risk presented by members' activity.

[3] Category 2 Dealers and Category 2 Futures Commission Merchants will be subject to higher confidence levels than other Netting Members.

[7] Securities Exchange Act Release No. 53534 (March 21, 2006), 71 FR 15781 [File No. SR–FICC–2005–18]. This rule change created a generic CUSIP offset and applicable margin rate for determining clearing fund consequences for such late allocations.

[8] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments have not been solicited with respect to the proposed rule change, and none have been received. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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*. Please include File Number SR–FICC–2006–16 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–FICC–2006–16. 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 FICC and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query*. 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–FICC–2006–16 and should be submitted on or before January 17, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22085 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54969; File No. SR–FICC–2006–15]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Modify its Rules To Diversify and Standardize Clearing Fund Collateral Requirements Across the Divisions To Improve Liquidity and Minimize Risk for Its Members

December 19, 2006.

I. Introduction

On October 4, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2006–15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on November 9, 2006.[2] A correction and extension of the comment period was published in the **Federal Register** on November 22, 2006.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description

FICC seeks to modify the rules of both of the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'') (collectively, ''Divisions'') to diversify and standardize Clearing Fund[4] collateral requirements across the Divisions in order to improve liquidity and minimize risk for FICC and its members.

Presently, both GSD and MBSD members may satisfy their Clearing Fund requirements with cash deposits. Members may also satisfy a portion of their Clearing Fund requirements with an open account indebtedness fully secured by certain types of securities and/or letters of credit. FICC is modifying its rules to: (1) Expand the types of securities members may deposit to satisfy their Clearing Fund requirements (''Eligible Clearing Fund Securities''); (2) establish concentration limits with regard to members' use of Eligible Clearing Fund Securities; (3) create a correlating range of haircuts to be applied to the expanded types of Eligible Clearing Fund Securities; and (4) eliminate letters of credit as a generally acceptable form of collateral securing members' open account Clearing Fund indebtedness.

A. Revised Clearing Fund Components

(1) Cash

Currently the rules of GSD require that the greater of $100,000 or ten percent of a member's Clearing Fund requirement with a maximum of $500,000 be made in the form of cash.[5] The rules of MBSD currently do not contain a minimum cash requirement. For both Divisions, the proposed new cash collateral component will be the lesser of $5,000,000 or ten percent of a

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54682 (November 1, 2006), 71 FR 65855.

[3] Securities Exchange Act Release No. 54682A (November 17, 2006), 71 FR 67667. The correction addressed a typographical error in the original release.

[4] The GSD Rules refer to member collateral deposits as the ''Clearing Fund'' while the MBSD rules refer to these deposits as the ''Participants Fund.'' The term ''Clearing Fund'' in this order will refer to both.

[5] GSD Rule 4, Section 2(b)(ii).

member's Clearing Fund requirement with a minimum of $100,000.

(2) Securities

Currently each Division of FICC accepts different types of securities as Clearing Fund collateral. For example, GSD accepts Agency securities but not mortgage-backed securities, and MBSD accepts mortgage-backed securities but not Agency securities. In addition, there are currently no concentration limits placed on securities deposited as Clearing Fund collateral at either Division. In an effort to standardize the securities that are eligible as Clearing Fund collateral across the Divisions, FICC is modifying the rules of both Divisions by adding a definition, ''Eligible Clearing Fund Securities'' (for GSD) and ''Eligible Participants Fund Securities'' (for MBSD) to each Division's rules.[6] As defined, Eligible Clearing Fund Securities and Eligible Participants Fund Securities will be unmatured bonds which are either an ''Eligible Clearing Fund Agency Security,'' an ''Eligible Clearing Fund Mortgage-Backed Security'' or an ''Eligible Clearing Fund Treasury Security.''[7] ''Eligible Clearing Fund Agency Security'' would be defined as a direct obligation of those U.S. agencies or government sponsored enterprises as FICC may designate from time to time that satisfies the criteria set forth in notices issued by FICC from time to time. ''Eligible Clearing Fund Mortgage-Backed Security'' would be defined as a mortgage-backed pass through obligation issued by those U.S. agencies or government sponsored enterprises as FICC may designate from time to time that satisfies the criteria set forth in notices issued by FICC from time to time. ''Eligible Clearing Fund Treasury Security'' would be defined as a direct obligation of the U.S. government that satisfies the criteria set forth in notices issued by FICC from time to time.

(3) Security Concentration Provisions

FICC is also establishing security concentration limits for Clearing Fund deposits. A minimum of forty percent of a member's required Clearing Fund deposit will have to be in cash or Eligible Clearing Fund Treasury Securities. The remainder of a member's deposit can be secured by cash or the pledge of Eligible Clearing Fund Securities. However any deposits of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities in excess of twenty-five percent of a member's required Clearing Fund deposit will be subject to an additional haircut equal to twice the percentage specified in the haircut schedule. Furthermore, no more than twenty percent of a member's required Clearing Fund deposit can be secured by pledged Eligible Clearing Fund Agency Securities of a single issuer. Lastly, no member will be permitted to post as Clearing Fund collateral Eligible Clearing Fund Agency Securities for which it is the issuer.[8]

(4) Letters of Credit and Other Adequate Assurances

The provisions in the Divisions' Rules that pertain to Letter of Credit Issuers are being modified to reflect that letters of credit are no longer a generally accepted form of Clearing Fund collateral.[9] Effective April 1, 2007 (the regular expiration date of letters of credit), members that have letters of credit posted as collateral (other than members, if any, that have been required to post letters of credit for legal risk), will be required to replace the portion of the Clearing Fund collateralized by letters of credit with either cash or Eligible Clearing Fund Securities.

(5) Implementation Timeframes

The foregoing rule changes will become effective thirty days after an Important Notice is issued to members informing them that FICC's systems are ready to accommodate such changes. The corresponding changes to FICC's rules will be made at that time. On April 1, 2007, changes pertaining to letters of credit will be made to FICC's rules.

(6) Alternative Proportions of Eligible Collateral

As is currently the case under FICC's rules, FICC continues to reserve the right to require different proportions of the Clearing Fund collateral components as necessary to address any heightened legal or insolvency risks presented by a member.[10]

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.[11] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed 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.[12] The Commission finds that FICC's rule change is consistent with these requirements because by revising its rules governing the acceptable forms of Clearing Fund collateral deposits to increase the liquidity of its Clearing Fund and to minimize risk to FICC and its members, the proposed rule change should better enable FICC to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.[13]

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,[14] that the proposed rule change (File No. SR–FICC–2006–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22089 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[6] Initial eligibility criteria for each type of Eligible Clearing Fund Securities and Eligible Participants Fund Securities will be announced to members through an Important Notice prior to the effective date of this proposed rule change. Any future changes to the eligibility criteria will also be announced to members through Important Notices in advance of such changes becoming effective.

[7] In the MBSD Rules, these terms would be as follows: ''Eligible Participants Fund Agency Security,'' ''Eligible Participants Fund Mortgage-Backed Security,'' and ''Eligible Participants Fund Treasury Security.''

[8] However, a member will be permitted to pledge Eligible Clearing Fund Mortgage-Backed Securities for which it is the issuer subject to a haircut specified in the haircut schedule. Initially the haircut will be fourteen percent. If the member exceeded the twenty-five percent concentration limit, the haircut initially will be twenty-one percent.

[9] FICC has found that in practice letters of credit are not as liquid as cash and securities and therefore pose more risk to FICC and its members when pledged as Clearing Fund collateral. FICC is, however, reserving the right to require letters of credit from members in those instances where a particular member has been found, by FICC in its discretion, to present legal risk. GSD Rule 4, Section 2(o) and MBSD Rule 2, Section 4 of Article IV.

[10] GSD Rule 4, Section 2(o) and MBSD Rule 2, Section 4 of Article IV.

[11] 15 U.S.C. 78s(b).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54957; File No. SR–FICC–2006–07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Relating To Providing Certain Reports to Its Members

December 18, 2006.

On April 21, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on October 4, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change clarifies the frequency of certain reports that FICC will provide to its members. FICC conforms the rules of both its divisions, the Government Securities Division and the Mortgage Backed Securities Division (''MBSD''), regarding FICC's providing financial reports to members to the equivalent rule of FICC's affiliated clearing agency, The Depository Trust Company (''DTC'').[3] FICC's revised rules will state that quarterly unaudited financial statements will only be provided to members/participants for the first three quarters of the calendar year.[4] In addition, in conformity to DTC's rules, FICC is deleting the time frames from its rules for providing the financial reports to its members/participants. Nevertheless, FICC will attempt to continue to make its annual audited financial statements available to its members within 60 days of the fiscal year end and will attempt to continue to make its quarterly unaudited financial statements available within 30 days of the quarter end.

FICC is also changing the time frame in Article V, Rule 5, Section 3 of MBSD's Clearing Rulebook and EPN Rulebook regarding providing its participants with the independent auditors' annual study and evaluation of MBSD's internal accounting controls. While FICC will delete these rule provisions in their entirety, FICC will make this study and evaluation available to its members within a reasonable time after it receives it from its independent accountants, which is DTC's practice.

II. Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the proposed rule change conforms FICC's rules regarding providing unaudited quarterly financial statements and the independent auditor's annual study of internal controls with those of DTC and as such should promote the national clearance and settlement system.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2006–07) be, and hereby is, approved.[7]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22091 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54570 (Oct. 4, 2006), 71 FR 60591.

[3] DTC Rule 15.

[4] An annual audited financial statement is provided to members after the last calendar quarter of each year.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54968; File No. SR–NASDAQ–2006–058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit Orders to Peg to the Midpoint of the Best Bid and Best Offer

December 19, 2006.

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] The NASDAQ Stock Market LLC (''Nasdaq'') is filing with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing to enable orders to peg to the midpoint between the best bid and best offer (''Midpoint Peg''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.nasdaq.complinet.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, 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 proposes to modify the rule language pertaining to pegged orders (''Pegged Orders'') to enable orders to peg to the midpoint of the best bid and best offer. Nasdaq currently offers pegged functionality, adjusting the price of the order based upon changes in the best bid and offer in the national market system (''National Market System'').

A market participant entering a Pegged Order currently can specify that its price will equal the inside quote on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

the same side of the market (''Primary Peg'') or the opposite side of the market (''Market Peg''). The Primary Peg and Market Peg Orders may establish their pricing relative to the appropriate bids or offers by the selection of one or more offset amounts that will adjust the price of the order by the offset amount selected. Additionally, a new timestamp is created for the order each time it is automatically adjusted.

The proposed rule change is in accordance with Rule 612 of Regulation NMS,[5] which governs sub–penny quoting of National Market System stocks[6] (the ''Sub–Penny Rule''). The proposed rule change would not result in the display, rank, or acceptance of a bid or offer, an order, quotation, or indication of interest in any NMS stock that is priced in an increment smaller than $0.01 per share, unless the price of the bid or offer, order, indication of interest is priced less than $1.00 per share.[7]

The following examples illustrate how the proposed rule change would operate (note that the price of the order updates in response to changes in the best bid and best offer, excluding the order's own impact on the best bid or best offer):

Example 1

The best bid is $20.00 and the best offer is $20.06.

The Midpoint Peg Order to buy will be priced at $20.03.

The best offer updates to $20.08.

The price of the Midpoint Peg Order will update to $20.04.

Example 2

The best bid is $20.00 and the best offer is $20.03.

The price of the Midpoint Peg Order to buy will be $20.01. The true midpoint would be $20.015, but to avoid pricing the order in a sub–penny increment the bid is rounded down. However, if the order instead was a sell order the offer would be rounded up.

The best offer updates to $20.08.

The price of the Midpoint Peg Order will be $20.04.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] 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.

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.

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) of the Act[10] and Rule 19b–4(f)(6) thereunder[11] in that it: (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.[12]

A proposed rule changed filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay, which would make the rule change 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 provides a potentially useful enhancement for investors to utilize in executing their trades.[15]

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.* Please include File Number SR–NASDAQ–2006–058 in 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–NASDAQ–2006–058. 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

[5] 17 CFR 242.600 *et seq. See also* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[6] An NMS stock is any non-option security for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(46) and (47).

[7] If the bid or offer, order, or indication of interest is priced less than $1.00 per share, the minimum allowable increment is $0.0001 per share. *See* 17 CFR 242.612(b).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required by Rule 19b–4(f)(6)(iii), on November 28, 2006, Nasdaq provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 Nasdaq. 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–NASDAQ–2006–058 and should be submitted on or before January 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22081 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54965; File No. SR–NASDAQ–2006–052]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive Distributor Fee for Specific Data Element

December 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2006, The NASDAQ Stock Market LLC (''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 substantially prepared by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to allow for the unlimited, free distribution of Nasdaq's aggregate best bid and offer quotation for Nasdaq's quoting in stocks listed on the New York Stock Exchange LLC (''NYSE'') and the American Stock Exchange LLC (''Amex''). Below is the text of the proposed rule change. Proposed new language is *italicized.*

7023. Nasdaq TotalView

(a)–(b) No change.

(c) OpenView

(1) The OpenView entitlement package consists of all individual Nasdaq Market Center participant quoting quotes and orders in *non-Nasdaq* exchange-listed securities in the system. There shall be a charge of $6 per month per controlled device for OpenView.

(2) The OpenView Top-of-File (''OpenView TOF'') entitlement package consists of the Nasdaq aggregate best bid and offer quotation for non-Nasdaq exchange-listed securities in the system. There shall be no fee for the distribution of the OpenView TOF.

(d) No change.

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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

To encourage more competition in the trading and quoting of NYSE- and Amex-listed stocks, as well as to encourage subscribership to Nasdaq's full-depth products, Nasdaq proposes new Nasdaq Rule 7023(c)(2) to institute a fee waiver for firms wishing to distribute the OpenView Top-of-File, which consists of Nasdaq's aggregate real-time best bid and offer quote for NYSE- and Amex-listed stocks. The aggregate best bid and offer is a single data element within Nasdaq OpenView. That element can be extracted from OpenView and, under this proposal, can be separately distributed free of charge. Nasdaq believes that this will promote wider distribution of data and benefit investors wishing to use that data in making investment decisions. Nasdaq has filed this proposal as a change to the rule manual of The NASDAQ Stock Market LLC. As such, it will be operative when Nasdaq begins operating as an exchange with respect to the trading of NYSE- and Amex-listed securities.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(5) of the Act,[7] in particular, in that waiving the distribution fee for Nasdaq's aggregate best bid and offer in NYSE and Amex securities will encourage broader dissemination of that data and thereby increase transparency in those securities.

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.

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 proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposal: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Telephone conversation among John Roeser, Assistant Director, Division of Market Regulation (''Division''), Commission, David Liu, Special Counsel, Division, Commission, and Jeffrey Davis, Vice President-Deputy General Counsel, Nasdaq, on December 18, 2006.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

shorter time as designated by the Commission.[10]

At any time within 60 days of the filing of such 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.* Please include File Number SR–NASDAQ–2006–052 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–NASDAQ–2006–052. 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 Nasdaq. 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–NASDAQ–2006–052 and should be submitted on or before January 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22086 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[10] Nasdaq has satisfied the five-day pre-filing requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54959; File No. SR–NASDAQ–2006–056]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish Nasdaq Custom Data Feeds

December 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2006, The NASDAQ Stock Market LLC (''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 substantially by Nasdaq. 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

Nasdaq proposes to establish a new data filtration service—Nasdaq Custom Data Feeds—that will permit entities to request and receive customized data feeds containing data elements from Nasdaq's current data feeds. The text of the proposed rule change is available at *http://nasdaq.complinet.com/file_store/pdf/rulebooks/SR–NASDAQ–2006–056.pdf*, at Nasdaq, and at the Commission's Public Reference Room.[3]

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 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

As quoting and trading have become increasingly automated, the rate of market data traffic has increased materially. For example, the rate of message traffic on TotalView has increased by more than 250% since January 1, 2004. Nasdaq notes that the integration of INET, Brut and Nasdaq execution systems into a single system has increased message traffic further. The data feeds of all markets are seeing similar, and in some cases more pronounced, increases in message traffic. These increases strain the capacity of brokers and vendors in two ways, at significant expense. First, the telecommunications bandwidth a firm purchases must be increased to handle the message traffic without material increases in latency or dropped information. Second, once the data is received it must be processed, with resulting hardware expenses.

As a result, participants are seeking to ''filter'' or reduce the amount of data received without losing information necessary for their trading activities. A service that can filter the data without impacting data performance or integrity is considered valuable, given the savings obtained from lower telecommunications and hardware costs. Moreover, some firms prefer that Nasdaq undertake the filtering prior to delivery rather than accept the full data and filter it themselves. Firms are willing to pay in kind to have ''irrelevant'' data removed from their data stream, avoiding superfluous, recurring payments to telecommunication providers for what they consider to be ''noise.''

To respond to this demand, Nasdaq proposes to establish Nasdaq Custom Data Feeds, a customized data feed service that would allow Nasdaq to accommodate particular subscribers' requests for market data feeds containing a pre-specified combination of data elements otherwise delivered on multiple data feeds. Customized data feeds would allow a customer to receive an entirely unique combination of functionality and content.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://www.nasdaqtrader.com.*

There is a variety of firm types that could be interested in customized data feeds. For example, firms whose trading of Nasdaq securities is specific to particular subsets of securities might elect to receive only data associated with those securities. A common example is a trading desk that specializes in trading only Nasdaq-100 securities and corresponding index products. For such firms, receipt of data pertaining to stocks outside the Nasdaq-100 is unnecessary and costly from a hardware and software perspective. Another example would be a firm whose program trading models exclusively track liquidity patterns at the first five price levels on the bid-side and ask-side of the market. For such a firm, receipt of liquidity measures beyond the fifth price level is again unnecessary, resource intensive, and wasteful. Traditional market data vendors, specializing in providing all data to their customers, are poor candidates for either of these types of customized feeds.

Additionally, firms have specific protocols or formats that they prefer when receiving data feeds. Nasdaq, historically, has delivered all data feeds in a uniform format and protocol, but now has the ability to offer more flexibility in the delivery mechanisms. Therefore, Nasdaq would also customize the data using protocols the customer specifies to Nasdaq. For example, market data vendors or subscriber firms having made particular technology architecture investments may benefit from receipt of the Nasdaq data in particular formats. For example, firms having invested in late-model, high-speed processors may very much prefer to receive single-channel data feeds inclusive of every data point. Such a feed would have the advantage of being much easier and efficient to deploy into single-box architecture. By contrast, firms with earlier-model technology, and/or an architecture with multiple applications reading the data feeds, may prefer ''highly channelized'' data feeds, such as one channel for securities beginning with the letter A, one for securities beginning with the letter B, etc. This allows the firm to utilize existing capacity and technology investments in a way reflective of the firm's particular needs.

There are many different customized data feeds that could be requested, though the actual usefulness of customized feeds will ultimately be determined by how technology and bandwidth trends continue to evolve. By charging a fee for the customized data feeds, market participants and market data vendors are expected to request and deploy customized data feeds only in cases where there is a great deal of economic value conferred on the recipient. Customized data feeds will be delivered through Nasdaq's existing data dissemination architecture under the technological conditions applicable to recipients of the un-filtered data feeds.

Nasdaq will make available the data delivered via any customized data feed at the same time it is made available via its regular data feeds. This fact alone does not determine the speed with which the data would be received at the distributor firm. There are many factors that determine the time that a firm receives, processes, acts upon market data—regardless of when the data is sent or whether the data feed is customized. For example, regardless of the data feed, the amount of bandwidth the firm has purchased will impact how quickly the market data is received. Furthermore, the sheer number of miles and the number of routers and switches between the origin of a data feed and its terminus will impact the time it is ultimately received and processed. Further, the size of the messages (measured in bits), in conjunction with the processing power of the equipment inside the network and at the subscriber firm also impact the time a firm receives and acts upon the data. In the end, a firm receiving a customized data feed could ultimately receive and process the data via its customized data feed either prior to or subsequent to when it would receive this data from a traditional data feed. It is dependent on all of the above factors. To reiterate, Nasdaq will make available data via both traditional and customized data feeds at the same time.

Nasdaq has based its fee schedule for the customized data feeds on an array of considerations: (1) What types of requests are most likely to be made; (2) the composition and hardware, software, and man-hour costs associated with accommodating those requests—noting that there could be significant variety between the requests; and (3) a minimum level of initial and ongoing support associated with the initiation and maintenance of the customized data feeds. In general, these proposed fees are intended to approximate the average costs for the prospective customized feeds, rather than the cost of any specific customized feed. It is expected that some customized feeds could cost more and some could cost less to build than the initial fee.

The price for customized data feeds will have three components: (1) A $50,000 initial set-up fee for the establishment and creation of the unique feed; (2) the user and distributor fees for the underlying data entitlement from which the customized data is extracted; and an additional fee of $1000 per month, per filtered feed. For example, if a firm requests a feed that contains specific data elements from TotalView plus some data elements from the Nasdaq Index Dissemination Feed (''NIDS''), the firm would pay the TotalView distributor fee (currently between $1,000 and $5,000 per month), plus the NIDS distributor fee (currently between $1,500 and $2,000 per month) plus an additional fee of $1000 per month for receiving the data in filtered format, in addition to the $50,000 set-up fee.

This is an optional data product that would only be purchased if a potential customer determines that the perceived benefit of one of these data products outweighs the cost of obtaining it. In other words, supply and demand will determine the ultimate success of these data products. Nasdaq believes this is consistent with, and critical to, the operation of a fair and competitive marketplace. In the order approving Regulation NMS, the Commission voiced its support for proposals that ''would allow investors and vendors greater freedom to make their own decisions regarding the data they need.'' [4] Nasdaq believes that the Nasdaq Custom Data Feeds service is precisely the type of product that the Commission envisioned when it determined to grant greater flexibility in the provision and purchase of market data.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] 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 Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Use of the Custom Data Feeds service is voluntary and the subscription fees will be imposed on all purchasers equally based on the level of service selected. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and

[4] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 at 37566 (June 29, 2005).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

administering the service, among other things.

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. As a general matter, the Commission has long held the view that ''competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system.'' [7] The Commission has also stated ''that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs, and better service in the interest of investors and the general public.'' [8]

The Commission goes on to state its belief ''that the appropriate analysis to determine a proposal's competitive impact is to weigh the proposal's overall benefits and costs to competition based on the particular facts involved, such as examining whether the proposal would promote economically efficient execution of securities and fair competition between and among exchange markets and other market centers, as well as fair competition between the participants of a particular market.'' [9]

The Nasdaq Custom Data Feeds service is designed to increase the efficiency of executions by enabling vendors to provide market data in the manner they deem most cost efficient. Vendors will only utilize the service if they conclude that it is economically beneficial to them and to their users. There is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that generate the data. Nasdaq fully expects its competitors to quickly copy this innovative new service as they have copied other Nasdaq data products in the past.

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.

[7] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[8] Securities Exchange Act Release No. 54155 (July 20, 2006), 71 FR 41291 at 41298.

[9] *Id.*

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.* Please include File No. SR–NASDAQ–2006–056 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–NASDAQ–2006–056. 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 Nasdaq.

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–NASDAQ–2006–056 and should be submitted on or before January 17, 2007.

[10] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22087 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54958; File No. SR–NSCC–2006–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Harmonizing Administrative Provisions With Affiliated Clearing Agencies

December 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 3, 2006, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b-4(f)(4) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this filing is to harmonize various administrative aspects of NSCC's rules with the rules of its clearing agency affiliates, the Fixed Income Clearing Corporation (''FICC'') and The Depository Trust Company (''DTC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b-4(f)(4).

in Item IV below. NSCC has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. OFAC Status and Securities Eligibility

NSCC's Rule 3 sets forth criteria relating to the eligibility of securities and other financial instruments that underlie contracts that may be cleared through NSCC. NSCC proposes to add new Section 11 to this rule that will contain language that is similar to language in FICC's and DTC's rules. Specifically, the revised rule would provide that securities or other financial instruments of an issuer listed on the Office of Foreign Assets Control (''OFAC'') list of specially designated nationals distributed by the U.S. Department of the Treasury or of an issuer that is incorporated in a country that is on the OFAC list of countries subject to comprehensive sanctions may not be: (a) Submitted to NSCC by a member for processing or (b) requested by members for inclusion on lists of securities or other financial instruments maintained by NSCC pursuant to Rule 3.

2. Forms

Currently, NSCC's Rule 28 states that the delivery of forms of lists, notices, and other documents may be delivered by the use of any media, such as magnetic tape, discs, or cards, as shall be prescribed in NSCC's Procedures. NSCC proposes to remove the language ''such as magnetic tape, discs or cards'' because such modes of delivery are outdated.

3. Signatures

NSCC proposes to amend Rule 32 with respect to acceptable forms of signatures. Currently, this rule permits NSCC to accept documents from members that have been executed using mechanically reproduced facsimile signatures. The proposed rule change modernizes this rule by permitting NSCC, at its option, to rely on any other electronic, optical, or other similar forms of signatures in lieu of original signatures. The new language is adapted from similar language contained in the rule of DTC and both of FICC's divisions (the Government Securities Division and the Mortgage-Backed Securities Division). In addition, NSCC will revise the title of this rule from ''Facsimile Signatures'' to ''Signatures'' in order to remain consistent with the above-mentioned changes.

NSCC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder because they are concerned solely with the administration of NSCC and do not affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule change will have no impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

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)(iii)[5] of the Act and Rule 19b–4(f)(4)[6] thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or person using the service. 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.* Please include File No. SR–NSCC–2006–13 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–NSCC–2006–13. 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 NSCC's principal office and on NSCC's Web site at *http://www.nscc.com/legal/index.html.* 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 submission should refer to File No. SR–NSCC–2006–13 and should be submitted on or before January 17, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22084 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b-4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54955; File No. SR–NYSE–2006–89]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Require Member Organizations To Use Their Own Mnemonics When Entering Orders

December 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 1, 2006, the New York Stock Exchange LLC (''NYSE'' 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 principally by the NYSE. The Exchange filed this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Rule 131A (A Member Organization Shall Use Its Own Mnemonic When Entering Orders) to require that member organizations obtain and use mnemonics in their own name to accurately identify the member organization submitting orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.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 Exchange provides its member organizations with unique identifiers referred to as mnemonics. The Exchange, at its discretion, may assign multiple mnemonics to a member organization. Member organizations often use different mnemonics as an internal order management tool or for other administrative purposes. Member organizations are required to input one of their mnemonics in the ''entering firm'' field when submitting an order to the NYSE.

The Exchange proposes to add Rule 131A to require that member organizations use mnemonics that accurately identify the member organization entering an order at the Exchange. The purpose for this change is three-fold. First, the Exchange's ability to accurately identify the member organization entering an order is necessary to properly attribute trade volume to the correct member organization for direct billing purposes. Second, the proposed rule change will strengthen the Exchange's ability to meet its obligations as a self-regulatory organization by providing additional and readily accessible information regarding the entering member organization. Third, the proposed rule change will clarify the use of mnemonics by member organizations.

With respect to the need to clarify the use of mnemonics; currently, clearing member organizations at times request mnemonics from the NYSE on behalf of member organizations for which they clear. Some of these requests are made in the name of the clearing member organization instead of the entering member organization. As a result, member organizations may use mnemonics that the NYSE recognizes as that of the clearing member organization instead of the member organization submitting the order.

Additionally, some member organizations that handle the execution of orders for another member organization on the Floor of the Exchange do not use the mnemonic of the member organization on whose behalf they are handling the order. The result is that the member organization where the order originated is not identified as the entering firm. Additionally, some member organizations fail to use their own mnemonic to identify themselves as the entering firm when handling an order for a non-member.

The proposed rule will create a uniform standard of use pertaining to mnemonics. It will also accomplish the stated business and regulatory goals of the Exchange and provide a basis for disciplinary action in instances where deviation from that standard is found.

The Exchange does not anticipate that there will be any significant system or program changes required of its member organizations in order to comply with the Rule. Pursuant to the Rule, member organizations will be required to use mnemonics issued in their own name. Any member organization that currently uses mnemonics in the name of its clearing member organization must obtain new mnemonics in its own name or change the name of the entering member organization on its existing mnemonics so that the existing mnemonic will thereafter accurately identify the name of the member organization. The Exchange retains the responsibility of issuing new mnemonics or changing the name of the entering member organization on its existing mnemonics. Clearing member organizations may continue to request mnemonics on behalf of a member organization that enters orders on the Exchange, but such mnemonics must be in the entering member organization's name.

Proposed Rule 131A requires member organizations submitting orders to the Exchange to enter a mnemonic issued in their own name in the order's ''entering firm'' field. For example, in the case of a Floor-based execution where a Floor broker for member organization (A) requests that an independent Floor broker handle the order for execution, the independent Floor broker must use the mnemonic of member organization (A) as the entering firm. Similarly, if member organization (B) uses its order entry systems to submit the order of member organization (C) to the Exchange, member organization (B) must use its own mnemonic to identify itself as the entering firm. The proposed rule does not change the way in which member organizations currently conduct their business. Moreover, the Exchange does not believe that the Rule hinders its member organization's ability to compete. The proposed rule merely changes the way in which the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

[5] The Exchange requested that the Commission waive the five-day pre-filing notice requirement specified in Rule 19b(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

attributes trade volume for direct billing purposes.

2. Statutory BasisThe

Exchange states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to promote just and equitable principles of trade, to serve 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 Exchange states that the proposed rule will provide more accurate order identification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange states that the proposed rule change does 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 states that no written comments were solicited or received with respect to the proposed rule change.

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) of the Act[7] and Rule 19b-4(f)(6) thereunder.[8]

The Exchange requests that the Commission waive the provision in Rule 19b-4(e)(6)(iii)[9] requiring written notice of the NYSE's intent to file the proposed rule change at least five days prior to the filing date. The Commission grants the Exchange's request to waive the pre-filing requirement because a similar version this proposal was filed previously with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2006–89 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–NYSE–2006–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the 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 No. SR–NYSE–2006–89 and should be submitted on or before January 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–22090 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b-4(f)(6).

[9] 17 CFR 240.19b-4(e)(6)(iii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54966; File No. SR–NYSEArca–2006–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Exchange Fees and Charges

December 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2006, NYSE Arca, Inc. (''NYSE Arca'' 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 substantially prepared by NYSE Arca. On December 15, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. NYSE Arca has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its Schedule of Fees and Charges For Exchange Services (''Schedule'') to make a minor change to the Firm Transaction Fee, eliminate certain obsolete fees, and make a non-substantive formatting change to the Schedule. The text of the proposed rule change is available on NYSE Arca's Web site at *http://www.nysearca.com*, at the principal office of NYSE Arca, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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 the these statements may be examined at the places specified in Item IV below. NYSE Arca 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 its Schedule in order to make a minor change to the Firm Transaction Fee, eliminate certain obsolete fees, and make a non-substantive formatting change.

Changes to the Firm Transaction Fee

NYSE Arca charges transaction fees associated with all option contracts that are executed on the Exchange. The current Firm Transaction Fee applies to OTP Firm [5] proprietary trades that have a customer of that firm on the contra side of the transaction. The Exchange offers this rate as an incentive to OTP Firms to direct their customer orders to NYSE Arca for execution. NYSE Arca applies the Firm Transaction Fee to all trades between an OTP Firm and a customer of the same OTP Firm, whenever a proprietary account of the firm is used. This includes market makers that trade against orders that their affiliated firm represents for customers. The Firm Transaction Fee became applicable for certain market maker transactions upon the filing of a proposed rule change with the commission.[6] At that time the Market Maker Transaction Fee was $0.26 per contract and the Firm Transaction Fee was $0.15 per contract. As stated above, the cost savings was offered as a incentive for Firms to send addition customer orders to NYSE Arca. As part of a more recent proposed rule change,[7] the Market Maker Transaction Fee was lowered to $0.16 per contract, representing a savings of almost 40% over the previous fee. Because of the reduction in the Market Maker Transaction Fee, the additional savings afforded by the application of the Firm Transaction Fee in certain instances, is no longer significant. In order to simplify the billing process, all market maker transactions will now be billed the same the fee of $0.16 per contract. While this change represents a modest $0.01 increase in certain cases, the Exchange believes that it is more than compensated for by the previous reduction in the Market Maker Transaction Fee.

The change to this fee will be reflected in the footnote associated with the Firm Transaction Fee on the Schedule.

Elimination of Obsolete Fees

Due to changes in the market structure at NYSE Arca certain fees have become outdate and obsolete. The Exchange proposes to eliminate these fees from the Schedule.

- *Order Cancellation Fee*—This fee was applied to orders were cancelled on the PCX Plus automated trading system. This system is no longer in use and accordingly the fee no longer applies.
- *Booth WorkStation Fee*—This fee was assessed to OTP Firms operating on the floor of the Exchange that used certain Exchange provided workstations. These workstations have been replaced by firm proprietary systems; therefore the fee no longer applies.
- *Printer Fee*—Prior to the introduction of the OX system,[8] the Exchange provided printers that would generate order tickets in certain cases where orders were not electronically executed or represented. OX is a fully automated system and does not need to print order tickets. The printers are no longer in use and therefore the user fee no longer applies.
- *Market Maker Held Fees*—Market Makers on the floor of the Exchange now use proprietary trading systems to interface with the OX system. The Market Maker Hand Held system is no longer in use on NYSE Area; accordingly the fees associated with it no longer apply.

Administrative Changes

the Exchange also proposes a change to the formatting of the Schedule. Presently, the Schedule shows a list of explanatory end notes on the last page of the Schedule. With the new format, the end notes will be moved to the appropriate page that shows the corresponding fee or charge. Except where previously noted, the language in the reference notes will remain the same, just the formatting of the reference note will change. The Exchange believes that by having the reference notes on the same page as the corresponding charge or fee, the Schedule will be more user friendly and easier to read.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6 of the Act, [9] in general, and with Section 6(b)(4) of the Act,[10] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its OTP Holders [11] and OTP Firms trading option contracts on NYSE Arca.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder [13] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.[14]

[5] *See* NYSE Arca Rule (1(r).

[6] *See* Securities Exchange Act Release No. 53165 (January 22, 2006), 71 FR 4955 (January 30, 2006) (SR–PCX–2005–136..

[7] *See* Securities Exchange Act Release No. 54309 (August 11, 2006), 71 FR 48571 (August 21, 2006) (SR–NYSEArca–2006–25).

[8] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006)(SR–NYSEArca–2006–13).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* NYSE Arca rule 1(q).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19bn–4(f)(2).

[14] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the

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 from (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–89 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–NYSEArca–2006–89. 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 NYSE Arca. 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–NYSEArca–2006–89 and should be submitted on or before January 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 06–9864 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–M

Commission may summarily abrogate the proposal, the Commission considers the period to commence on December 15, 2006, the date on which the Exchange submitted Amendment No. 1.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54967; File No. SR–NYSEArca–2006–90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Exchange-Traded Notes Linked to the MSCI India Total Return Index Pursuant to Unlisted Trading Privileges

December 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2006, NYSE Arca, Inc. (the ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through NYSE Arca Equities, is proposing to trade Exchange-Traded Notes (''Notes'') of Barclays Bank PLC (''Barclays'') linked to the performance of the MSCI India Total Return Index (''Index'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available on the Exchange's Web site *http://www.nysearca.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 III 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 is proposing to trade the Notes of Barclays linked to the performance of the Index pursuant to UTP. The Index is a free-float-adjusted market capitalization index that is designed to measure the market performance, including price performance and income from dividend payments, of Indian equity securities. The Index is currently comprised of the top 68 companies by market capitalization listed on the National Stock Exchange of India. The Index is calculated by Morgan Stanley Capital International Inc. (''MSCI'') and is denominated in U.S. dollars. A rule proposal for the original listing and trading of the Notes by New York Stock Exchange LLC (''NYSE'') has been approved by the Commission.[3] The Exchange deems the Notes to be an equity securities, thus rendering trading in the Notes subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Notes on the Exchange would be from 9:30 a.m. to 8 p.m. Eastern Time (''ET'') in accordance with NYSE Arca Equities Rule 7.34(a).

Quotations for and last sale information regarding the Notes are disseminated through the Consolidated Quotation System. Bloomberg L.P. disseminates the value of the Index under the ticker symbol ''NDEUSIA'' and this information is widely disseminated by quotation vendors. The Index is static during the NYSE's trading day from 9:30 a.m. ET to 4 p.m. ET, which is equivalent to the Exchange's Core Trading Session. An intraday ''indicative value'' (''IIV'') meant to approximate the intrinsic

[3] *See* Securities Exchange Act Release No. 54944 (December 15, 2006).

economic value of the Notes, updated to reflect changes in currency exchange rates, will be calculated and published by a third-party service provider via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the regular NYSE trading day of 9:30 a.m. to 4 p.m. ET on each day on which the Notes are traded on NYSE.

The Exchange represents that it would cease trading in the Notes during the listing market's trading hours if: (a) the listing market stops trading the Notes because:

(i) of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12;

(ii) MSCI ceases to maintain or calculate the value of the Index on a periodic basis or if the value of the Index ceases to be widely available; or

(iii) the IIV is no longer calculated or disseminated; or (b) if the listing market delists the Notes. Additionally, the Exchange states that it may cease trading the Notes if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. In addition, the Exchange represents that it would follow any procedures with respect to trading halts as set forth in NYSE Arca Equities Rule 7.34.

In connection with the trading of the Notes, NYSE Arca Equities represents that it would inform Exchange members in an Information Bulletin of the special characteristics and risks associated with trading the Notes. The Exchange also would require its members to deliver a prospectus or product description to investors purchasing Notes prior to or concurrently with a transaction in the Notes and will note this prospectus delivery requirement in the Information Bulletin.[4]

In addition, before an Exchange member recommends a transaction in the Notes, the member must determine that the Notes are suitable for the customer.

The Exchange represents that its surveillance procedures would incorporate and rely upon existing Exchange surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Notes in all trading sessions and to detect violations of Exchange rules, thereby deterring manipulation. The Exchange states that its current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[5] in general and Section 6(b)(5) of the Act[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[7] because it deems the Notes to be equity securities, thus rendering trading in the Notes subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–90 and should be submitted on or before January 17, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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 national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing

[4] *See* e-mail dated December 19, 2006, from John Carey, Assistant General Counsel, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division of Market Regulation, Commission.

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78s(b)(5).

[7] 17 CFR 240.12f–5.

[8] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

competition among markets that trade the Notes.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[10] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[11] The Commission notes that it previously approved the listing and trading of the Notes on NYSE.[12] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[13] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Notes to be equity securities, thus rendering trading in the Notes subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Notes are disseminated through the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, will be calculated and published by a third-party service provider via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the Exchange's Core Trading Session. In addition, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the Notes. The Exchange has represented that it would follow the procedures with respect to trading halts set forth in NYSE Arca Equities Rule 7.34.

The Commission notes that, if the Notes should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Notes pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Notes on a UTP basis.

2. The Exchange would inform Exchange members in an Information Bulletin of the special characteristics and risks associated with trading the Notes.

3. The Exchange would require its members to deliver a prospectus or product description to investors purchasing Notes prior to or concurrently with a transaction in the Notes and will note this prospectus delivery requirement in the information circular.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Notes on NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Notes on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Notes.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSEArca–2006–90) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–22083 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78*l*(f).

[11] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[12] *See supra* note 3.

[13] 17 CFR 240.12f–5.

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54960; File No. SR–Phlx–2006–83]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Minor Clarifying Changes to Phlx Rules Governing Registration

December 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 the Phlx. The Phlx filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to make minor clarifying changes to Phlx rules governing registration. The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx'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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended Exchange Rules 600, 604, 620, 623, and 1024 and Equity Floor Procedure Advice (''EFPA'') and Option Floor Procedure Advice (''OFPA'') F–25; and adopted EFPA F–34 and OFPA F–34 to create a more efficient, centralized registration process by migrating from a manual paper-based Exchange procedure to the National Association of Securities Dealers, Inc.'s Web Central Registration Depository (''Web CRD'') process for registration and processing of fingerprints.[5]

The purpose of this proposed rule change is to further clarify Exchange Rules 600, 604, 620 and 1024 and corresponding EFPAs and OFPAs F–25 and F–34, as they relate to the new Web CRD process. The Exchange believes that the clarifying language should help all members, participants, and member and participant organizations to better understand the rules relating to Web CRD.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by clarifying Phlx rules and corresponding EFPAs and OFPAs in connection with providing information to Web CRD.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[5] *See* Securities Exchange Act Release No. 53612 (April 6, 2006), 71 FR 18798 (April 12, 2006) (SR–Phlx–2006–15).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the Phlx has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change clarifies existing Exchange rules relating to Web CRD. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

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:

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–83 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–Phlx–2006–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–83 and should be submitted on or before January 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22092 Filed 12–26–06; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10761 and # 10762]

Oregon Disaster # OR–00015

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of OREGON dated 12/19/2006.

Incident: Severe Winter Storm & Flooding.

Incident Period: 11/02/2006 through 11/08/2006.

Effective Date: 12/19/2006.

Physical Loan Application Deadline Date: 02/20/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 09/19/2007.

ADDRESSES: Submit completed loan applications to: ≤U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road Fort, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Tillamook.

Contiguous Counties:

Oregon: Clatsop, Columbia, Lincoln Polk, Washington, Yamhill.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	6.000
Homeowners Without Credit Available Elsewhere:	3.000
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 10761 B and for economic injury is 10762 0.

The State which received an EIDL Declaration # is Oregon.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 19, 2006.

Steven C. Preston,

Administrator.

[FR Doc. E6–22106 Filed 12–26–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 27

This document replaces and supersedes ''Line of Succession Designation No. 1–A, Revision 26.''

Line of Succession Designation No. 1–A, Revision 27

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998, to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff

(2) General Counsel

(3) Associate Deputy Administrator for Management and Administration

(4) Chief Financial Officer

(5) Regional Administrator for Region 6.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, sbull I11''absence from the office,'' as used in reference to myself in paragraph (a) above, means

(1) I am not present the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraph (a) (1) through (5), unless designated as such the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a) (1) through (5), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Stephen C. Preston,

Administrator.

[FR Doc. E6–22143 Filed 12–26–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5628]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, January 23, 2007 in room 6319 of the U.S. Coast Guard Headquarters building, 2100 Second Street, SW., Washington, DC, 20593–0001. The primary purpose of the meeting is to prepare for the 51st Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection to be held at the Royal Horticultural Halls and Conference Center in London, UK from February 5–9, 2007.

Discussion will focus on papers received and draft U.S. positions regarding:

—Performance testing & approval standards for fire safety systems;

—Comprehensive review of the Fire Test Procedures Code;

—Recommendations on evacuation analysis for new and existing passenger ships;

—Review of the SPS Code;

—Development of provisions for gas fueled ships;

—Measures to prevent fires in engine-rooms and cargo pump-rooms;

—Consideration of IACS unified interpretations;

—Analysis of fire casualty records;

—Fire resistance of ventilation ducts;

—Application of requirements for dangerous goods in SOLAS and the 2000 HSC Code;

—Unified interpretation on the number and arrangement of portable extinguishers;

—Review of the fire safety of external areas on passenger ships; and

—Performance standards for fixed water spraying, fire detection and fire alarm systems for cabin balconies.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Chief, Lifesaving and Fire Safety Standards Division, Commandant (CG–3PSE–4), U.S. Coast Guard Headquarters, Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: Mr. R. Eberly at (202) 372 -1393, or by e-mail at *Randall.Eberly@uscg.mil.*

Dated: December 18, 2006.

Michael Tousley,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–22167 Filed 12–26–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25755]

Operating Limitations at New York LaGuardia Airport; Notice of Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of order.

SUMMARY: On September 11, 2006, the FAA issued a proposed order, which requested written views on the FAA's tentative determination to place temporary limitations on flight operations at New York's LaGuardia Airport (LaGuardia). The temporary limits are intended to prevent the congestion-related delays that would otherwise occur during the interval between the expiration of the High Density Rule and the effective date of a long-term regulation. In response to comments, the FAA is issuing a final order (the Order) that adopts the proposed limitations with some modifications. The limitations will permit 75 scheduled and six unscheduled operations per hour between 6 a.m. through 9:59 p.m., Eastern time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, on Sundays.

FOR FURTHER INFORMATION CONTACT: Komal K. Jain, Office of the Chief Counsel, Regulations Division, AGC–240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION: LaGuardia's runway capacity cannot accommodate the number of flight operations that carriers would like to operate without the development of significant congestion. Rules adopted by the FAA have long limited the number of LaGuardia operations during peak demand periods. By statute enacted six years ago, those rules will terminate as of January 1, 2007. The FAA has proposed a long-term rule in a separate docket that would limit the number of scheduled and unscheduled operations at LaGuardia.[1] We are currently soliciting comments on that notice of proposed rulemaking. Because the FAA will be unable to complete that rulemaking by January 1, carrier operations at LaGuardia would be unrestricted unless the FAA adopts temporary limits that will remain in place until the rulemaking's completion. Without such operational limitations, the FAA expects that severe congestion-related delays will occur, both at LaGuardia and at other airports throughout the National Airspace System (NAS) as a result of capacity constraints at LaGuardia. The FAA therefore has proposed to adopt short-term limitations on LaGuardia flights while that rulemaking is completed, and, after considering the comments, is issuing this final Order limiting LaGuardia operations.

The FAA's authority to limit the number of flight operations at LaGuardia is an essential component of the FAA's statutory responsibilities.[2] The FAA holds broad authority under 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

I. Background

LaGuardia's runway capacity cannot accommodate the number of flight operations that carriers would like to operate without the development of significant congestion. Rules adopted by the FAA have long limited the number of LaGuardia operations during peak demand periods. By statute enacted six years ago, those rules will terminate as of January 1, 2007. The FAA has proposed a long-term rule in a separate docket that would limit the number of scheduled and unscheduled operations at LaGuardia.[3] We are currently soliciting comments on that notice of proposed rulemaking. Because the FAA will be unable to complete that rulemaking by January 1, carrier operations at LaGuardia would be unrestricted unless the FAA adopts temporary limits that will remain in place until the rulemaking's completion. Without such operational limitations, the FAA expects that severe congestion-related delays will occur, both at LaGuardia and at other airports throughout the National Airspace System (NAS) as a result of capacity constraints at LaGuardia. The FAA therefore has proposed to adopt short-term limitations on LaGuardia flights while that rulemaking is completed, and, after considering the comments, is issuing this final Order limiting LaGuardia operations.

The FAA's authority to limit the number of flight operations at LaGuardia is an essential component of the FAA's statutory responsibilities.[4] The FAA holds broad authority under 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

As a result of LaGuardia's history of congestion-related delays, the FAA, over the course of nearly forty years, applied increasingly detailed rules to govern the allocation and use of the limited capacity at the airport.[5] These regulations, collectively known as the High Density Rule (HDR) and the Buy-Sell Rule (or slot rules), effectively controlled congestion at LaGuardia. In 2000, however, out of concern with the collateral effects of the slot rules at LaGuardia on airport access and competition, Congress included a provision in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) that terminates the LaGuardia slot rules as of January 1, 2007.[6] Congress simultaneously directed the U.S. Department of Transportation, effective immediately, to grant exemptions from the HDR for flights that would serve small hub and non-hub airports with aircraft with less than 71 seats and to grant a limited number of applications for slot exemptions from new entrant and limited incumbent carriers.[7]

As carriers began using the slot exemptions permitted under AIR–21, the number of scheduled flight

[1] Docket FAA–2006–25709.

[2] No one commented on the FAA's statutory authority to adopt an Order limiting flights at LaGuardia.

[3] Docket FAA–2006–25709.

[4] No one commented on the FAA's statutory authority to adopt an Order limiting flights at LaGuardia.

[5] See 33 FR 17896 (Dec. 3, 1968); 34 FR 2603 (Feb. 26, 1969); cf. 14 CFR 93.121–93.133, 93.211–93.227 (2006).

[6] 49 U.S.C. 41715(a)(2), enacted by Pub. L. No. 106–181, § 231, 114 Stat. 61, 106–10 (2000).

[7] 49 U.S.C. 41716.

operations at LaGuardia began to far exceed the airport's capacity even under optimal operating conditions.[8] By the fall of 2000, carriers had already added over 300 scheduled flights at LaGuardia and planned to add even more.[9] With no new airport infrastructure or air traffic control procedures, overall airport capacity remained the same while the number of aircraft operations and delays soared. The average minutes of delay for all arriving flights at LaGuardia increased 144% from 15.52 minutes in March 2000 (the month before AIR–21 was enacted) to 37.86 minutes in September 2000.[10] The increase in delays at LaGuardia also affected flights at other airports and in adjacent airspace. By September 2000, flight delays at LaGuardia accounted for 25 percent of the nation's delays, compared to 10 percent for the previous year.[11]

In order to address the growing congestion at LaGuardia, the FAA intervened in November 2000. The FAA reduced the number of daily exemptions from the HDR at LaGuardia to 159 during peak operating hours and distributed the exemptions via lottery.[12] The 159 daily operations reflected an increase of almost eleven hourly operations above the limits in place before the statutory amendments. Even with the FAA's partial rollback of the number of exemption flights, LaGuardia is now operating at capacity during most hours, and continues to have a relatively serious delay problem.

Although LaGuardia lacks the capacity to handle additional flight operations beyond the current peak hour limits, the expiration of the HDR at LaGuardia as of January 1, 2007, will eliminate the scheduling and reservation mechanisms that currently sustain the airport's operational balance.[13] Accordingly, on August 29, 2006, the FAA proposed a new rule to maintain the number of operations at LaGuardia's current hourly limits.[14] An order that temporarily maintains LaGuardia's current operational limits during the interval between the High Density Rule's expiration and the effective date of the proposed replacement rule is necessary to avoid any increase in the number of operations or a significant rescheduling of existing flights that would cause unacceptable delay levels, as explained below in our discussion of the comments.

After considering the comments received on the proposed Order, the FAA has determined to adopt this Order. Under this Order, the FAA (1) Maintains the current hourly limits on scheduled (75) and unscheduled (six) operations at LaGuardia during peak periods; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations; (3) provides for a lottery to reallocate withdrawn, surrendered or unallocated Operating Authorizations; and (4) allows for trades and leases of Operating Authorizations for consideration for the duration of the Order. The FAA is not allowing carriers to buy and sell Operating Authorizations during the term of this Order. The FAA also is not restricting the use of any Operating Authorizations for flights to certain destinations or flights with aircraft of a particular size.

II. Discussion of Written Submissions and the Final Order

In response to our request for written comments, 18 respondents expressed views on the FAA's proposed Order. The respondents included 10 air carriers (American Airlines, U.S. Airways, Delta Air Lines, Northwest Airlines, Colgan Air, United Airlines, Republic Airways Group (Republic Airline, Chautauqua Airlines, Shuttle America Corp.), and AirTran Airways), three air carrier organizations (Regional Airline Association (RAA), Air Carrier Association of America (ACAA) and Air Transport Association of America (ATA)), two airports (Akron-Canton Airport and Newport News/Williamsburg International Airport), the Port Authority of New York and New Jersey (Port Authority), City of Canton, the Medina County Ohio Economic Development Corporation, the Stark Development Board, Inc, and Indiana Senator Richard G. Lugar and Congresswoman Julia M. Carson.

Need for Limits on LaGuardia Flight Operations

As explained in the proposed Order, the FAA continues to believe that carrier demand for LaGuardia substantially exceeds the number of flights that can be operated at the airport without creating unacceptable delays. Commenters generally agreed that LaGuardia flights should be limited, and no commenter disputed the FAA's tentative conclusion under the proposed Order that the existing hourly limits should be maintained. The Port Authority, for example, stated, ''There is a lesson to be learned from the extreme congestion, bordering on gridlock, that took place after the enactment of AIR–21 '' LaGuardia most certainly would once again face crippling delays and congestion, if no form of operational limitation (or other demand management tool) is in place when the HDR expires at the end of the year.'' Port Authority Comments at 4. This Order accordingly adopts the proposed hourly limits on scheduled operations at LaGuardia.

Term of the Order

By statute, the HDR expires as of January 1, 2007. Therefore, the FAA proposed the Order take effect on January 2, 2007. Multiple air carrier slot and slot exemption transactions expire on December 31, 2006, as do the FAA limits on AIR–21 slot exemptions. If the effective date of January 2, 2007, were adopted, as proposed, carriers would have to enter into one-day slot transfers to bridge the break in dates or adjust their schedules to meet their slot holdings. In order to provide the most seamless transition between the HDR and AIR–21 slot exemption rules and this Order and to avoid additional administrative burdens for a one-day period, the Order will take effect on January 1, 2007.

The FAA also is modifying the Order's termination date. Based on the original rulemaking schedule established for the Congestion Management Rule for LaGuardia, the FAA proposed that the Order terminate on September 30, 2007. Several air carriers, as well as ATA and RAA, commented on the proposed expiration date of the Order. They assert that the airlines would benefit if the duration of the Order were tied directly to the effective date of the final rule replacing the Order rather than the FAA establishing a fixed date, which could be subject to extension if the rule is not published as planned. Commenters also emphasized that the air carriers will need time to transition from one regulatory regime to another, and any transition should occur when the carriers make their seasonal schedule changes.

The FAA recognizes that carriers require sufficient notice to plan schedules, market and sell tickets, and allocate aircraft, crew and airport resources. The FAA seeks to ensure that carriers are afforded adequate time to

[8] The increase in scheduled operations at LaGuardia is described more fully at 66 FR 31731 (June 12, 2001).

[9] 71 FR 51361.

[10] Source: FAA's Aviation System Performance Metrics (ASPM).

[11] Calculated from FAA's Air Traffic Operations Network Database (OPSNET).

[12] 65 FR 69126 (Nov. 15, 2000). This was extended through December 31, 2006. 70 FR 36998 (June 27, 2005).

[13] The FAA maintains safe operations through the use of air traffic control procedures. Traffic management initiatives would be applied as needed but would result in significant aircraft and passenger delays.

[14] 71 FR 51360.

minimize disruptions caused by implementation of a new rule at LaGuardia, and we recognize that adjusting to a new rule will be more difficult for carriers if the adjustment must occur in the middle of a scheduling season. Thus, as specifically requested by United, American, Northwest, and ATA, the Order will expire at the first change of scheduling season, as defined in 14 CFR, part 93, subpart B, occurring no less than 90 days after the issuance of a final rule.

While the FAA is extending the term of this Order, the FAA recognizes the need to complete the rulemaking, because the final decision in that proceeding should establish a more rational basis for the regulation of flight operations at LaGuardia. The rulemaking process will give the FAA and the commenters a better opportunity to consider and develop a better long-term policy on LaGuardia operations.

Hours of the Cap and Hourly Limits

The FAA proposed a limit of 75 scheduled operations per hour, the current cap on scheduled operations in effect under the slot rules. This limit is based on the optimal airport runway capacity of 81 operations per hour, including unscheduled flights. The FAA is adopting this limit under the final Order, and as discussed later, will assign Operating Authorizations for arrival and departures on a 30-minute basis consistent with current practices. The FAA's Air Traffic Organization may adjust the half-hour arrival and departure totals within the hourly limit based on operating conditions.

The FAA made a preliminary determination to apply the operational limits at LaGuardia beginning at 6:30 a.m. on weekdays rather than at the historic 6 a.m. start under the HDR. American and U.S. Airways requested the Order's limitations begin earlier, at 6 a.m., expressing concern that additional operations in the 6 to 6:29 a.m. half-hour, if unrestricted, might cause unacceptable delays. The FAA reviewed the potential delay scenarios with unconstrained operations before 6:30 a.m. and agrees that starting the limitations at 6:30 a.m. each weekday would create a risk of serious delays. Although overnight aircraft parking positions are a constraint, there is the potential that greater utilization of existing overnight positions or the establishment of new ones might facilitate additional morning departures. Therefore, the FAA concludes that beginning the limits at 6 a.m. hour is warranted.[15] For conformity, the FAA also will begin the limits for unscheduled operations at 6 a.m.

The FAA also considered the Port Authority's comment that the limits should apply on Saturday mornings before noon. We recognize that traffic levels have increased on Saturday mornings, but our review indicates that airport demand remains within the airport's capacity. The FAA will continue to monitor operations and congestion during the non-controlled hours at LaGuardia. Should a problem begin to materialize, the FAA believes that there will be sufficient time to adopt an amendment to this Order that would prevent undue congestion.

Assignment of Operating Authorizations[16]

Under ordering paragraph 3 of the proposed Order, an Operating Authorization would be assigned to the air carrier that holds the equivalent slot or slot exemption authority, or if a non-air carrier holds such authority to the air carrier assigned the operational authority by the non-air carrier. The FAA will use the records of allocations under the High Density Rule or FAA slot exemptions rules as of January 1, 2007.

The FAA has determined to adopt its proposal to assign Operating Authorizations only to carriers. The FAA believes that it can more easily and effectively administer the Operating Authorization regime if the operating rights are held only by carriers. Because this provision raised several questions of applicability, the FAA provides the following clarification.

Each slot currently has a ''holder'' status and an ''operator'' status. The same air carrier might be both holder and operator of a slot (or Operating Authorization). In many cases, however, the air carrier holder transfers the operator status to another carrier on a one-for-one basis for a slot at another time, on a lease, or for operation by a regional/commuter affiliate air carrier. Under the HDR, some slots also are held by non-air carrier entities who arrange for a carrier to operate the slots. Historically, transfer of ''operator'' status from a non-air carrier holder to an air carrier has been for a multi-year period.

If a carrier is using a slot ''held'' by another carrier, the Operating Authorization will be assigned to the carrier who actually holds the slot, *i.e.*, the air carrier that has operational authority, assigned by the FAA, to conduct scheduled operations at LaGuardia on a particular day of the week, during a specific time of the day. In other words, carriers that currently ''hold'' slots or slot exemptions will continue to ''hold'' the equivalent Operating Authorizations under the Order even if those authorizations are currently leased or licensed to other airlines for scheduled flight operations at LaGuardia. If a non-air carrier holds the slot, the FAA will assign the Operating Authorization to the carrier that was directly authorized by the non-air carrier to operate the slot even if that carrier subsequently transferred the slot temporarily to another carrier under the HDR. As discussed under the following ''Secondary Market'' section, the FAA is prohibiting the buying and selling of Operating Authorizations; therefore, the ''holder'' status remains with the initially assigned carrier under this Order unless an Operating Authorization is returned or withdrawn by FAA for nonuse.

In the case of AIR–21 slot exemptions allocated for service between LaGuardia and small hub and non-hub airports, the initial allocations were made to marketing air carrier groups including American/American Eagle, Delta/Delta Connection, Northwest/Northwest Airlink, and U.S. Airways/US Airways Express. The particular air carrier providing the service within those groups may have changed from time to time but the marketing carrier has remained the same. Therefore, in these cases, the FAA will assign Operating Authorizations to the primary marketing air carrier, *i.e.*, American Airlines, Delta Air Lines, Northwest Airlines, and U.S. Airways.

ATA asked whether the FAA would interpret an air carrier holder as including subsidiaries or affiliates of certificated air carriers that now hold slots. ATA provided the following example: Calair L.L.C., a wholly-owned subsidiary of Continental Airlines, currently holds the slots under the HDR that are operated by Continental. Calair

[15] We recognize that the FAA's proposed rule for LaGuardia would begin limits at 6:30 a.m. on weekdays. The FAA expects to complete a similar review of capacity and possible delay implications in the context of that proceeding.

[16] Proposed Ordering Paragraph 4 stated that FAA would assign identification numbers to each Operating Authorization. These numbers would be used for administrative purposes such as identifying Operating Authorizations for trades and transfers and for usage monitoring. Under the HDR and the Chicago O'Hare final rule, the FAA also used randomly assigned identification numbers for potential withdrawal if capacity reduction is required to meet FAA's operational needs. While the FAA is not specifically adopting a similar withdrawal priority mechanism for the purposes of this Order, Operating Authorizations remain subject to FAA control and may be withdrawn to meet FAA's operational needs. Should capacity be reduced on an on-going basis, the FAA will adopt procedures to withdraw Operating Authorizations.

is not a certificated air carrier. As indicated in the proposed LaGuardia Order and similar rulemaking proceedings for Chicago O'Hare, the FAA believes that the assignment of operational authority under FAA adopted capacity limitations should be restricted to air carriers. In fact, the FAA did not assign slots to non-air carriers under the HDR'that was accomplished solely through carrier transactions in the secondary market. However, the FAA will look at the chain of ownership and see if there is a direct relationship between the affiliate or subsidiary to a certificated air carrier. Thus, in this example and under the provisions of this Order, Calair cannot receive the initial assignment of Operating Authorizations because it is not a certificated air carrier; rather the Operating Authorizations would be given to Continental because it would be the air carrier with the most direct relationship with Calair. In instances where the affiliate or subsidiary organization is owned by more than one air carrier, the air carriers will have to notify the FAA prior to the assignment of Operating Authorizations whom they want designated as the ''holder''.

Alternatively, if a carrier is operating a slot that is held by an entity that is not a certificated carrier, and the holder has no direct relationship with a parent airline company, the Operating Authorization will be assigned to the carrier designated as the operator by the non-air carrier holder under the HDR. This recognizes that a non-air carrier slot holder cannot operate the slots because actual flight operations must be by an air carrier. The FAA does not agree with certain commenters'claims that this allocation of Operating Authorizations will interfere with on-going business relationships. Carriers and other persons have long known that any rights held under the slot rules would end on December 31, 2006. The statutory termination date for the slot rules has meant that all financial and security interests in slots will inevitably end on that date, so no one could have reasonably expected that existing business and financial arrangements based on the slot rules could continue after this year. In any event, this Order is not intended to prohibit an air carrier from contractually arranging to pledge an interest in an Operating Authorization to a person, for use as collateral or otherwise, for the duration of the Order.

The Republic Group asked that trusts be recognized under the Order. Specifically, we were asked to allow for Operating Authorizations to be held by trust so long as the beneficial ownership of the Operating Authorizations is held by an air carrier. The FAA is unsure how these types of trust operate in the market place, how they would differ from other arrangements whereby non-air carriers might seek to hold Operating Authorizations, what documentation might be required in order to meet any standards adopted by the FAA, and whether alternative agreements could readily be crafted to replace a trust. The Republic Group did not provide sufficient background information in order for us to make an educated decision distinguishing the requested beneficial trust scenario from other potential non-air carrier holders.

Secondary Market

The slot rules have a buy-sell provision that allows carriers to buy and sell slots for consideration. The recently-adopted rules limiting operations at O'Hare permit buying and selling of operating rights (''arrival authorizations''), but only under a blind-auction procedure overseen by the FAA.[17] Our proposal on long-term rules for LaGuardia proposed a similar blind-auction requirement but also asked for comment on whether carriers should be able to buy and sell operating rights directly, as they have been able to do under the slot rules. Our order, however, proposed to allow carriers only to engage in one-for-one trades of Operating Authorizations and to lease Operating Authorizations, but stated that any such trade or lease would terminate when the Order terminated.

All air carriers and carrier associations, except for AirTran and ACAA, requested that the FAA permit the transfer and trading of Operating Authorizations without restriction. Commenters pointed to the FAA rules permitting such exchanges under the HDR and a recent amendment to the FAA Order on scheduling limitations at Chicago O'Hare.[18] AirTran and ACAA, on the other hand, supported limits on the buying/selling and leasing of Operating Authorizations because they believe it would increase competition. At a minimum, they argued that any sales of Operating Authorizations must be made through a blind-auction process similar to the procedures required under the secondary market for arrival authorization at Chicago O'Hare and the proposed rule for LaGuardia.

The FAA has considered a secondary market that permitted the purchase and sale of Operating Authorizations. We have assessed whether we should allow leases, trades, and transfers to extend beyond the duration of the Order. We also have considered whether a blind transfer mechanism similar to the one adopted for Chicago O'Hare would address the concerns raised by ACAA and AirTran even if Operating Authorizations were not subject to expiring lives under the Order.

The FAA has decided to permit leases and trades of Operating Authorizations provided that all Operating Authorizations revert no later than the expiration of this Order.[19] Permanent sales, purchases, or transfers of Operating Authorizations will not be permitted. We also are clarifying that carriers may offer any form of consideration in the lease and trade transactions negotiated under this Order.

This Order is not intended to create a long-term solution for LaGuardia congestion. Because the Operating Authorizations established under this Order should not create long-term rights at LaGuardia, the FAA does not wish to allow or encourage carriers to engage in transactions that assume that a carrier purchasing Operating Authorizations, or leasing them under a long-term lease, will acquire potential rights to continue operating flights after this Order is replaced by a new rule. The FAA determined that only through a limited secondary market permitting temporary transfers of Operating Authorizations could we protect various aspects of the proposed rule for LaGuardia, including the various proposals regarding small community access and the initial assignment of Operating Authorizations. The FAA is aware there is potential for changes to small community service levels during the life of the Order. Although the FAA proposed in the NPRM a category of Operating Authorizations reserved for use to small communities based on October 2006 services, we believe the likelihood of small community service change increases if we were to permit the permanent buying and selling of Operating Authorizations. While prohibiting the permanent or long-term transfer of Operating Authorizations under the Order does not prevent small community impacts, it does reduce the likelihood.

Minimum Use Requirements

The FAA proposed that Operating Authorizations be subject to a minimum use requirement of 80 percent over a consecutive two-month reporting

[17] 71 FR 51382 (August 29, 2006).

[18] 71 FR 60600 (October 13, 2006).

[19] Because the FAA is adopting this Order without a fixed expiration date, the latest reversion date of any approved leases, trades, or other transfers will coincide with the Order's expiration.

period. Operating Authorizations not meeting this minimum would be withdrawn by the FAA and would be reallocated using a lottery. Most commenters supported an 80 percent use or lose requirement in order to ensure the use of the airport's capacity. No one opposed having a minimum-use requirement. The Port Authority, however, supported increasing the minimum usage to 90 percent. Otherwise the FAA would be allowing a carrier to keep an afternoon Operating Authorization that it used for only 4.8 flights per week when the slot rules now require that the equivalent slot be used for 5.6 flights per week.

The FAA has decided to adopt the proposed 80 percent minimum usage requirement. Our experience in applying the HDR, as well as information on cancellations presented by the Port Authority, is that carriers typically operate slots well in excess of 80 percent. In particular, weekday slots under the HDR have historically been used more than weekend ones. We have no reason to believe carrier usage patterns will not continue for the duration of this Order. Therefore, absent any demonstrated changes in service patterns, we are reluctant to increase the usage requirement beyond the proposed 80 percent for the duration of this Order. We note that the FAA's minimum-use requirement in its O'Hare rules adopted the 80 percent level and that level is prescribed at slot-controlled airports throughout much of the world.

United Airlines requested clarification on whether a carrier holding an Operating Authorization for scheduled service could use it for unscheduled service, and if so, report it on use or lose reports. The FAA clarifies that an air carrier may do as United seeks'operate charters and other unscheduled services and have it count toward minimum usage.

The FAA also proposed that any Operating Authorizations withdrawn for failing to meet the minimum usage requirements would be reallocated by lottery using the procedures in 14 CFR 93.225. The FAA is adopting this procedure with one change to provide that any Operating Authorizations assigned by lottery to new entrants and limited incumbents under the Order would not automatically revert to the FAA at the expiration of this Order.[20] A new entrant/limited incumbent carrier might choose not to initiate service under the Order if it could not continue that service after a final rule. This would be contrary to past FAA actions to promote new entry and competition.

Finally, the proposed Order provided that the Administrator could waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition beyond the control of the carrier and which exists for a period of 5 consecutive days or more. We adopt the proposal to permit usage waivers based on unusual circumstances.

Provisions for New Entrants and Limited Incumbents

AirTran and ACAA requested several modifications to the proposed Order that would give limited incumbent air carriers and new entrants a better opportunity to obtain Operating Authorizations. As discussed elsewhere in this Order, they also urged the FAA to adopt other provisions, such as a blind-auction procedure for any sales of Operating Authorizations that would give airlines with a smaller presence at LaGuardia a better chance to compete with the airport's dominant carriers. Insofar as awarding additional Operating Authorizations to smaller carriers is concerned, ACAA asked that the FAA:

- Withdraw ten percent of all slots held by carriers holding more than forty (40) slots and distribute those slots to limited incumbents operating aircraft with at least 110 seats;
- Allow limited incumbent carriers that operated slots held by other carriers during the October 1–6, 2006, period for full-size aircraft service to small communities to continue using those slots until a final rule is issued.

ACAA argued that its reallocation proposal was reasonable, because, among other things, the Order proposed to end the requirements that the major carriers use their slot exemptions only for flights operated to smaller communities with smaller aircraft.

AirTran further asks that the FAA provide at least ten additional Operating Authorizations to each limited incumbent carrier to operate full-size jets. AirTran did not indicate how the FAA would create these authorizations while maintaining our cap on operations. Alternatively, they asked that we withdraw Operating Authorizations from other larger carriers. Senator Richard G. Lugar and Congresswoman Julia M. Carson supported an allocation of additional operating authority to permit AirTran to serve the LaGuardia/Indianapolis market.

The reallocations proposed for by ACAA and AirTran incorporate elements of the NPRM that are currently subject to comment. The rulemaking, not this Order, is intended to establish flight restrictions for the long term at LaGuardia. In the rulemaking the FAA has proposed that Operating Authorizations expire in a periodic fashion and be subject to reallocation. The pending rulemaking will give interested persons a better opportunity to present their economic and policy views on potential reallocation and withdrawal issues, and enable the FAA to consider such matters more fully on the basis of a better record. The FAA accordingly prefers to consider in that proceeding whether LaGuardia operating rights should be reallocated.

Small Community Service

The Order did not propose to designate Operating Authorizations that would be restricted to small community service or limited to smaller aircraft. The HDR air carrier and commuter slot categories would be merged into a single category of Operating Authorizations. Likewise, AIR–21 restrictions granting certain slot exemptions for services to small hub and non-hub airports using smaller aircraft would expire along with the HDR. Therefore, carriers could choose to adjust existing schedules and markets during the duration of this Order without regard to the market and aircraft restrictions that existed under the HDR. In addition to several proposals that urge the FAA to grant Operating Authorizations for service to specific communities, as discussed below, several commenters—AirTran, Colgan Air, ACAA, and the Port Authority—argued that the FAA should adopt provisions that would protect service to small community airports while the Order is in effect. Their comments included suggestions such as retaining the restrictions requiring AIR–21 slot exemptions to be used for flights to small hub and non-hub airports.

The FAA shares the concerns about continuing LaGuardia service to smaller communities. The commuter slot pool under the HDR was established, in part, to recognize historic service to small communities and provide a level of protection for that service by restricting the use of the slots with larger turbojet aircraft typically used for larger communities. The AIR–21 slot exemption authority reflected congressional interest for increased

[20] The FAA recognizes this conflicts with the proposed rule for LaGuardia which uses slot holdings and operations during October 1–6, 2006, as the base for initial assignment of Operating Authorizations at the effective date of the rule. Similarly, the FAA recognizes that a carrier that has an Operating Authorization withdrawn for nonuse during the duration of the Order should not be assigned an equivalent Operating Authorization at the effective date of the rule. The FAA will resolve these issues during our rulemaking proceedings.

service opportunities to small communities seeking access to LaGuardia, and the FAA's lottery system for allocating those exemptions provided for an equitable distribution of exemptions between carriers serving small communities and new entrants.

The pending rulemaking includes three options for ensuring that small communities will continue to have service to LaGuardia. The number and timing of operations conducted by air carriers to the various small hub and non-hub airports during October 1–6, 2006, would be the base period for establishing the small community pool under the final rule. We expect to receive comments under that proceeding as to the appropriate level of protection for small communities served from LaGuardia Airport. Therefore, the FAA did not propose a specific set-aside for small communities under the Order since the appropriateness and make-up of such a designation was already the subject of a rulemaking that is intended to be more comprehensive and long-term. Some of the comments on the proposed Order suggest the FAA should continue the AIR–21 limits on small hub and non-hub airport slot exemptions while the comments on the NPRM are considered. Absent those restrictions, carriers would be free to use larger aircraft to serve larger size airports and might discontinue the small community services gained under AIR–21. While the FAA understands there is a potential for this to occur, the final rule, in all probability, would use for its initial assignment of Operating Authorizations a base period when various protections existed for small community service. Thus, carriers might alter service plans to small hub and non-hub airports during the Order only to face a final rule designating certain Operating Authorizations for historic small community service levels. Carriers may consider the benefits of schedule stability at smaller airports during the duration of this Order. Furthermore, the FAA agrees with the Port Authority's suggestion that it should monitor changes in small community service during the term of this Order. The FAA intends to do so.

Finally, as indicated earlier, the FAA is not increasing the proposed hourly limits on flight operations in order to ensure that small communities would continue to have all of the service at LaGuardia that they have had in the past. Such an accommodation would increase delays and fail to meet the congestion management objectives of this Order. The airport's capacity limitations prevent us from authorizing additional flights, even when they would serve a worthy purpose.

Flights to Specific Communities

Several commenters urged the FAA to adopt provisions that would protect service to small community airports while the Order is in effect. Newport News/Williamsburg Airport and Akron-Canton Airport each filed comments requesting that the FAA allocate two Operating Authorizations to each airport. They would allow AirTran to reinstate roundtrip flights that it can no longer operate because it does not hold or lease the necessary slots, and accordingly, will not be assigned operating authorizations for such operations under this Order.[21]

The FAA is unwilling in this Order to create additional Operating Authorizations to ensure that specific communities obtain additional service to LaGuardia. While the FAA understands the desire of the Akron-Canton and Newport News/Williamsburg groups to maintain the recent air service levels between LaGuardia and their respective airports, the FAA has not used congestion management rules to provide service to specific communities. Like a slot under the HDR, an Operating Authorization under the Order is the operation authority assigned by the FAA to a carrier to conduct a scheduled arrival or departure operation and has no specific city-pair limitations. To honor the request made by these airports would be tantamount to a radical change in the congestion management program. Further, unlike the situation at Ronald Reagan Washington National Airport, where the Department of Transportation is directed to grant certain slot exemptions for ''selected routes'' beyond the perimeter and to airports within the perimeter,[22] there is not such statutory basis for the FAA to require that a carrier operate to a certain market from LaGuardia. The FAA therefore declines to do adopt the suggestion of Akron-Canton and Newport News/Williamsburg.

Unscheduled Operations

In addition to limits on scheduled operations, the FAA proposed adopting limits for unscheduled operations to ensure that demand is spread reasonably throughout the day. The FAA proposed the same hourly limits that applied under the HDR using similar reservation procedures described in FAA Advisory Circular 93–1, ''Reservations for Unscheduled Operations at High Density Traffic Airports.'' The FAA's Airport Reservation Office at the David J. Hurley Air Traffic Control System Command Center would manage the reservation process using the existing e-CVRS system.

No comments were received opposing the establishment of the reservation requirements and proposed procedures for allocating reservations for unscheduled flights. United Airlines commented that the number of hourly reservations established for unscheduled operations conflicts with other stated agency objectives of ensuring efficient utilization of limited airport resources and increasing passenger throughput. We proposed the historic set aside of six reservations for unscheduled operations and adopt this allocation under this final Order, because it is consistent with the treatment of the scheduled operations during the time this order will be temporarily in place. As a result, the FAA is adopting the proposed allocation for unscheduled flights.

United Airlines also requested clarification that it could conduct charters and other unscheduled operations using its Operating Authorizations for scheduled service. We agreed and addressed United's comment in the section on Minimum Use.

The FAA is adopting the proposed limits and reservation procedures with minor editorial changes. Information on procedures for obtaining the appropriate reservations for unscheduled flights will be available prior to the effective date of this Order via the Internet on the FAA's Web site at *http://www.fly.faa.gov/ecvrs*.

III. Conclusion

On September 11, 2006, the FAA issued a proposed Order, which solicited written views on the FAA's tentative determination to place temporary limitations on flight operations at LaGuardia Airport. After considering the responses, the FAA has determined to issue a final Order adopting operating limitations at New York LaGuardia Airport.

A. Scheduled Operations

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures, except helicopters, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-five (75) Operating

[21] The City of Canton, the Medina County Economic Development Corporation, and the Stark Development Board, Inc. among others also support the request.

[22] 49 U.S.C. 41718 (a) and (b).

Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis.

2. The final Order takes effect on January 1, 2007, and will expire at the first change of scheduling season, as defined in 14 CFR, part 93, subpart B, occurring no less than 90 days after the issuance of a final rule regulating congestion at LaGuardia.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule or FAA slot exemption rules as of December 31, 2006; to the primary marketing air carrier in the case of AIR–21 small hub/non-hub airport slot exemptions; or to the air carrier operating the flights as of December 31, 2006, in the case of a slot held by a non-air carrier. If the slot is held by a subsidiary or affiliate of an air carrier, the FAA will assign the operating authority to the carrier that has the most direct relationship with that non-air carrier holder. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority to conduct scheduled passenger service and FAA operating authority under 14 CFR part 121, 129, or 135. The Chief Counsel of the FAA will be the final decision maker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

5. An air carrier can lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the final Order. Notice of a trade or lease under this paragraph would be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of each air carrier. The air carriers are required to receive written confirmation from the FAA prior to operating under the traded operating authority.

6. Every air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. The FAA Administrator can waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 5 consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for non-use, surrendered to the FAA or are unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

B. Unscheduled Operations [23]

With respect to unscheduled flight operations at LaGuardia:

1. The final Order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire at the first change of scheduling season occurring no less than 90 days after the issuance of a final rule regulating congestion at LaGuardia.

3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation is available via the Internet at *http://www.fly.faa.gov/ecvrs*.

4. Six (6) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a ''first-come, first-served'' basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned is required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the ''remarks'' section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Non-emergency flights in direct support of national security, law enforcement, military aircraft operations, or public-use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at *http://www.fly.faa.gov/ecvrs*.

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused Operating Authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

[23] Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, DC, on December 13, 2006.

Rebecca Byers MacPherson,

Assistant Chief Counsel for Regulation.

[FR Doc. 06–9863 Filed 12–20–06; 3:29 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting, Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

SUMMARY: The FAA is issuing this notice to advise the public of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

DATES: The meeting will be held January 25, 2007, from 9 a.m.–11 a.m.

ADDRESSES: The meeting will be held at EADS North America, 1616 N. Fort Myer Drive, Suite 1600, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 212 meeting. The agenda will include:

- *January 25:*
  - Opening Planary Session (Welcome, Introductions, and Administrative Remarks, Secretary Selection, Agenda Overview).
  - Summary of Working Group Activities.
  - KSN Server.
  - Presentation on TAWS (Previous Terrain Awareness and Warning System).
  - Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-Registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 14, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–9859 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

DATES: The meeting will be held January 9–12, 2007, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. *Note: Specific working group sessions will be held January 9–12.* The plenary agenda will include:

- January 12:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting).
  - Review Working Group (WG) Progress and Identify Issues for Resolution.
  - Global Positioning System (GPS)/3rd Civil Frequency (WG–1).
  - GPS/Wide Area Augmentation System (WAAS)(WG–2).
  - GPS/GLONASS (WG–2A).
  - GPS/Inertial (WG–2C).
  - GPS/Precision Landing Guidance (WG–4).
  - GPS/Airport Surface Surveillance (WG–5).
  - GPS/Interference (WG–6).
  - GPS/Antennas (WG–7).
  - GPS/GRAS (WG–8).
  - Review of EUROCAE activities.
  - Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 14, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–9860 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting, RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 204 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters.

DATES: The meeting will be held on January 16–17, 2007, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036–533.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- *January 16–17:*
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Terms of Reference/Status).
  - Approval of Summary for the

Seventh meeting held on 23–24 October 2006, RTCA Paper No. 279–06/SC204–019.
- EUROCAE ELT Status.
- Committee Presentations, Discussion, Recommendations.
- Revisions/Updates to DO–204–Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT).
- Any New Items Discussions.
- PLBs.
- Closing Session (Other Business, Assignment/Review of Future Work, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 19, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–9861 Filed 12–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–25750]

Final Policy Statement on When High-Occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final policy statement.

SUMMARY: This Final Policy Statement describes the terms and conditions on which the Federal Transit Administration (FTA) will classify High-Occupancy Vehicle (HOV) lanes that are converted to High-Occupancy/Toll (HOT) lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA. The Final Policy Statement also describes when HOT lanes shall not be classfied as fixed guideway miles in FTA's funding formulas.

DATES: *Effective Date:* The effective data of this Final Policy Statement is January 1, 2007.

ADDRESSES: *Availability of the Final Policy Statement and Comments:* Copies of this Final Policy Statement and comments and material received frot he public, as well as any documents indicated in the preamble as being available in the docket, are part of docket number FTA–2006–25750. For access to the DOT docket, please go to *http://dms.dot.gov* at any time or to the Docket Management System facility, U.S. Department of Transportation, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington , DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David B. Horner, Esq., Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4040, *david.horner@dot.gov* or Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4050, *robert.tuccillo@dot.gov*. Office hours are from 8:30 a.. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2006, the Federal Transit Administration (FTA) published in the **Federal Register** a proposed Policy Statement on When High-occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When Hot Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA'S Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas (Notice of Proposed Policy) (71 FR 528490). In its Notice of Proposed Policy, FTA proposed the following terms and conditions on which it would classify HOV lanes that are converted to HOT lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA:

FTA would classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of the following conditions is satisfied: (i) The HOT lanes were previously HOV lanes reported in the National Transit Databased as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309; (ii) The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d); and (iii) Program income from the HOT lane facility, including all toll revenue, is used solely for 'permissible uses.'

In its Notice of Proposed Policy, FTA also discussed whether it would require certain transit and tolling policies with respect to HOT lanes classified as fixed guideway miles, and whether FTA would require the return of funds made available under Full Funding Grant Agreements made available for the construction of HOV lanes that have later converted to HOT lanes in accordance with this Final Policy Statement.

34 parties submitted comments in response to FTA's Notice of Proposed Policy. FTA hereby responds to these comments by topic and in the folllowing order: (a) Policy Statement Generally; (b) HOT Lanes as ''Fixed Guideway Miles''; (c) Monitoring and Performance Standards; (d) Program Income and Toll Revenues; (e) Transit Fares and Tolls; (f) Return of Funds under Full Funding Grant Agreements; and (g) Miscellaneous Comments.

(a) Policy Statement Generally

The intended purpose of the Proposed Statement of Policy was to ensure that Federal transit funding for congested urban areas is not decreased when HOV facilitates are converted to variably-priced HOT lanes. The proposed policy also suggested a uniform approach by the Department of Transportation's (the Department's) operating agencies concerning HOV-to-HOT conversions, and supported the Department's policy of encouraging HOV-to-HOT conversions. Eight commenters agreed generally with FTA's Notice of Proposed Policy, Six parties submitted general comments. Four commenters asked FTA to defer its final policy determination until the impacts are more apparent. One commenter articulated four policy principles that discuss ways to integrate transit into toll roads and HOT lanes.[1] Another commenter stated that one of FTA's top priorities in developing this policy statement should be to foster an increase in alternative transportation ridership, whether that alternative is carpool, transit, or other shared-mode, and suggested four ways this policy

[1] The suggested policy principles are as follows: (1) Metropolitan areas and states should have greater latitude to use roadway tolling; (2) Tolling should be a supplement to and not a substitution for existing transportation funding; (3) Local sponsors should have the discretion to fund public transportation with toll revenues; and (4) Tolling should be permitted as a long-term strategy.

statement could better support this end.[2]

FTA Response: The commenters that ask FTA to defer its final policy determination until the impacts are more apparent appear to misunderstand the scope of FTA's Notice of Proposed Policy FTA's HOV-to-HOT policy will *not* result in *all* HOT lane facilities being classified as ''fixed guideway miles'' for purposes of FTA's funding formulas. Rather, only those HOT lane facilities converted from HOV lanes that have been previously classified as ''fixed guideway miles'' shall qualify for continued classification as such, subject to the conditions set forth in this Final Policy Statement.

FTA recognizes the four policy principles summarized at footnote (1) and responds by reminding the commenter that without this Final Policy Statement transit formula funding for congested urban areas would decrease if existing HOV facilities were converted to variably-priced HOT lanes. For this reason, FTA believes that this policy statement (1) Gives states greater latitude to use tolling without negatively impacting available transit resources; (2) enhances existing transportation funding through the collection of toll revenues; (3) grants project sponsors discretion to use toll revenues for any ''permissible use''; and (4) encourages variably-priced HOT lanes as a long-term strategy consistent with the policy of the Department.

In response to the commenter that believes FTA should consider fostering an increase in alternative transportation ridership as one of its top priorities in developing this guidance, FTA reemphasizes its primary in drafting this guidance__to ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to HOT lanes. FTA responds to the commenter's four suggestions summarized at footnote (2) in turn with respect to the first suggestion, this policy statement supports HOV usage, but recognizes that many HOV facilities are underutilized; the ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. With respect to the second and third suggestions, FTA will rely on the management, operation, monitoring and enforcement provisions of 23 U.S.C. 166(d). with respect to the fourth suggestions, this guidance does not modify or enhance language at 23 U.S.C. 166(c)(3).

Accordingly, FTA adopts as final the general provisions of its Notice of Proposed Policy.

(b) HOT Lanes Were Previously HOV lanes reported in the National Transit Database as ''Fixed Guideway Miles''

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The first condition is that the HOT lanes were previously HOV lanes reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309. FTA received thirty five comments on this condition, with some parties offering multiple comments. Eight commenters favored FTA's proposed policy to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA so long as each of three conditions is satisfied. Eighteen commenters asked FTA to expand its policy to classify *all* lanes as ''fixed guideway miles0z4 for purposes of the funding formulas administered by FTA, regardless of whether the HOT lane facility is newly constructed or was converted from an existing HOV facility. Seven commenters asked FTA not to fund HOT lane facilities at a level that would dilute the pool of transit funding available for existing ''fixed guideway'' facilities. Two commenters proposed that FTA require converted HOV lanes to have operated as HOV lanes for seven years prior to conversion to HOT lanes and before FTA would classify them as ''fixed guideway miles'' for purposes of its funding formulas.

FTA Response: FTA recognizes that all HOT lanes provide similar benefits to metropolitan areas that are experiencing severe and worsening congestion, regardless of whether the facility is newly constructed or converted from HOV or general purpose lanes. However, the purpose of this policy statement is to ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, or maximize throughput using excess HOV lane capacity and to promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. If FTA were to classify all HOT lanes as ''fixed guideway mile'' without a commensurate increase in overall funding levels, it could negatively impact the ability of many transit operators to finance needed capital maintenance on existing infrastructure. For this reason, FTA limited the scope of this policy statement to classify as ''fixed guideway miles'' only those HOT lane facilities that are converted from HOV lanes that previously have been classified as ''fixed guideway miles.'' In this way, FTA will ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes. FTA believes it appropriate to leave for Congress, and not to determine on an administrative basis, the question of whether and on what terms facilities newly constructed as HOT lanes or general purpose lanes converted directly to HOT lanes shall be classified as ''fixed guideway miles'' given the substantial reallocation of formula funds among transit authorities that might result over time if such facilities were classified as ''fixed guideway miles.''

FTA has added the following language by footnote to section (b)(1) of its Final Statement of Policy in response to the recommendation that FTA require HOV lanes to have operated as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as ''fixed guideway miles:''

FTA apportions amounts made available for fixed guideway modernization under 49 U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One of these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service at least 7 years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this Final Policy Statement; and (ii) no HOV facility that has been in revenue service for less than seven years shall forfeit the years it has accrued thereunder because it is converted to a HOT lane facility and for so

[2] The four suggestions on how FTA's policy statement could foster alternative transportation ridership are as follows: (1) The policy statement should support transportation demand management and HOV usage; (2) Greater emphasis on enforcement should be considered; (3) FTA should tie fixed guideway qualification to integrity of lane; and (4) FTA should emphasize language at 23 U.S.C. 166(c)(3), which section requests that States, in the use of toll revenues, give priority consideration to projects for developing alternatives to single occupancy vehicle and projects for improving highway safety.

long as the HOT lane facility maintains its ✖fixed guideway'' classification in accordance with this policy statement, it shall continue to accrue years thereunder.

Accordingly, FTA will not require that converted HOV lanes operate as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as ''fixed guideway miles'' Pursuant to this Final Policy Statement.

(c) Monitoring and Performance Standards

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The second condition is that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d). FTA received twenty comments on this topic. Four commenters favored FTA's proposed position. Seven commenters proposed that FTA require a minimum level of transit service on a HOT land facility before its lanes could be classified as ''fixed guideway miles'' for purposes of the funding formulas administered by FTS. Five commenters requested that FTA adopt more exacting performance standards. One commenter requested that FTA state explicitly that local agencies may increase HOV occupancy levels as necessary to ensure free-flow conditions needed for transit bus service. Another commenter asked FTA to amend its policy to state that single occupant vehicles may be permitted on HOT lanes that are classified as ''guideway miles,'' provided that the lanes satisfy the conditions set forth FTA's Final Policy Statement. One commenter requested that FTA acknowledge that compliance with state law governing performance standards for HOT lanes suffices in terms of meeting the condition that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free fow traffic conditions as specified in 23 U.S.C. 166(d). One commenter asked FTA to require a study on degradation of transit service before an HOV facility may convert to a HOT lane facility and be classified as ''fixed guideway miles'' for purposes of funding formulas administered by FTA.

FTA Response: A number of commenters recommend a more exacting performance standard, including a minimum level of transit service. FTA recognizes that a more exacting standard would be necessary if all HOT land facilities were eligible for classification as ''fixed guideway miles,'' for under this scenario rural or suburban HOT lane facilities with little or no transit service could receive a portion of the Federal transit funds needed by the Nation's largest transit providers to maintain their current infrastructure. For this reason, FTA has limited the benefits of this policy to HOV lanes that have already been classified as ''fixed guideway miles.'' Current designation as a ''fixed guideway mile'' indicates that a facility has a minimum level of transit service. FTA believes that compliance with the performance standards codified at 23 U.S.C. 166(d) is sufficient to ensure free flow traffic conditions and to avoid degradation of transit service on these facilities when converted from HOV lanes to HOT lane facilities. Moreover, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) and (e) could be required, when an HOV facility converts to a HOT lane facility, to achieve a higher performance standard than required under 23 U.S.C. 166(d). In all circumstances, FTA shall require real-time monitoring of traffic flows to ensure on-going compliance with 23 U.S.C. 166(d).

FTA will not acknowledge that compliance with state law governing HOT land performance standards will satisfy FTA's requirements in all circumstances. Rather, FTA shall require all HOT land facilities to comply with the statutory requirements of 23 U.S.C. 166 to be classified as ''fixed guideway miles'' for purposes of FTA's funding formulas. It may be the case that the laws of certain states require a higher level of performance than the Federal standard articulated here. In these instances, the lesser Federal standard should present no obstacle to HOT conversion.

With respect to the request that FTA require a study on the degradation of transit service before an HOV facility may convert to a HOT facility, FTA (i) believes that compliance with the free flow traffic requirements of 23 U.S.C. 166 is sufficient to avoid the degradation of transit service on these facilities and (ii) will not require that project sponsors incur the additional expense of a formal study on the degradation of transit service.

(d) Program Income and Toll Revenues

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The third condition is that program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.'' FTA received twenty five comments on this condition. Five commenters favored FTA's proposed policy. Seven commenters requested that FTA expressly state in its final policy that grantees may use toll revenues for transit operating costs. Four commenters stated that FTA funds should not be used for the maintenance and/or construction of HOT lane facilities. Four commenters asked that FTA require all Federal transit funds generated by HOT lane facilities because of their classification as ''fixed guideway miles'' be directed to the ''designated receipt'' for Federal transit funding. Three commenters stated that FTA should not permit the operators of HOT lane facilities to finance a HOT lane facility's operating losses with Federal funds generated by the facility's operating losses with Federal funds generated by the facility's classification as ''fixed guideway miles.'' One commenter asked that FTA not limit the use of HOT lane toll revenues to transit. Another commenter asked FTA to require that priority of payment be provided for in the project implementation documents.

FTA Response: Based on the recommendation of several commenters that FTA expressly state that grantees may use toll revenues for transit operating costs, and pursuant to CFR 18.25, which states that FTA ''grantees may retain program income for allowable capital or operating expenses,'' FTA as added transit operating costs to its description of ''permissible uses'' at section (iii)(b) of its Final Policy Statement.

FTA disagrees with the comment that its grantees should not use Federal transit funds for the maintenance and/or construction of HOT lane facilities. The commenter did not indicate whether it referred to the use of grant funds or program income. While FTA recognizes both HOV and HOT lanes as permissible incidental uses of FTA-funded assets, FTA grant funds shall not be used to construct a HOT lane facility beyond what is allowed by 49 U.S.C. 5302(a)(4), as implemented by FTA's regulations, as amended from time to time.[3] Any facility that converts from an HOV to a HOT facility, and retains its classification as a ''fixed guideway'' by satisfying the conditions of this policy statement, may use program income in accordance with this Final Policy Statement, the Department's regulation at 49 CFR 18.25, and other applicable statutes, regulations and requirements.

Similarly, FTA disagrees with the comment that it should limit the use of HOT lane toll revenues to transit. In many cases, a HOT lane facility may have received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program. In these instance, FTA's restrictions concerning permissible use shall not apply to more than transit's allocable share of the facility's program income, as described elsewhere in this Final Policy Statement. FTA will not require recipients to assign priority in payment to any permissible use.

Federal transit law requires FTA to disburse certain funds to the designated recipient. The designated recipient for FTA formula funds shall not be changed because the grantee converted an HOV facility to a HOT facility, so long as the facility maintains its classification as a ''fixed guideway'' by satisfying the conditions of this Final Policy Statement. FTA shall not prevent such designated recipients from using the funds for eligible activities in accordance with the process for programming transit funds described at 23 CFR 450.324(1) of the joint FTA–FHWA planning regulations.

(e) Transit Fares and Tolls

In its Notice of Proposed Policy, FTA requested comments on transit fares and tolls on HOT lane facilities. FTA stated that it would not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA would allow grantees and tolling authorities to develop their own fare structures for transit services and tools on HOT lane facilities. FTA received sixteen comments on this topic. Without further comment, five commenters agreed with FTA's proposed policy not to regulate toll prices. Ten commenters stated that transit vehicles should be exempt from tolls charged on federally-funded HOT lane facilities for its lanes to be classified as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA. One commenter asked FTA to require that transit fares and tolls remain competitive.

FTA Response: Federal transit law prohibits FTA from regulating the ''rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.'' 49 U.S.C. 5334(b)(1). Accordingly, FTA shall not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA will allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(f) Return of Funds under Full Funding Grant Agreements

In its Notice of Proposed Policy, FTA requested comments on its proposed policy that, in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would not require the grantee to return such funds so long as the facility complied with the conditions set forth in the Notice of Proposed Policy. FTA received one comment on this topic. The commenter expressed concern that, when the grantee is not also the tolling authority, the tolling authority may make business decisions contrary to the interest of the grantee/transit provider, thus forcing the grantee/transit provider to repay New Starts funding to FTA.

FTA Response: It appears that the commenter misunderstands the scope of FTA's proposed policy, which states that ''in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would *not* require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.'' If a grantee wishes to convert an existing HOV facility to a HOT lane facility and maintain the classification of its facility as a ''fixed guideway for purposes of FTA's funding formulas, it must comply with the conditions set forth in this Final Policy Statement. To the extent that the facility is subject to a Full Funding Grant Agreement, the grantee is obligated to abide by the requirements thereof, just as it is bound to any other contractual or legal obligation.''

(g) Miscellaneous Comments

FTA received seven miscellaneous comments in response to its Notice of Proposed Policy. One commenter asked FTA to address a circumstance where a previously eligible HOV lane (or a portion of an HOV lane) is temporarily or permanently taken out of service in order to be reconstructed and expanded into an improved HOT lane facility in the same corridor. A second commenter requested that FTA indicate whether it would classify as ''fixed guideway miles'' bus-only shoulders converted to HOT lanes when the bus-only shoulders are currently classified as ''fixed guideway miles.'' Another commenter asked FTA to clarify its policy with respect to variable-priced express lanes. Two commenters asked FTA to require coordination between privately operated HOT lane facilities and public transportation agencies. One commenter asked FTA to connect this policy with transit supportive land use. And another commenter argued that FTA'[s policy should not affect New Starts project eligibility criteria.

FTA Response: FTA recognizes that it may be necessary to temporarily remove an HOV lane from service in order to convert it into a HOT lane facility. South a HOT lane facility will not lose its classification as a ''fixed guideway'' so long as it satisfies the conditions of this Final Policy Statement.

FTA agrees with the proposal that it classify as ''fixed guideway miles'' bus-only shoulders converted to HOT lanes as long as the bus-only shoulders are currently classified as ''fixed guideway miles'' and satisfy the conditions of this Final Policy Statement. Accordingly, FTA has added the following language to its Final Policy Statement by footnote at section (b)(1):

> FTA shall classify HOT lane facilities converted from bus-only shoulders as ''fixed guideway miles,'' so long as such HOT lanes satisfy conditions (ii) and (iii) of this Final Policy Statement and were bus-only shoulders previously reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.

The commenter that asked FTA to consider variably-priced express lanes did not provide enough information for FTA to determine whether such facility could satisfy the conditions of its Proposed Statement of Policy. FTA responds by reiterating its statement at section (b)(i) of the Final Policy Statement, that with the exception of bus-only shoulders, ''neither non-HOV facilities nor facilities constructed as HOT lanes would be eligible for classification as fixed 'guideway miles.' ''

The comment requesting that FTA require coordination between privately operated HOT lane facilities and public transportation is beyond the scope of this policy statement. FTA's Planning and Assistance Standards are located at 49 CFR part 613.

Similarly, the comments requesting that FTA connect this policy with transit supportive land and that this policy not affect FTA's New Starts

project eligibility criteria are beyond the scope of this policy statement, which is limited to the classification of HOT lane facilities as ''fixed guideway miles'' for purposes for FTA's funding formulas.

Final Policy Statement on HOV-to-HOT Conversion

The following Final Policy Statement explains when FTA shall classify HOV lanes converted to HOT lanes as ''fixed guideway miles'' for FTA's funding formulas and when FTA shall not classify HOT lanes as ''fixed guideway miles'' for its funding formulas.

Background

Since the early 1980s, transportation officials have sought to manage traffic congestion and increase vehicle occupancy by means of High-Occupancy Vehicle (HOV) lanes—highway lanes reserved for the exclusive use of car pools and transit vehicles. Today, there are over 130 freeway HOV facilities in metropolitan areas in the US,[4] of which approximately 10 have received funding through FTA's Major Capital Investment program and approximately 80 are counted as ''fixed guideway miles'' for purposes of FTA's formula grant programs.[5] Since 1990, however, HOV mode share in 26 of the 40 largest metropolitan areas has steadily declined,[6] while both excess capacity on HOV lanes and congestion on general purpose lanes have increased.[7]

An increasing number of metropolitan areas are considering new demand management strategies as alternative to HOB lanes. One emerging alternative is the variably-priced High-Occupancy/Toll (HOT) lane. HOT lanes combine HOV and pricing strategies by allowing Single-Occupant Vehicles (SOVs) to access HOV lanes by paying a toll. The lanes are ''managed'' through pricing to maintain free flow conditions even during the height of rush hours.

HOT lanes provide multiple benefits to metropolitan areas that are experiencing severe and worsening congestion and significant transportation funding shortages. First, variably-priced HOT lanes expand mobility options in congested urban areas by providing an opportunity for reliable travel times for users prepared to pay a premium for this service. HOT lanes also improve the efficiency of HOV facilities by allowing toll-paying SOVs to utilize excess lane capacity on HOVs. In addition, HOT lanes generate new revenue which can be used to pay for transportation improvements, including enhanced transit service.

In August of 2005, recognizing the advantages of HOT lanes, Congress enacted Section 112 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), codified at 23 U.S.C. 166, to authorize States to permit use of HOV lanes by SOVs, so long as the performance of the HOV lanes is continuously monitored and continues to meet specified performance standards. The U.S. Department of Transportation (Department) has strongly endorsed the conversion of HOV lanes to variably HOT lanes, most recently in its *Initiative to Reduce Congestion on the Nation's Transportation Network.* It is the Department's policy to encourage jurisdictions to consider ''HOV-to-HOT'' conversion as a means of congestion relief and possible revenue enhancement.

The ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. For this reason, and given the new authority enacted by Congress to promote ''HOV-to-HOT'' conversions, many States, transportation agencies and metropolitan areas are seriously considering applying variable pricing to both new and existing roadways. For example, the current long-range transportation plan for the Washington, DC, metropolitan area includes four new HOT lanes along 15 miles of the Capital Beltway in Virginia, and six new variably lanes along 18 miles on the Inter-County Connector in Montgomery and Prince george's Counties in Maryland.[8] Virginia ia also exploring the possibility of converting existing HOV lanes along the I–95/395 corridor into HOT lanes.[9] Maryland is considering express toll lanes along I–495, I–270, as well as along other facilities.[10] Similarly, in San Francisco, the Metropolitan Transportation Commission's Transportation 2030 Plan advocates development of a HOT network that would convert that region's existing HOV lanes to HOT lanes;[11] Houston's 2025 Regional Transportation Plan includes plans to implement peak period pricing within the managed HOT lanes of the major freeway corridors in the region;[12] and the Miami-Dade, Florida 2030 Transportation Plan includes conversion of existing HOV lanes to reversible HOV/HOT lanes to provide additional capacity to I–95 in Miami-Dade County.[13] Other jurisdictions are exploring the potential for HOT lanes with grants provided by the Department's Value Pricing Pilot Program.[14] These include the Port Authority of New York/New Jersey; San Antonio, Texas; Seattle, Washington; Atlanta, Georgia; and Portland, Oregon.[15]

While an increasing number of metropolitan planning organization and State departments of transportation are study the HOT lane concept as a strategy to improve mobility, six HOT lane facilities currently operate in the United States: State Route 91 (SR 91) Express Lanes in Orange County, California; the I 15 FasTrak in San Diego, California; the Katy Freeway

[4] Office of Operations, Federal Highway Administration, U.S. Department of Transportation.

[5] National Transit Database.

[6] Journey to Work Trends in the United States and its Major Metropolitan Areas 1960–2000, Publication No. FHWA–EP–03–058 Prepared for: US Department of Transportation, Federal Highway Administration, Office of Planning, Prepared by: Nancy McGuckin, Consultant, Nanda Srinivasan, Cambridge Systematics, Inc.

[7] Office of Operations, Federal Highway Administration, U.S. Department of Transportation. Demand for highway travel by Americans continues to grow as population increases, particularly in metropolitan areas. Construction of new highway capacity to accommodate this growth in travel has not kept pace. Between 1980 and 1999, route miles of highways increased 1.5 percent while vehicle miles of travel increased 76 percent. The Texas Transportation Institute estimates that, in 200, the 75 largest metropolitan areas experienced 3.6 billion vehicle-hours of delay, resulting in 5.7 billion gallons in wasted fuel and $67.5 billion in lost productivity. And traffic volumes are projected to continue to grow. The volume of freight movement alone is forecast to nearly double by 2020. Congestion is largely thought of as a big city problem, but delays are becoming increasingly common in small cities and some rural areas as well.

[8] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[9] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[10] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[11] A Vision for the Future Transportation 2030, February 2005, Chapter 1, Page 6.

[12] 2025 Regional Transportation Plan Houston-Galveston Area, June 2005, Page 31.

[13] Miami-Dade Transportation Plan (to the Year 2030) December 2004, FINAL DRAFT, Page 24.

[14] Federal Highway Administration, U.S. Department of Transportation. The Department's Value Pricing Pilot Program (VPPP), initially authorized by the Intermodal Surface Transportation Efficiency Act as the Congestion Pricing Pilot Program and continued as the VPPP under SAFETEA–LU, encourages implementation and evaluation of value pricing pilot projects, offering flexibility to encompass a variety of innovative applications including areawide pricing, pricing of multiple or single facilities or corridors, single lane pricing, and implementation of other market-based strategies.

[15] Federal Highway Administration, U.S. Department of Transportation.

QuickRide and the Northwest Freeway (US 90) in Harris County, Texas; I 394 in Minneapolis and St. Paul, Minnesota; and I 25 in Denver, Colorado.

Prior FTA Policy

Since 2002, FTA's policy has been to continue to classify the lanes of an HOV facility converted to HOT lanes as ''fixed guideway miles'' for funding formula purposes on the condition that the facility meets two requirements: (i) the HOT facility manages SOV use so that it does not impede the free-flow and high speed of transit and high-occupancy vehicles and (ii) toll revenues collected on the facility will be used for mass transit purposes.[16] FTA has considered requiring as an additional condition for eligibility that the lowest toll payable by SOVs on a HOT facility be not less than the fare charged for transit services on the HOT facility.

Final FTA Policy

(a) *Purpose of Final Policy.* This Final Statement of Policy will help ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, and maximize throughput using excess HOV lane capacity. The revised FTA policy will also promote a uniform approach by the Department's operating agencies concerning HOV-t0-HOT conversions. In particular, FTA's policy will be coordinated with the statutes enacted by Congress under Section 112 of SAFETEA–LU applicable to the Federal Highway Administration intended to simplify conversion of HOV lanes to HOT lanes. The policy statement will also support the Department's policy of encouraging HOV-to-HOT conversions.

Final Policy. FTA shall classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as *each* of the following conditions is satisfied:

The HOT lanes were previously[17] *HOV lanes reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307(b) and 49 U.S.C. 5309(a)(E).*[18] Facilities that were not eligible HOV lanes prior to being converted to HOT lanes will remain ineligible for inclusion as fixed guideway miles in FTA's funding formulas. Therefore, neither non-HOV facilities converted directly to HOT facilities nor facilities constructed as HOT lanes will be eligible for classification as ''fixed guideway miles.''[19]

(ii) *The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in* 23 U.S.C. 166(d) 23 U.S.C. 166(d) provides operational performance standards for an HOV facility converted to a HOT facility. It also requires that the performance of the facility be continuously monitored and that it continue to meet specified performance standards. Due to original project commitments, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) or (e) may be required, when converted to HOT lanes, to achieve a higher performance standard than required under 23 U.S.C. 166(d). Standards for operational performance and determining degradation of operational performance for facilities constructed with funds from FTA's New Starts program shall be determined by FTA on a case-by-case basis. FTA will require real-time monitoring of traffic flows to ensure on-going compliance with operational performance standards.

(iii) *Program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.''* ''Permissible uses'' means any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity: (a) Debt service, (b) a reasonable return on investment of any private financing, (c) the costs necessary for the proper operation and maintenance of such facility,[20] and (d) if the operating entity annually certifies that the facility is being adequately operated and maintained (including that the permissible uses described in (a), (b) and (c) above, if applicable, are being duly paid), any other purpose relating to a project carried out under Title 49 U.S.C. 5301 *et seq.* In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use shall not apply to more than *transit's allocable share*[21] of the facility's program income. FTA shall not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA shall not condition

[16] In a Letter to U.S. Representative Randall Cunningham, dated June 10, 2002, concerning the I–15 FasTrak facility in San Diego, FTA stated: ''* * * FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis (often called high occupancy/toll (HOT) lanes) under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles, and the toll revenues collected must be used for mass transit purposes.''

[17] With respect to whether HOT lanes were previously HOV lanes reported in the National Transit Database (''HTD'') as ''fixed guideway miles,'' HOV facilities classified as ''fixed guideway miles'' in the NTD on or before data of the publication of this Final Policy Statement shall satisfy this requirement. With data of publication of this Final Policy Statement, such HOV lanes may not be converted to HOT lanes and maintain their classification as ''fixed guideway miles'' unless: (i) the HOV lanes have reported to the NTD as ''fixed guideway miles'' for three years to their conversion to HOT lanes, (ii) users of public transportation have accounted for at least 50% of the passenger miles traveled on the HOV lanes in their last twelve months of service (or once the HOV lanes are converted to HOT lanes, users of public transportation are reasonably expected to account for at least 50% of the passenger miles traveled on the HOT lanes in their twelve months of service), or (iii) in his or her discretion, the Administrator so approves.

[18] FTA apportions amounts made available for fixed guideway modernization under 49 U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One off these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service at least 7 years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this Final Policy Statement; and (ii) no HOV facility that has been in revenue service for less than seven years shall forfeit the years it has accrued thereunder because it is converted to a HOT lane facility and for so long as the HOT lane facility maintains its ''fixed guideway'' in accordance with this Final Policy Statement, it shall continue to accrue years thereunder.

[19] FTA recognizes one exception to this statement—bus-only shoulders. Accordingly, FTA shall classify HOT lane facilities converted from bus-only shoulders as ''fixed guideway miles,'' so long as such HOT lanes satisfy conditions (ii) and (iii) of this Final Policy Statement and were bus-only shoulders previously reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.

[20] The costs necessary for the proper operation and maintenance of a HOT lane facility may include reconstruction, rehabilitation, and the costs associated with operating transit service on the facility.

[21] Transit's allocable share of the facility's program income shall be an amount equal to the facility's total program income, for any period, multiplied by a ratio, (a) the numerator of which shall be the cumulative amount of funds contributed to the facility through a program established by transit law, and (b) the denominator of which shall be the cumulative amount of all Federal, State and local capital funds contributed to the facility, in each case at the time transit's allocable share is calculated. For purposes of 49 CFR 18.25, (i) amounts other than transit's allocable share shall not constitute program income and (ii) any expenditure of transit's allocable share that is not deducted from outlays made under transit law shall be deemed an ''alternative'' under 49 U.S.C. 18.25(g) and deemed by FTA a term of the grant agreement.

the classification of HOT lanes converted from HOV lanes as ''fixed guideway miles,'' or condition any approval or waiver under a Full Funding Grant Agreement, on a grantee's adopting transit fare policies or a tolling authority's adopting of tolling policies concerning, respectively, the price of transit services on the HOT lane facility and the tolls payable by SOVs. Instead, FTA shall permit grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(d) *No Return of Funds under Full Funding Grant Agreements.* In the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA shall not require the grantee to return such funds so long as the facility complies with the conditions set forth in this guidance and the original grant agreement or Full Funding Grant Agreement, as applicable.

Issued on the 21st day of December, 2006.

James S. Simpson,

Administrator.

[FR Doc. 06–9873 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Final Rule—Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to make this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Final Rule—Management of Federal Agency Disbursements.''

DATES: Written comments should be received on or before February 26, 2007.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sally Phillips, Director, EFT Strategy Division, Room 420, Liberty Center Building, 401 14th Street, SW., Washington, DC 20227, (202) 874–7106.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Final Rule—Management of Federal Agency Disbursements.

OMB Number: 1510–0066.

Form Number: None.

Abstract: Recipients of Federal disbursements must furnish to FMS their bank account number and the name and routing number of their financial institution to receive payment electronically.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses, or other for-profit institutions, Individuals or households, Not-for-profit Institutions.

Estimated Number of Respondents: 1,300.

Estimated Time per Respondents: 15 minutes.

Estimated Total Annual Burden Hours: 325.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 21, 2006.

Wanda Rogers,

Assistant Commissioner, Regional Operations.

[FR Doc. 06–9857 Filed 12–26–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Direct Deposit Sign-Up Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form 1199A ''Direct Deposit Sign-Up Form'' and Form 1200 ''Go Direct Sign Up Form for Direct Deposit of Federal Benefit Payments.''

DATES: Written comments should be received on or before February 26, 2007.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Sally Phillips, Director, EFT Strategy Division, Room 420, 401 14th Street, SW., Washington, DC 20227, (202) 874–7106.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(a)), the Financial Management Service solicits comments on the collection of information described below:

Title: Direct Deposit Sign-Up Form, and Go Direct Sign-Up Form for Direct Deposit of Federal Benefit Payments.

OMB Number: 1510–0007.

*Form Number(s):*SF–1199A, FMS 1200.

Abstract: These forms are used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information on the forms routes the direct deposit payment to the correct account at the financial institution.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals of household, Business or other for-profit, Federal Government.

Estimated Number of Respondents: 406,715.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 69,142.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 21, 2006.

Wanda Rogers,

Assistant Commissioner, Regional Operations.

[FR Doc. 06–9858 Filed 12–26–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120200–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–120200–97 (TD 8775), Election Not to Apply Look-Back Method in De Minimis Cases (§ 1.460–6).

DATES: Written comments should be received on or before February 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, 202–622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election Not to Apply Look-Back Method in De Minimis Cases.

OMB Number: 1545–1572.

Regulation Project Number: Reg–120200–97.

Abstract: Under Internal Revenue Code section 460(b)(6), a taxpayer may elect not to apply the look-back method to long-term contracts in *de minimis* cases. The taxpayer is required under the regulation to notify the IRS of its election.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 min.

Estimated Total Annual Burden Hours: 4,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 6, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–22168 Filed 12–26–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Savings Association Holding Company Report H–(b)11

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before February 26, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information

about this proposed information collection from Donna Deale, Director of Holding Companies and Affiliates, Examinations and Supervision Policy, (202) 906–7488, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Savings Association Holding Company Report H–(b)11.

OMB Number: 1550–0060.

Form Number: H–(b)11.

Regulation requirement: 12 CFR 584.1(a)(2).

Description: The H–(b)11 form is used to aid OTS in its role as consolidated supervisor of savings and loan holding companies. In addition, it will aid OTS in determining whether savings and loan holding companies are engaging in activities that violate applicable statutes and regulations or may prove injurious to any subsidiary savings association.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1,012.

Estimated Burden Hours per Response: 2 hours.

Estimated Frequency of Response: Quarterly.

Estimated Total Burden: 8,096 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 06–9893 Filed 12–26–06; 8:45 am]

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Federal Register

Wednesday,
December 27, 2006

Part II

Environmental Protection Agency

40 CFR Parts 86 and 600

Fuel Economy Labeling of Motor Vehicles: Revisions To Improve Calculation of Fuel Economy Estimates; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[EPA–HQ–OAR–2005–0169; FRL–8257–5]

RIN 2060–AN14

Fuel Economy Labeling of Motor Vehicles: Revisions To Improve Calculation of Fuel Economy Estimates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing changes to the methods used to calculate the fuel economy estimates that are posted on window stickers of all new cars and light trucks sold in the United States. This final rule will greatly improve the EPA fuel economy estimates to more accurately inform consumers about the fuel economy they can expect to achieve in the real world. The new test methods take into account several important factors that affect fuel economy in the real world, but are missing from the existing fuel economy tests. Key among these factors are high speeds, aggressive accelerations and decelerations, the use of air conditioning, and operation in cold temperatures. Under the new methods, the city miles per gallon (mpg) estimates for the manufacturers of most vehicles will drop by about 12 percent on average relative to today's estimates, and city mpg estimates for some vehicles will drop by as much as 30 percent. The highway mpg estimates for most vehicles will drop on average by about 8 percent, with some estimates dropping by as much as 25 percent relative to today's estimates. These changes will take effect starting with 2008 model year vehicles, available at dealers in 2007. We also are adopting a new fuel economy label design with a new look and updated information that should be more useful to prospective car buyers. The new label features more prominent fuel cost information, an easy-to-use graphic for comparing the fuel economy of different vehicles, clearer text, and a Web site address for more information. Manufacturers will be phasing in the new design during the 2008 model year. Finally, for the first time we are requiring fuel economy labeling of certain passenger vehicles between 8,500 and 10,000 lbs gross vehicle weight rating. Because of the Department of Transportation's recent regulation that brings medium-duty passenger vehicles into the Corporate Average Fuel Economy program starting in 2011, EPA is now statutorily obligated to include these vehicles in the fuel economy labeling program. Medium-duty passenger vehicles are a subset of vehicles between 8,500 and 10,000 lbs gross vehicle weight that includes large sport utility vehicles and vans, but not pickup trucks. Vehicle manufacturers are required to post fuel economy labels on medium-duty passenger vehicles beginning with the 2011 model year.

DATES: This final rule is effective on January 26, 2007. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 26, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0169. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Rob French, U.S. EPA, Voice-mail (734) 214–4636; E-mail: *french.roberts@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

This action affects companies that manufacture or sell new light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles.[1] Regulated categories and entities include:

Category	NAICS Codes [a]	Examples of potentially regulated entities
Industry	336111, 336112	Motor vehicle manufacturers.
Industry	81112, 811198, 54154	Commercial importers of vehicles and vehicle components.

[a] North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT.**

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I. Introduction

This final rule has three key elements. First, we are finalizing changes to the Environmental Protection Agency's (EPA) fuel economy testing and calculation procedures so that the miles per gallon (mpg) estimates for passenger cars and light-duty trucks will better reflect what consumers achieve in the real-world. Second, we are updating the fuel economy window sticker that appears on all new cars and light trucks sold in the U.S., which will make the window sticker more useful and understandable to consumers. Third, for the first time we are requiring fuel economy labeling of certain passenger vehicles between 8,500 and 10,000 lbs gross vehicle weight rating (GVWR), such as the largest sport-utility vehicles (SUVs) and passenger vans.

This final rule follows a Notice of Proposed Rulemaking (NPRM) published on February 1, 2006.[2] In the NPRM, we proposed changes to the testing and calculation procedures used to calculate the fuel economy estimates that appear on window stickers that are posted on all new cars and light trucks sold in the United States. The NPRM also proposed changes to the fuel economy label design and content. We received comments on the NPRM from a wide variety of stakeholders, including the automobile manufacturing industry, environmental groups, consumer organizations, state governments, and the general public. These comments are available for public viewing in Docket EPA–HQ–OAR–2005–0169. Docket content can be viewed and/or downloaded at *http://www.regulations.gov*.[3] Our responses to these comments are detailed in the Response to Comments document, which is available in the public docket and on our Web site.[4] In this section of the final rule we describe some background information and provide a brief description of the content, timing, and rationale for the final program. For additional background and details regarding the proposal, readers should consult the NPRM and related documents.

A. Background

With this final rule, EPA is helping car buyers make more informed decisions when considering a vehicle's fuel economy. Fuel economy, or gas mileage, continues to be a major area of public interest for several reasons. Passenger vehicles account for approximately 40 percent of all U.S. oil consumption. Finally, the more miles a car gets per gallon of gasoline, the more money the owner saves on fuel costs. With consumers' renewed interest in fuel savings due to higher gasoline prices, providing mileage estimates that more closely reflect real-world driving has once again become important for consumers who comparison-shop.

The EPA fuel economy estimates have appeared on the window stickers of all new cars and light trucks since the late 1970's and are well-recognized by consumers. The window sticker displays two fuel economy estimates: One for city driving and one for highway driving. These estimates, in units of miles per gallon, essentially serve two purposes: (1) To provide consumers with a basis on which to compare the fuel economy of different vehicles, and (2) to provide consumers with a reasonable estimate of the fuel economy they can expect to achieve. While the EPA fuel economy estimates have generally been a useful tool for comparing the relative fuel economy of different vehicles, they have been less useful for predicting the fuel economy that consumers can reasonably expect to achieve in the real world. Consumers need to be provided with accurate,

[2] See 71 FR 5426 (Feb. 1, 2006), Available in the public docket and on our Web site at *http://www.epa.gov/fueleconomy/regulations.htm.*

[3] Enter the docket i.d. number (EPA–HQ–OAR–2005–0169) in the Keyword field and choose ''All Documents (Open and Closed for Comment).''

[4] See *http://www.epa.gov/fueleconomy/regulations.htm* or *http://www.regulations.gov.*

easily understandable, and relevant information regarding the fuel economy of new vehicles. This final rule improves the information provided to consumers regarding the fuel economy of new vehicles.

The city fuel economy estimate is currently based on the Federal Test Procedure (FTP), which was designed to measure a vehicle's tailpipe emissions under urban driving conditions. The driving cycle used for the FTP was developed in the mid-1960's to represent home-to-work commuting in Los Angeles. The FTP is also one of the tests used to determine emissions compliance today. The FTP includes a series of accelerations, decelerations, and idling (such as at stop lights). It also includes starting the vehicle after it has been parked for an extended period of time (called a ''cold start''), as well as a start on a warmed-up engine (called a ''hot start''). The total distance covered by the FTP is about 11 miles and the average speed is about 21 mph, with a maximum speed of about 56 mph.

The highway fuel economy estimate is currently based on the Highway Fuel Economy Test (HFET), which was developed by EPA in 1974 and was designed to represent a mix of interstate highway and rural driving. It consists of relatively constant higher-speed driving, with no engine starts or idling time. The HFET covers a distance of about 10 miles, at an average speed of 49 mph and a top speed of about 60 mph.

A fundamental issue with today's fuel economy estimates is that the underlying test and calculation procedures do not fully represent current real-world driving conditions. Some of the key limitations are that the highway test has a top speed of only 60 miles per hour, both the city and highway tests are run at mild climatic conditions (75 °F), both tests have mild acceleration rates, and neither test is run with the use of fuel-consuming accessories, such as air conditioning. Over the past few years, there have been several independent studies comparing EPA's fuel economy estimates to the real-world experience of consumers. These studies confirm that there is considerable variation in real-world fuel economy, and provide substantial evidence that EPA's mileage ratings often overestimate real-world fuel economy. Although these studies differ in a number of variables, including their test methods, driving conditions, and fuel economy measurement techniques, they indicate that EPA's approach to estimating fuel economy needs to be improved to better represent some key real-world fuel economy impacts.

The methods used today for calculating the city and highway mpg estimates have been in place since the 1970's, and the results of these methods were adjusted only once in the mid-1980's to bring them closer to consumer's expectations.[5] Since that time, there have been many changes affecting the way Americans drive—speed limits are higher, road congestion has increased, vehicle performance has increased, vehicle technologies have changed markedly, and more vehicles are equipped with energy-consuming accessories like air conditioning. Our analysis shows that these changes, along with several other factors, again indicate a need to revise the testing and calculation procedures underlying the fuel economy window sticker estimates.[6]

We believe the new fuel economy estimates will provide car buyers with useful information when comparing the fuel economy of different vehicles. It is important to emphasize that fuel economy varies from driver to driver for a wide variety of reasons, such as different driving styles, climates, traffic patterns, use of accessories, loads, weather, and vehicle maintenance. Even different drivers of the same vehicle will experience different fuel economy as these and other factors vary. Therefore, it is impossible to design a ''perfect'' fuel economy test that will provide accurate real-world fuel economy estimates for every consumer. With any estimate, there will always be consumers that get better or worse actual fuel economy. The EPA estimates are meant to be a general guideline for consumers, particularly to compare the relative fuel economy of one vehicle to another. Nevertheless, we do believe that the new fuel economy test methods will do a better job of giving consumers a more accurate estimate of the fuel economy they can achieve in the real-world. Under the new methods, the city mpg estimates for the manufacturers of most vehicles will drop by about 12 percent on average relative to today's estimates. City estimates for some of the most fuel-efficient vehicles, including gasoline-electric hybrid vehicles, will decrease by 20 to 30 percent. The highway mpg estimates for most vehicles will drop on average by about 8 percent, with some estimates dropping by as much as 25 percent relative to today's estimates.

While the inputs to our estimates are based on data from actual real-world driving behavior and conditions, it is essential that our fuel economy estimates continue to be derived primarily from controlled, repeatable, laboratory tests. Because the test is controlled and repeatable, an EPA fuel economy estimate can be used for comparison of different vehicle models and types. In other words, when consumers are shopping for a car, they can be sure that the fuel economy estimates were measured using a ''common yardstick''—that is the same test run under the exact same set of conditions, making the fuel economy estimates a fair comparison from vehicle-to-vehicle. While some organizations have issued their own fuel economy estimates based on real-world driving, such an approach introduces a wide number of often uncontrollable variables—different drivers, driving patterns, weather conditions, temperatures, etc.—that make repeatable tests impossible. Our new fuel economy test methods are more representative of real-world conditions than the current fuel economy tests—yet we retain our practice of relying on controlled, repeatable, laboratory tests. EPA and manufacturers test over 1,250 vehicle models annually and every test is run under an identical range of conditions and under a precise driver's trace, which assures that the result will be the same for an individual vehicle model no matter when and where the laboratory test is performed. Variations in temperature, road grade, driving patterns, and other variables do not impact the result of the test. While such external conditions impact fuel economy on a trip-to-trip basis, they do not change the laboratory test result. Therefore, a repeatable test provides a level playing field for all vehicles, which is essential for comparing the fuel economy of one vehicle to another. Finally, EPA must preserve the ability to confirm the values achieved by the manufacturers' testing, and this can only be achieved with a highly repeatable test or set of tests.

In the Energy Policy Act of 2005, Congress required EPA to revise the fuel economy labeling methods to better reflect a variety of real-world factors that affect fuel economy. Section 774 of

[5] In 1984, EPA published new fuel economy labeling procedures that were applicable to 1985 and alter model year vehicles. Based on in-use fuel economy data collected at the time, it was evident that the fuel economy estimates needed to be adjusted downward in order to more accurately reflect consumers' average fuel economy experience. The city values (based on the raw FTP test data) were adjusted downward by 10 percent and the highway values (likewise based on the raw highway test data) were adjusted downward by 22 percent. See 49 FR 13832 (April 6, 1984).

[6] See the Technical Support Document and ''Vehicle Fuel Economy Labeling and the Effect of Cold Temperature, Air-Conditioning Usage and Aggressive Driving on Fuel Economy,'' by Eldert Bontekoe and Richard A. Rykowski, 2005. These are available in the public docket for review.

the 2005 Energy Policy Act directs EPA to ''* * * update or revise the adjustment factors in [certain sections of the fuel economy labeling regulations] to take into consideration higher speed limits, faster acceleration rates, variations in temperature, use of air conditioning, shorter city test cycle lengths, current reference fuels, and the use of other fuel depleting features.'' This final rule fully addresses this statutory requirement. Section VII contains a detailed analysis of the statute and regulations.

B. What Requirements Are We Adopting?

This final rule establishes new methods for determining the city and highway fuel economy estimates for the sole purpose of fuel economy labeling by incorporating fuel economy results over a broader range of driving conditions. The new methodology will result in EPA fuel economy estimates that better approximate the miles per gallon that consumers achieve in real-world driving. These changes include some revisions to existing test procedures. In addition, we are revising the format and content of the fuel economy label to make the information more useful and easily understandable to consumers. The new rule also requires that medium-duty passenger vehicles (a subset of vehicles 8,500 to 10,000 lbs gross vehicle weight) have fuel economy labels. We also are finalizing minor changes related to the fuel economy information program, including revising the comparable vehicle classes and adding a new provision for the electronic distribution of the annual Fuel Economy Guide. An overview of each of these requirements follows, with additional detail provided in subsequent sections of this final rule.

1. Revised Methods for Calculating City and Highway Fuel Economy Estimates

This final rule revises the test methods by which the city and highway fuel economy estimates are calculated. We are replacing the current method, established in 1984, of adjusting the city (FTP) test result downward by 10 percent and the highway (HFET) test result downward by 22 percent. Instead, we are finalizing the proposed approach that incorporates additional test methods that address factors that impact fuel economy but that are missing from today's tests—specifically, higher speeds, more aggressive driving (e.g., higher acceleration rates), the use of air conditioning, and the effect of cold temperature and other factors.

Since 1984 when we last updated the fuel economy estimate methodology, EPA has established several new test cycles for emissions certification. EPA had become concerned that the FTP omitted many critical driving modes and conditions that existed in actual use, and that emissions could be substantially higher during these driving modes compared to the FTP.[7] Manufacturers frequently designed their vehicles' emission control systems to meet the specified FTP test conditions, often neglecting emissions control over other driving conditions, resulting in higher real-world emissions.

The need for action to address off-cycle emissions was recognized by Congress in the passage of Sections 206(h) and 202(j) of the Clean Air Act Amendments of 1990 (CAAA). Section 206(h) required EPA to study and revise as necessary the test procedures used to measure emissions, taking into consideration the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude. Section 202(j) of the CAAA required EPA to establish emission standards for carbon monoxide under cold (20°F) temperature conditions.

In 1992, EPA published rules implementing the 202(j) cold temperature testing requirement, acknowledging that the ambient temperature conditions of the FTP test (run between 68 and 86 °F) did not represent the full range of ambient temperature conditions that exist across the United States and that cold temperature had different emissions effects on different vehicle designs.[8] EPA's cold temperature emission regulations required manufacturers to conduct FTP testing at 20 °F. By promulgating this new test procedure and associated carbon monoxide emission standard, EPA sought to encourage manufacturers to employ better emission control strategies that would improve ambient air quality across a wider range of in-use temperature conditions.

In fulfillment of the 206(h) CAAA requirement, EPA published a report in 1993 which concluded that the FTP cycle did not represent the full range of urban driving conditions that could impact the in-use driving emission levels.[9] Consequently, EPA promulgated a rule in 1996 that established two new test procedures, with associated emission standards, that addressed certain shortcomings with the current FTP. Known as the ''Supplemental FTP,'' or ''SFTP,'' these procedures, similar to the cold temperature FTP, encouraged the use of the better emission controls across a wider range of in-use driving conditions in order to improve ambient air quality.[10]

One of the SFTP test cycles, the US06, was designed to address high speed, aggressive driving behavior (with more severe acceleration rates) and rapid and frequent speed fluctuations. The US06 test contains both lower-speed city driving and higher-speed highway driving modes. Its top speed is 80 mph, and average speed is 48 mph. The top acceleration rate exceeds 8 mph per second. The other SFTP test, the SC03, was designed to address air-conditioner operation under a full simulation of high temperature (95 °F), high sun-load, and high humidity. The SC03 drive cycle was designed to represent driving immediately following a vehicle startup, and rapid and frequent speed fluctuations. Its top speed is about 55 mph and average speed is 22 mph. The top acceleration rate is about 5 mph per second.

The basis for the SFTP rulemaking was a study of real-world driving in four cities, Baltimore, Spokane, Atlanta and Los Angeles, where driving activity was measured on instrumented vehicles as well as by chase cars.[11] At that time, it was found that 18 percent of the driving (in Baltimore) occurred outside of the speed/acceleration distribution of the FTP drive schedule. More recent real-world driving activity data indicates that driving has become even more aggressive than it was in 1992. Recent real-world activity data collected in California and Kansas City found that about 28 percent of driving (vehicle miles traveled) is at speeds greater than 60 mph. Further, about 33 percent of recent real-world driving falls outside of the FTP/HFET speed and acceleration activity region. This is based on extensive chase car studies in California and instrumented vehicle studies in Kansas City.[12] Our assessment of these

[7] Emissions from driving modes not reflected on EPA test procedures became known as ''off-cycle'' emissions, meaning that they occurred during driving conditions not typically encountered over EPA's emission test cycle.

[8] *See* 57 FR 31888 (July 17, 1992).

[9] U.S. Environmental Protection Agency. Federal Test Procedure Review Project: Preliminary Technical Report. U.S. Environmental Protection Agency, No. EPA420–R–93–007, May 1993.

[10] *See* 61 FR 54852 (October 22, 1996).

[11] These studies were not designed to produce results that would be representative of driving behaviors throughout the U.S. Nonetheless, they were the best and most current data upon which to base design of the new test cycles.

[12] A ''chase car'' study is a study in which driving behavior is recorded by an instrumented vehicle that follows vehicles on the road to record the behavior of the followed vehicle. In some cases the chase car is equipped with a laser rangefinder to enable the data collection systems to accurately

Continued

recent real-world driving activity studies is described in detail in the Technical Support Document.

Clearly, the FTP and HFET tests alone do not fully capture the broad range of real-world driving conditions; indeed, this has already been conclusively demonstrated by the research that led to the revision of the FTP for emission test purposes. In order for EPA's fuel economy tests to be more representative of key aspects of real-world driving, it is critical that we consider the test conditions represented by these additional emission tests. The additional test methods will bring into the fuel economy estimates the test results from the five emissions tests in place today: FTP, HFET, US06, SC03, and Cold FTP. Thus, we refer to this as the ''5-cycle'' method. The five test procedures that make up the 5-cycle method and some of their key characteristics are summarized in the table below.

TABLE I–1.—CHARACTERISTICS OF THE FUEL ECONOMY AND EMISSION TESTS OF THE 5-CYCLE METHODOLOGY

Test	Designed to represent	Avg speed (mph)	Max speed (mph)	Max accel (mph/sec)	Ambient conditions	Primary use
Federal Test Procedure (FTP).	Urban stop-and-go driving from 1970's.	21	58	3.3	75 °F	Emissions & fuel economy testing.
Highway Fuel Economy Test (HFET).	Rural driving	48	60	3.3	75 °F	Fuel economy testing.
US06	High speeds and aggressive driving.	48	80	8.5	75 °F	Emissions testing.
SC03	Air conditioner operation.	22	55	5.1	95 °F & 40% relative humidity.	Emissions testing.
Cold FTP	Cold temperature operation.	21	58	3.3	20 °F	Emissions testing.

Under the new requirements, rather than basing the city mpg estimate solely on the adjusted FTP test result, and the highway mpg estimate solely on the adjusted HFET test result, each estimate will be based on a ''composite'' calculation of all five tests, weighting each appropriately to arrive at new city and highway mpg estimates. The new city and highway estimates will each be calculated according to separate city and highway ''5-cycle'' formulae that are based on fuel economy results over these five tests. The conditions represented by each test will be ''weighted'' according to how frequently those conditions occur over average real-world city or highway driving. For example, we have derived weightings to represent driving cycle effects, trip length, air conditioner compressor-on usage (it is the activity of the compressor that most significantly affects emissions and fuel economy), and operation over various temperatures. This methodology is described in detail in Section II and in the Technical Support Document.

We also are finalizing a downward adjustment to account for effects that are not reflected in our existing five test cycles. There are many factors that impact fuel economy, but are difficult to account for in the test cell on the dynamometer. These include roadway roughness, road grade (hills), wind, low tire pressure, heavier loads, hills, snow/ice, effects of ethanol in gasoline, larger vehicle loads (e.g., trailers, cargo, multiple passengers), and others. We need to account for these factors in our new fuel economy calculation methods, as they will lower a driver's fuel economy beyond those factors represented by our existing test cycles. We are finalizing a 9.5 percent downward adjustment to account for these non-dynamometer effects, based on detailed analyses of the impacts of each of these factors using the most recent technical information and studies available. Additional detail regarding this factor can be found in Section II and in the Technical Support Document.

Because the 5-cycle method is inherently vehicle-specific, the difference between today's label values and the new fuel economy estimates may vary significantly from vehicle to vehicle. In general, however, the new approach will result in city fuel economy estimates that are about 8 to 15 percent lower than today's labels for the majority of conventional vehicles. The city mpg estimates for the manufacturers of most vehicles will drop by about 12 percent on average relative to today's estimates. For vehicles that achieve generally better fuel economy, such as gasoline-electric hybrid vehicles, new city estimates will be about 20 to 30 percent lower than today's labels. The new highway fuel economy estimates will be about 5 to 15 percent lower for the majority of vehicles, including most hybrids. The highway mpg estimates for the manufacturers of most vehicles will drop on average by about 8 percent, with estimates for most hybrid vehicles dropping by 10 to 20 percent relative to today's estimates.

This final rule will greatly improve the EPA fuel economy estimates, so that they come closer to the fuel economy that consumers achieve in the real world. However, these are still estimates, and even with the improved fuel economy test methods we are finalizing today, some consumers will continue to get fuel economy that is higher or lower than the new estimates. No single test or set of tests can ever account for the wide variety of conditions experienced by every driver.

2. New Labeling Requirement for Medium-Duty Passenger Vehicles

Based on the public comments and on specific events that have transpired since the NPRM was published, we are finalizing in this rule a fuel economy labeling program for Medium-Duty Passenger Vehicles (MDPVs), a subset of vehicles between 8,500 and 10,000 lbs GVWR.

MDPVs were first defined in the regulation that put in place the ''Tier 2'' emission standards and gasoline sulfur controls.[13] This newly-defined class of vehicles includes SUVs and passenger vans between 8,500 and 10,000 lbs GVWR, but excludes large pick-up trucks. The specific regulatory definition was designed to capture in the light-duty vehicle emissions

determine the speed of the chased vehicle relative to the chase car. An instrumented vehicle study is a study in which data is collected from customer vehicles where the customer has agreed to allow their vehicle to be equipped with data collection instrumentation.

[13] See 65 FR 6698 (Feb. 10, 2000).

program some of the heavy-duty vehicles that are designed and used predominantly for passenger use.

Under the Energy Policy and Conservation Act (EPCA), EPA is required to establish regulations that require a manufacturer to attach a label to each ''automobile'' manufactured in a model year.[14] ''Automobile'' is defined as a vehicle not more than 6,000 lbs GVWR, and those vehicles between 6,000 and 10,000 lbs GVWR that DOT determines are appropriate for inclusion in the Corporate Average Fuel Economy (CAFE) program.[15] ''Automobile'' for the purposes of labeling also includes vehicles at no more than 8,500 lbs GVWR whether or not the Department of Transportation (DOT) has included those vehicles in the CAFE program.[16] EPA has no authority to require labels on vehicles that are not automobiles, therefore EPA has no authority to require labeling of either vehicles above 10,000 lbs GVWR, or vehicles between 8,500 and 10,000 lbs GVWR that are not included by DOT in the CAFE program.

Since the time of EPA's proposal, DOT has included some vehicles above 8,500 lbs GVWR and below 10,000 lbs in its CAFE program, beginning in model year 2011.[17] Since these vehicles now meet the definition of automobile, EPA is authorized to include these vehicles in labeling program. This final rule requires fuel economy labels on these MDPVs beginning in model year 2011.

3. Improved Fuel Economy Label Design

We are adopting a new fuel economy label format that is easier to read, has improved graphic design, and contains information that should be more useful to prospective car buyers. The final label design reflects input from the public comments received and from market testing of prototype label designs conducted via a series of focus groups. In addition to displaying revised city and highway mpg estimates, the new label features the following items:

- A new layout featuring an updated fuel pump graphic, a prominent heading, and prominent government logos;
- More prominent estimated annual fuel cost information, including the addition of the basis for the estimated annual fuel cost (dollars per gallon and miles driven per year);
- An easy-to-use graphic that allows quick comparison of the labeled vehicle with other vehicles in its class;
- A simplified statement noting that ''Your mileage will vary'';
- A link to the EPA/DOE Web site *www.fueleconomy.gov*; and,
- A transition statement noting that the mpg estimates are the result of new EPA methods beginning with the 2008 models (for inclusion on labels of model year 2008 and 2009 vehicles only).

Details about the label design and content are found in Section III. An example label is shown below (actual size of the label is required by statute to be 4.5 inches tall by 7 inches wide).

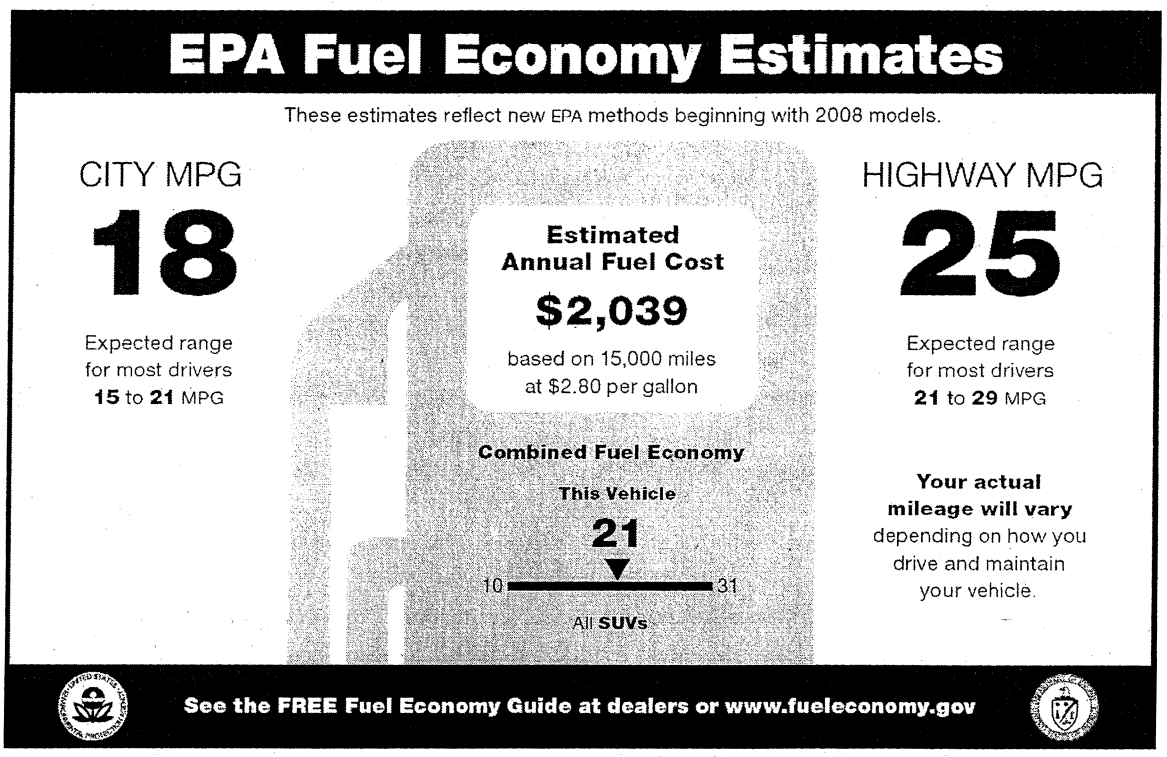
[14] See 49 U.S.C. 32908(b).

[15] See 49 U.S.C. 32901(a)(3).

[16] See 49 U.S.C. 32908(a).

[17] See 71 FR 17565 (April 6, 2006).

Figure I-1: Example of New Fuel Economy Label



* Combined fuel economy is based on a weighted harmonic average of city and highway mpg, where city is weighted 55% and highway is weighted 45%. The estimated annual fuel cost is based on the combined fuel economy.

4. New Vehicle Class Categories and Definitions

EPCA requires that the label contain "the range of fuel economy of comparable automobiles of all manufacturers." [18] EPA regulations define what constitutes "comparable automobiles." We proposed and are finalizing changes to the vehicle class categories to better reflect the current vehicle market and to allow consumers to make more appropriate fuel economy comparisons. Specifically, we are finalizing our proposal to add the vehicle class categories of "Sport Utility Vehicle" and "Minivan," with appropriate definitions, to the list of categories used to classify vehicles for fuel economy comparison purposes. We are also redefining the "Small Pickup Truck" class by increasing the weight limit criteria. Section VI contains additional detail on these changes.

[18] See 49 U.S.C. 32908(b)(1)(C).

5. Test Procedure Modifications

We are finalizing several changes to existing test procedures to allow the collection of appropriate fuel economy data and to ensure that existing test procedures better represent real-world conditions. Specifically, we are finalizing the following test procedure changes:

- A revised US06 test protocol that will collect the US06 exhaust emissions in two emissions samples (bags) in order to separately assess city and highway fuel economy over this test, with several alternative methods of determining a two-bag result allowed);
- Mandatory operation of the heater/defroster during the cold temperature FTP for emissions and fuel economy testing;
- Testing diesel vehicles on the cold temperature FTP; and
- Requiring hybrid vehicles to perform all four phases/bags of the FTP.

Details regarding these changes are described in Section IV.

C. Why Is EPA Taking This Action?

1. Energy Policy Act of 2005

In the Energy Policy Act of 2005, Congress required EPA to update or revise adjustment factors to better reflect a variety of real-world factors that affect fuel economy. Section 774 of the Energy Policy Act directs EPA to " * * * update or revise the adjustment factors in [certain sections of the fuel economy labeling regulations] to take into consideration higher speed limits, faster acceleration rates, variations in temperature, use of air conditioning, shorter city test cycle lengths, current reference fuels, and the use of other fuel depleting features." This final rule does take into account these conditions and will address this statutory requirement. The Energy Policy Act of 2005 and other relevant statutes are discussed in greater detail in Section VII.

2. Comparing EPA Estimates to Actual Driving Experience

First, it is important to stress that the EPA city and highway mpg numbers are

estimates—they cannot give consumers an exact indication of the fuel economy they will achieve. The complete range of consumer fuel economy experience can not be represented perfectly by any one number. Fuel economy varies based on a wide range of factors, some of which we have discussed above. There will always be consumers that achieve real-world fuel economy both better and worse than a given estimate.

In recent years, there have been a number of studies, conducted by a variety of sources, suggesting that there is often a shortfall between the EPA estimates and real-world fuel economy. Several organizations have provided consumers with their own fuel economy estimates, which in some cases vary significantly from EPA's estimates. Each of these studies differs in its test methods, driving cycles, sampling of vehicles, and methods of measuring fuel economy. There are strengths and weaknesses of each study, which we discuss further in the Technical Support Document. Collectively, these studies indicate there are many cases where real-world fuel economy falls below the EPA estimates. The studies also indicate that real-world fuel economy varies significantly depending on the conditions under which it is evaluated. Nevertheless, taken as a whole, these studies reflect a wide range of real-world driving conditions, and show that typical fuel economy can be much lower than EPA's current estimates.

3. Representing Real-World Conditions on the Fuel Economy Tests

The current city and highway fuel economy tests do not represent the full range of real-world driving conditions. The 1985 adjustment factors were designed to ensure that the fuel economy estimates across the vehicle fleet reflected the average impacts of a number of conditions not represented on the tests. However, as we noted earlier, many changes have occurred since then that make it once again desirable to reevaluate the fuel economy test methods and adjustment factors. Given the significant degree of variation that is apparent across vehicles, we believe it is important to reconsider the approach of ''one-size-fits-all'' adjustment factors and instead move to an approach that more directly reflects the impacts of fuel economy on individual vehicle models.

There are several key limitations in the FTP and HFET tests that cause them to not adequately reflect real-world driving today. First, most consumers understandably think ''highway'' fuel economy means the fuel economy you can expect under freeway driving conditions. In fact, the highway test has a top speed of 60 mph, since the test was developed more than 20 years ago to represent rural driving conditions at a time when the national speed limit was 55 miles per hour. The national speed limit has since been eliminated, many states have established speed limits of 65 to 70 miles per hour, and much driving is at even higher speeds. Recent real-world driving studies indicate that about 28 percent of driving (vehicle miles traveled, or VMT) is at speeds of greater than 60 mph. (This analysis is detailed in the Technical Support Document.) These studies also show that 33 percent of real-world driving VMT falls outside the FTP/HFET speed and acceleration activity region. Thus, a substantial amount of high speed driving behavior is not captured in today's FTP or HFET tests. This is a weakness in our current fuel economy test procedures. Since higher speed driving has a negative impact on fuel economy, incorporating these higher speed driving conditions into the fuel economy tests would lower the fuel economy estimates.

Second, the maximum acceleration rates of both the FTP and HFET tests are a relatively mild 3.3 miles-per-hour per second (mph/sec), considerably lower than the maximum acceleration rates seen in real-world driving. Recent real-world driving studies indicate that maximum acceleration rates are as high as 11 to 12 mph/sec and significant activity occurs beyond 3.3 mph/sec. (This analysis is detailed in the Technical Support Document.) At the time these tests were first developed, the real-world accelerations were higher than 3.3 mph/sec, but the test cycle's acceleration rates were limited to accommodate the mechanical limitation of the dynamometer test equipment. These constraints no longer exist with today's dynamometers, so we now have the ability to incorporate higher maximum acceleration rates that more closely reflect those of actual driving. As with high speed driving, higher acceleration rates have a negative impact on fuel economy; thus, if these higher accelerations were factored into our fuel economy methods, the estimates would be lower.

The maximum deceleration rate of the FTP and HFET tests is important to consider as well, because it relates to the regenerative breaking effect of hybrid electric vehicles. The FTP and HFET tests include a mild maximum deceleration rate of -3.3 mph/sec; yet in recent real-world driving rates as high as -11 to -17 mph/sec were recorded. (This analysis is detailed in the Technical Support Document.) Under higher deceleration rates, the effects of regenerative breaking for hybrid electric vehicles are diminished, thereby lowering fuel economy. In this regard, today's FTP and HFET tests result in a higher fuel economy for hybrid vehicles than is achieved under typical driving conditions.

Third, both the FTP and HFET tests are run at mild ambient conditions (approximately 75 °F), while real-world driving occurs at a wide range of ambient temperatures. Moderate conditions tend to be optimal for achieving good fuel economy, and fuel economy is lower at temperatures colder or warmer than the 75 °F test temperature. Only about 20 percent of VMT occurs between 70 and 80 °F, approximately 15 percent of VMT occurs at temperatures above 80 °F, and 65 percent occurs below 70 °F. (This analysis is detailed in the Technical Support Document.) Moreover, neither the FTP nor HFET tests are run with accessories operating, such as air conditioners, heaters, or defrosters. These accessories, most notably air conditioning, can have a significant impact on a vehicle's fuel economy.

Finally, there are many factors that affect fuel economy that cannot be replicated on dynamometer test cycles in a laboratory. These include road grade, wind, vehicle maintenance (e.g., tire pressure), snow/ice, precipitation, fuel effects, and others. It is not possible to develop a test cycle that captures the full range of factors impacting fuel economy. However, it is clear that the FTP and HFET tests alone are missing some important elements of real-world driving. All of these factors can reduce fuel economy. This largely explains why our current estimates often do not reflect consumers' real-world fuel economy experience.

D. When Will the New Requirements Take Effect?

1. New City and Highway Fuel Economy Estimates

We want the public to benefit from the improved information provided by the new fuel economy estimates as soon as possible. Therefore, these new regulations take effect with the 2008 model year vehicles, which will be available for sale at dealers in 2007. We believe this is the earliest possible date for implementation. Manufacturers can legally begin selling 2008 models as early as January 2, 2007. However, we are phasing in the new test methods in order to provide manufacturers with sufficient lead time to plan for increased fuel economy testing necessitated by the 5-cycle approach.

For the first three model years (2008 through 2010), we provide manufacturers with the option of deriving the 5-cycle fuel economy using a scale of adjustments based on an analysis of data developed from the 5-cycle method. This approach, called the ''mpg-based'' method, incorporates the effects of higher speed/aggressive driving, air conditioning use, and colder temperatures, but less directly than the 5-cycle vehicle-specific method.[19] The mpg-based adjustments were derived by applying the 5-cycle formulae to a data set of recent fuel economy test data, and developing a regression line through the data. (See Section II for a full description of this approach). These adjustments differ based on the mpg a vehicle obtains over the FTP (City) or HFET (Highway) tests. In other words, every vehicle with the same mpg on the FTP test receives the same adjustment for its city fuel economy label. Likewise, every vehicle with the same mpg on the HFET test will receive the same adjustment for its highway fuel economy label. This method of adjustment would not require any testing beyond the FTP/HFET tests already performed today, thus, it can be implemented sooner than the 5-cycle approach as an interim improvement to our fuel economy test methods. However, during this time frame, manufacturers may optionally choose to run full 5-cycle testing for any of their vehicle models.[20] The phase-in will provide consumers with more accurate estimates as soon as possible, while allowing the industry the necessary lead time to prepare for the necessary testing under the 5-cycle approach.

Starting with the 2011 model year, the 5-cycle approach will be required. Under this approach, the manufacturers will be required to implement vehicle-specific 5-cycle testing across some portion of their fleet. The manufacturers will use the emission certification test results over the five test procedures to calculate 5-cycle city and highway fuel economy values. However, we are finalizing criteria as proposed that will allow continued use of the mpg-based adjustments in cases where we can predict with reasonable certainty that the fuel economy results under the mpg-based approach will not differ significantly from the results achieved by the 5-cycle method. These criteria and the methodology by which vehicles are selected for 5-cycle testing in the 2011 and later model years are described in detail in Section II.

2. Implementation of New Label Design

In order to allow manufacturers to transition to the new label format, we are allowing use of the new label format to be optional until September 1, 2007. This date aligns with the date manufacturers must place National Highway Traffic Safety Administration (NHTSA) crash test ratings on the vehicle pricing labels of all vehicles manufactured as of that date. The September 1, 2007 date allows manufacturers to redesign their vehicle pricing labels only once to incorporate two new federal labeling requirements. However, we encourage manufacturers to implement the new label format as quickly as possible such that the majority of 2008 vehicles on dealer lots exhibit the new label format. All 2008 model year vehicles must use the new methods to calculate fuel economy estimates. Labels on all 2008 models will have a statement indicating that the fuel economy estimates are based on new methods.

3. Fuel Economy Labeling of Medium-Duty Passenger Vehicles

The requirement for MDPVs to be labeled with city and highway fuel economy estimates begins with the 2011 model year. EPA does not have the authority to require labeling of MDPVs sooner because of our authority is linked to NHTSA's determination of CAFE standards for vehicles over 8,500 lbs GVWR.[21] However, we encourage manufacturers to voluntarily label these vehicles sooner, if at all possible. Many vehicles in the MDPV category have counterpart models below 8,500 lbs GVWR, and these vehicles receive fuel economy labels today.

E. Periodic Evaluation of Fuel Economy Labeling Methods

In the proposal, we expressed an interest in ensuring that the new methods continue to reflect real-world fuel economy into the future, and we encouraged stakeholders to submit data that would inform future analysis and potential changes to the methodology. We believe it is critical to ensure that the fuel economy methods are periodically evaluated. We are committed to evaluating the 5-cycle method every several years (e.g., five years) to ensure that it appropriately accounts for advancements in vehicle technology, changes in driving patterns, and any new data collected on in-use fuel economy. We also remain open to reviewing any valid test data indicating that any of our assumptions were inappropriate for a specific vehicle and considering modifications to the 5-cycle formulae overall to account for these differences. In the public comments, some stakeholders expressed an interest in conducting studies of in-use fuel economy. We welcome stakeholders to submit any such future data for use in our periodic evaluation of the fuel economy test methods.

We are also committed to offering technical guidance to any stakeholder interested in undertaking an in-use testing and data-collection program. By seeking our technical input up front, stakeholders can better ensure that the data is collected in a way that is ultimately best-suited to evaluate potential changes to the methodology. However, we note that collecting in-use fuel economy data alone can only indicate whether or not the 5-cycle estimates are accurate; it would not provide the information needed to actually improve the 5-cycle equations. The 5-cycle approach is based on emission test results over the five test cycles and on the weighting of a number of factors based on their average impact across all U.S. driving. Data on in-use fuel economy alone, without complementary driving behavior and activity data representative of the fleet, is insufficient to initiate changes that may be appropriate to the 5-cycle weighting factors.

Finally, several commenters suggested that EPA conduct an evaluation of the 5-cycle method prior to model year 2011, when the 5-cycle method becomes required. If appropriate data is submitted prior to the end of 2008, we would plan to review it in a timely manner. If such data suggests that changes to the 5-cycle approach are necessary, we would plan to issue a separate rulemaking to address changes to the methodology, providing adequate lead time to the industry to comply.

F. This Final Rule Does Not Impact CAFE Standards or Test Procedures

This final rule does not alter the FTP and HFET driving cycles, the measurement techniques, or the calculation methods used to determine CAFE. EPCA requires that CAFE for passenger automobiles be determined from the EPA test procedures in place as of 1975 (or procedures that give comparable results), which are the city and highway tests of today, with a few small adjustments for minor procedural changes that have occurred since

[19] The ''mpg-based'' method is termed the ''derived 5-cycle'' approach in the regulatory text.

[20] Any manufacturer that chooses to optionally use the 5-cycle approach prior to the 2011 model year must use that approach to determine both city and highway label estimates.

[21] See 49 U.S.C. 32908, 32901(a)(3)(B), and Section VII for a detailed explanation of EPA's legal authority.

1975.[22] This final rule will not impact the CAFE calculations.

G. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for public comment following the proposal published on February 1, 2006.[23] We held a public hearing on the proposal in Romulus, Michigan on March 3, 2006. At that hearing, oral comments on the proposal were received and recorded. A written comment period remained open until April 3, 2006. Comments and hearing testimony have been placed in the docket for this rule. We considered these comments in developing the final rule.

We have prepared a detailed Response to Comments document, which describes the comments we received on the proposal and our response to each of these comments. The Response to Comments is available in the docket for this rule and on the EPA Web site.[24]

II. New Test Methods and Calculation Procedures for Fuel Economy Labels

The current fuel economy label values are based on measured fuel economy over city and highway driving cycles, which are then adjusted downward by 10 and 22 percent, respectively, to account for a variety of factors not addressed in EPA's vehicle test procedures. These adjustments are intended to account for differences between the way vehicles are driven on the road and over the test cycles. Such differences include air conditioning use, higher speeds, more aggressive accelerations and decelerations, widely varying ambient temperature and humidity, varying trip lengths, wind, precipitation, rough road conditions, hills, etc. The purpose of the new methods is to expand the basis for the fuel economy labels to include actual vehicle testing over a wider range of driving patterns and ambient conditions than is currently covered by the city (FTP) and highway (HFET) fuel economy tests.

For example, vehicles in the real world are often driven more aggressively and at higher speeds than is represented in the FTP and HFET tests. The incorporation of measured fuel economy over the US06 test cycle into the fuel economy label values will make the label values more realistic. Drivers often use air conditioning in warm, humid conditions, while the air conditioner is turned off during the FTP and HFET tests. The incorporation of measured fuel economy over the SC03 test cycle into the fuel economy label values will reflect the added fuel needed to operate the air conditioning system. Vehicles also often are driven at temperatures below 75°F, at which the FTP and HFET tests are performed. The incorporation of measured fuel economy over the cold temperature FTP test into the fuel economy label values will reflect the additional fuel needed to start up a cold engine at colder temperatures.

The new vehicle-specific, 5-cycle approach to calculating fuel economy labels will incorporate estimates of the fuel efficiency of each vehicle during high speed, aggressive driving, air conditioning operation and cold temperatures into each vehicle's fuel economy label. It will combine measured fuel economy over the two current fuel economy tests, the FTP and HFET, as well as that over the US06, SC03 and cold FTP tests into estimates of city and highway fuel economy for labeling purposes. The test results from each cycle (and in some cases, portions of cycles or emission ''bags'')[25] will be weighted to represent the contribution of each cycle's attributes to onroad driving and fuel consumption. The vehicle-specific, 5-cycle approach will eliminate the need to account for the effect of aggressive driving, air conditioning use and colder temperatures on fuel economy through generic factors (as done today) which may not appropriately reflect that particular vehicle's sensitivity to these factors. A generic adjustment is still necessary to account for factors not addressed by any of the five dynamometer tests (e.g., road grade, wind, low tire pressure, gasoline quality, etc.). The derivation of this adjustment factor is discussed further below and in Chapter III of the Technical Support Document.

Currently, the US06, SC03 and cold FTP tests are only performed on a sub-set of new vehicle configurations, and only for emissions compliance purposes. In contrast, for fuel economy purposes, FTP and HFET tests are performed on many more vehicle configurations. In order to minimize the number of additional US06, SC03 and cold FTP tests resulting from the new testing and calculation procedures, we are allowing manufacturers to estimate the fuel economy over these three tests for vehicle configurations that are not normally tested for emissions compliance purposes, using the fuel economy measurements that are normally available. This is currently done on a more limited basis for both the FTP and HFET, and is referred to as analytically derived fuel economy (ADFE).[26] This method uses test data to determine the sensitivity of fuel economy to various vehicle parameters, and once these relationships are well established, we will issue guidance that provides manufacturers with the appropriate equations to use. We believe that these provisions are designed to represent a reasonable balance between the need for accurate fuel economy data and the need to contain the cost of testing for both industry and EPA, where we reasonably believe that actual testing would not produce a significantly different result. We always retain the right to order actual confirmatory testing where appropriate.

We also are finalizing the proposed provisions that allow manufacturers to use the interim approach to fuel economy label estimation, the ''mpg-based'' approach described below, when the available 5-cycle fuel economy data indicate that a vehicle test group's 5-cycle fuel economy is very close to that estimated by the mpg-based curve. The mpg-based method will also be used to determine label values for MDPVs that become mandatory with the 2011 model year, as discussed further in Section II.E.2.

Even with these provisions, we expect that some manufacturers will have to perform some additional US06, SC03, or cold FTP tests to address differences in vehicle designs which are not covered by the analytical derivation methodology. Other manufacturers may voluntarily choose to perform additional tests voluntarily to improve accuracy over the analytical derivation methodology, especially in cases where

[22] See 49 U.S.C. 32904(c).

[23] See 71 FR 5426 (Feb. 1, 2006).

[24] See *http://www.epa.gov/fueleconomy/* or *http://www.regulations.gov.*

[25] The FTP consists of two parts, referred to in the regulations as the ''cold start'' test and the ''hot start'' test. Each of these parts is divided into two periods, or ''phases'': a ''transient'' phase and a ''stabilized'' phase. Because the stabilized phase of the hot start test is assumed to be identical to the stabilized phase of the cold start test, only the cold start stabilized phase is typically run. These ''phases'' are often called ''bags,'' terminology that results from the sample bags in which the exhaust samples are collected. The phases are run in the following order: Cold start transient (Bag 1), cold start stabilized (Bag 2), and hot start transient (Bag 3).

[26] EPA's current policy for analytically derived fuel economy estimates for the FTP and HFET tests is contained in the EPA memorandum entitled, ''Updated Analytically Derived Fuel Economy (ADFE) Policy for 2005 Model Year,'' March 11, 2004, CCD–04–06 (LDV/LDT). This memorandum is issued under 40 CFR 600.006–89(e), which allows manufacturers to use analytical methods to determine fuel economy.

manufacturers have worked to improve fuel efficiency over the new test cycle conditions (e.g., during cold temperatures or with air conditioning on). Depending on how manufacturers choose to apply this method, this additional testing could prompt the construction or modification of test facilities. (Test burden and cost issues are discussed further in Section V of this preamble.) Therefore, in order to allow sufficient lead-time for the construction of these facilities, we are finalizing the proposed provisions that allow manufacturers the option of using an interim set of adjustments through the 2010 model year. These interim adjustments are not vehicle-specific, but instead reflect the effects of high speeds, hard accelerations, air conditioning use, and cold temperatures, etc., on the average vehicle. The vehicle-specific 5-cycle approach becomes mandatory with the 2011 model year. However, a manufacturer can voluntarily use the 5-cycle method prior to the 2011 model year for any vehicle model.[27]

The interim set of adjustments is termed the ''mpg-based'' approach. (See Figure II–1 for a graphical depiction of these adjustments.) The mpg-based approach is a sliding scale of adjustments which varies according to a vehicle's measured fuel economy over the FTP and HFET tests. The mpg-based adjustments were developed from applying the 5-cycle formulae to 615 recent model year vehicles and determining the average difference between the 5-cycle and current city and highway fuel economies.[28] Thus, because the data used to develop the mpg-based adjustments were derived from 5-cycle fuel economies, the mpg-based adjustments include the effects of high speeds, aggressive driving, air conditioning, and colder temperatures. However, they do so based on the impact of these factors on the average vehicle, not the individual vehicle, which is the case with the 5-cycle formulae. For example, for vehicles with fuel economy of 20–30 mpg over the FTP (i.e., city) test, the mpg-based approach would adjust the city fuel economy downward by 20–22 percent (or 4 to 7 mpg), versus today's single 10 percent downward adjustment. Thus, city fuel economy label values under the mpg-based approach tend to be about 11 percent lower on average than today's label values. For vehicles with fuel economy of 25–35 mpg over the HFET (i.e., highway) test, the mpg-based approach would adjust the highway fuel economy downward by about 28 percent (or 7 to 10 mpg), versus today's 22 percent downward adjustment. Thus, highway fuel economy label values under the mpg-based approach would tend to be about 8 percent lower than today's label values.

Given that both approaches utilize the 5-cycle fuel economy formulae in some fashion, it is useful to begin this section with a description of how the fuel economy measured over the 5 test cycles are combined to represent city and highway fuel economy. Then we will describe how the fleet-average formulae for the mpg-based approach were derived from these 5-cycle fuel economy estimates. Finally, we compare fuel economy label results from both the 5-cycle and mpg-based methods to onroad fuel economy data from a variety of sources.

Under the new methods, we are replacing the 0.90 and 0.78 adjustment factors for city and highway fuel economy, respectively, with new factors which are not simply constants. For model years 2008–2010, a manufacturer has the option of using two distinct methodologies to calculate the city and highway fuel economy values for any specific vehicle. One approach is called the mpg-based method, since the city and highway label values are based on the fuel economy (or mpg) measured over the FTP and HFET, respectively. The other approach is called the vehicle-specific 5-cycle approach, since the city and highway label values are based on the test results of five test cycles, the FTP, HFET, US06, SC03 and cold FTP. Both approaches also include an additional downward adjustment to represent effects not reflected in our existing laboratory dynamometer testing. Beginning with the 2011 model year, manufacturers are required to use the vehicle-specific 5-cycle method, but may still use the mpg-based approach on vehicles most sensitive to the new test conditions. Under the vehicle-specific 5-cycle approach, the fuel economy measurements over the 5 dynamometer test cycles will all be performed on (or estimated for) a specific vehicle in the current model year. The mpg-based approach uses historic fuel economy data over the 5 test cycles to estimate a fleet-wide average relationship between (1) FTP fuel economy and 5-cycle city fuel economy, and (2) HFET fuel economy and 5-cycle highway fuel economy. Under the mpg-based approach, a specific vehicle's city and highway fuel economy labels are based on this fleet-wide average relationship, as opposed to that vehicle's own results over the 5 test cycles. In other words, under the mpg-based approach every vehicle with the same fuel economy over the FTP test will receive the same city fuel economy label value. Likewise, every vehicle with the same fuel economy over the HFET test will receive the same highway fuel economy label value. This is illustrated further in Section II.B below. Below we present the specific equations under the two approaches which would be used to convert fuel economies measured over the dynamometer cycles into city and highway fuel economy values.

A. Derivation of the Vehicle-Specific 5-Cycle Methodology

The vehicle-specific, 5-cycle approach bases a vehicle's fuel economy label values on fuel economy measurements over five test cycles: FTP, HFET, US06, SC03 and cold FTP. These measurements are combined based on detailed estimates, or ''weightings,'' of how and when vehicles are driven, as well as under what ambient conditions. The 5-cycle formulae are derived from extensive data on real-world driving conditions, such as driving activity, temperatures, air conditioner operation, trip length, and other factors. We refer readers to the Technical Support Document for a detailed description of the development of the 5-cycle fuel economy formulae.

1. Overview of Public Comments on the 5-Cycle Methodology

Of those commenters addressing the 5-cycle formulae, most commented on the thoroughness of the analyses which supported the various cycle weighting factors (also called coefficients) included in the formulae. However, Honda, and to some extent Environmental Defense, criticized several aspects of the 5-cycle formulae. These comments are addressed in detail in the Response to Comments document. Overall, the key criticisms included:

(1) The 5-cycle formulae had not been validated for individual vehicles. In particular, these commenters claimed that the 5-cycle coefficients assume that all vehicles respond the same to various

[27] Any manufacturer that chooses to optionally use the 5-cycle approach prior to the 2011 model year must use that approach to determine both city and highway label estimates.

[28] Our database consists of 615 vehicles spanning the 2003 to 2006 model years. For these vehicles we have emission and/or fuel economy test data on all five test procedures. Additionally, manufacturers assisted with the development of this database by submitting detailed fuel economy data for the three phases (or ''bags'') of the FTP and the Cold FTP (EPA requires that they submit only the composite emissions and fuel economy data for certification or fuel economy labeling). The database includes data from 14 hybrid vehicles and one diesel vehicle, and represents all types of vehicles from all major manufacturers and most smaller manufacturers.

changes in driving pattern and ambient conditions;

(2) The three new test cycles represent extreme conditions, and;

(3) The 5-cycle method could penalize advanced fuel efficient technologies.

We present a summary of our responses to these three concerns below. Additional detail can be found in the Response to Comments Document.

First, all of the approaches to calculating label values involve relationships between driving activity or ambient conditions and fuel consumption. These relationships are never exact for each and every vehicle. The 5-cycle formulae utilize more vehicle-specific fuel consumption data than the mpg-based and current label approaches. Therefore, the 5-cycle approach is based on fewer assumptions regarding how individual vehicles react to temperature, soak time, low and high speed driving, aggressive driving, idling, air conditioning, etc. The 5-cycle method, by incorporating additional data from the three newer test cycles, improves our ability to estimate fuel economy outside of the conditions evaluated by the FTP and HFET tests. We provide examples and a detailed description of this analysis in the Technical Support Document.

Second, Honda states that the three new tests address vehicle conditions that are so extreme that their use in the above types of interpolations is actually worse than simply assuming that all vehicles have the same response to the conditions being addressed by the three tests. However, none of the available data indicates that this is the case, and Honda did not provide data to support their claim. All of the driving conditions addressed by the three tests clearly occur in-use. Our detailed analysis of recent real-world driving activity studies is contained in the Technical Support Document and Response to Comments document. In particular, use of fuel economy data over the cold FTP at 20 °F improves our ability to estimate fuel economy at 50 °F, compared to projecting fuel economy at 50 °F solely using the FTP test data at 75 °F. This analysis is detailed in the Technical Support Document as well.

Third, Honda states that these aspects of the 5-cycle formulae might actually penalize advanced fuel-efficient technology relative to conventional technology vehicles. Our comparisons of 5-cycle fuel economy for hybrids fall in the range of onroad fuel economy estimates developed by various organizations (see Section II of the Technical Support Document). It is true that the 5-cycle formulae decrease the fuel economy of some hybrid vehicles more than conventional vehicles, compared to the current label approach. However, this is easily explained by the way that current hybrid technology works under various operational and ambient conditions. For example, many current hybrid engine shut-off strategies cease to operate when the heater is turned on at cold temperatures. The current label approach assumes that any engine shut-off strategies operating over the FTP and HFET tests always operate in in-use. This is clearly not correct. Thus, some additional adjustment to current hybrid vehicle fuel economy is to be expected. Available data on hybrid fuel economy outside of the conditions addressed by the FTP and HFET confirm the impact of the 5-cycle formulae. We expect that future hybrid technology will significantly improve fuel economy over real-world conditions outside the FTP and HFET tests. Such improvements in real-world fuel economy will be reflected under the new 5-cycle estimates.

2. Changes to the 5-Cycle Methodology From Proposal

We received very few comments that provided new data with which to modify the proposed methodology. However, based on a few comments and new data we obtained, the methodology we are finalizing differs from the proposed methodology in three ways. First, we reevaluated an assumption with respect to the effect of ambient temperature on running fuel use. This reduced the weighting factor for cold temperature running fuel use. Second, we obtained new vehicle trip length data from extensive vehicle monitoring ongoing in Atlanta. This increased our estimate of trip length during city driving, which then reduced the contribution of start fuel use to average fuel consumption during city driving. Third, we updated our analyses based on the Federal Highway Administration's release of 2004 fuel economy estimates and revised 2003 fuel economy estimates. This analysis, along with addressing public comments, decreased the non-dynamometer adjustment factor slightly. Readers are referred to the Technical Support Document for detailed discussions of the analyses noted briefly below.

In response to Honda's comments regarding the assumptions involved in developing the 5-cycle formulae, we reevaluated our assumption regarding the effect of ambient temperature on running fuel use. This was the one area where the relationship in the proposed 5-cycle formula was based on a simple assumption of linearity and not on the results of actual vehicle testing. We performed an analysis of running fuel use of several vehicles tested at 20 °F, 50 °F, and 75 °F and determined that the effect was non-linear. Using the new relationship reduced the city and highway formulae's weighting of running fuel use at 20 °F from 0.30 to 0.18.

Since the time of the proposal, we also obtained vehicle trip data from extensive vehicle monitoring which is ongoing in Atlanta. Across a total of 668,000 vehicle trips, the average trip length was found to be 7.25 miles. This is 20 percent longer than found in Atlanta in the early 1990's. When we extrapolate this increase to the results of other studies performed in the early 1990's, we determined that a more reasonable estimate of trip length during city driving would be 4.1 miles, as opposed to the 3.5 mile estimate proposed in the 5-cycle city fuel economy formulae. This effectively reduces the contribution of start fuel use in the estimation of city fuel economy.

Also, since the proposal, the Federal Highway Administration published onroad fuel economy estimates for 2004, as well as a revised onroad fuel economy estimate for 2003. These estimates are roughly 3% lower than those contained in their 2003 report, which was the basis of our proposal. At the same time, Honda correctly pointed out that we had inappropriately assumed that the changes in FTP and HFET test procedures implemented with the Supplemental FTP rule increased measured fuel economy by 3%. These changes, plus other minor adjustments, led us to revise the factor for non-dynamometer effects from 0.89 to 0.905 (meaning that this factor further reduces both city and highway estimates by 9.5 percent). Detailed discussion and analyses of the non-dynamometer factor can be found in Section 5.0 of the Response to Comments document and Chapter III of the Technical Support Document.

With these revisions, under the vehicle-specific 5-cycle approach, the city fuel economy value will be calculated as follows:

$$\text{City FE} = 0.905 \times \frac{1}{(\text{Start FC} + \text{Running FC})}$$

Where:

$$\text{Start FC (gallons per mile)} = 0.330 \times \left(\frac{(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20})}{4.1} \right)$$

Where:

$$\text{Start Fuel}_x \text{ for vehicles tested over a 3-bag FTP} = 3.6 \times \left(\frac{1}{\text{Bag 1 FE}_x} - \frac{1}{\text{Bag 3 FE}_x} \right)$$

Where:

Bag y FE_x = the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75 ° or 20 °F.

For hybrid gasoline-electric vehicles tested over a 4-bag FTP the calculation for start fuel consumption is somewhat different:

$$\text{Start FC (gallons per mile)} = 0.33 \times \left(\frac{(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20})}{4.1} \right)$$

Where:

$$\text{Start Fuel}_{75} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}} \right] + 3.9 \times \left[\frac{1}{\text{Bag 2 FE}_{75}} - \frac{1}{\text{Bag 4 FE}_{75}} \right]$$

and

$$\text{Start Fuel}_{20} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}} \right]$$

Likewise,

$$\text{Running FC} = 0.82 \times \left[\frac{0.48}{\text{Bag 2}_{75}\text{ FE}} + \frac{0.41}{\text{Bag 3}_{75}\text{ FE}} + \frac{0.11}{\text{US06 City FE}} \right] + 0.18 \times \left[\frac{0.5}{\text{Bag 2}_{20}\text{ FE}} + \frac{0.5}{\text{Bag 3}_{20}\text{ FE}} \right]$$
$$+ 0.133 \times 1.083 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag 3}_{75}\text{ FE}} + \frac{0.39}{\text{Bag 2}_{75}\text{ FE}} \right) \right]$$

Where:

US06 FE = fuel economy in mile per gallon over the US06 test,

HFET FE = fuel economy in mile per gallon over the HFET test,

SC03 FE = fuel economy in mile per gallon over the SC03 test.

Hybrid gasoline-electric vehicles tested over a 4-bag 75 °F FTP will substitute the fuel economy over Bag 4 for Bag 2 in the appropriate places in the above equation (except in the case of the cold FTP, where hybrids, like conventional vehicles, will run a 3-bag test). The resulting equation for hybrid vehicles thus becomes:

$$0.82 \times \left[\frac{0.48}{\text{Bag } 4_{75} \text{ FE}} + \frac{0.41}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.11}{\text{US06 City FE}} \right] + 0.18 \times \left[\frac{0.5}{\text{Bag } 2_{20} \text{ FE}} + \frac{0.5}{\text{Bag } 3_{20} \text{ FE}} \right]$$
$$+ 0.133 \times 1.083 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 4_{75} \text{ FE}} \right) \right]$$

Under the vehicle-specific 5-cycle formula, the highway fuel economy value would be calculated as follows:

$$\text{Highway FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{Start FC (gallons per mile)} = 0.330 \times \left(\frac{(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20})}{60} \right)$$

and,

$$\text{Running FC} = (1.007) \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}} \right] + 0.133 \times 0.377 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag} 2_{75} \text{ FE}} \right) \right]$$

where the various symbols have the same definitions as described under the formula for the vehicle-specific 5-cycle city fuel economy value.

For hybrid gasoline-electric vehicles tested over a 4-bag 75 °F FTP the highway fuel economy is calculated using the following equations:

$$\text{Highway FE} = 0.905 \times \frac{1}{(\text{Start FC} + \text{Running FC})}$$

Where:

$$\text{Start FC} = 0.33 \times \left(\frac{(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20})}{60} \right)$$

Where:

$$\text{Start Fuel}_{75} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}} \right] + 3.9 \times \left[\frac{1}{\text{Bag 2 FE}_{75}} - \frac{1}{\text{Bag 4 FE}_{75}} \right]$$

and,

$$\text{Start Fuel}_{20} = 3.6 \times \left(\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}} \right)$$

and,

$$\text{Running FC} = 1.007 \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}} \right] + 0.133 \times 0.377 \times \left[\frac{1}{\text{SC0 3 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 4_{75} \text{ FE}} \right) \right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the Highway portion of the US06 test,

HFET FE = fuel economy in miles per gallon over the HFET test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

Additional equations are necessary in the unusual cases where a manufacturer test a hybrid gasoline-electric vehicle using a 2-bag FTP; these equations are detailed in the Technical Support Document.

B. Derivation of the MPG-Based Methodology

Although the 5-cycle vehicle-specific method will be optionally available to manufacturers starting with the 2008 model year, it is the mpg-based approach that will be more widely utilized for the 2008 through 2010 model years. Starting with the 2011 model year the mpg-based approach may continue to be used where test data demonstrates that the 5-cycle method is unlikely to produce significantly different results. The mpg-based method applies an adjustment to a vehicle's FTP or HFET test result based on that vehicle's measured fuel economy on the FTP or HFET.

The mpg-based adjustments were developed from applying the 5-cycle formulae to fuel economy data from 615 recent model year vehicles and determining the average relationship between the 5-cycle city and highway fuel economy values and FTP and HFET fuel economy values. Thus, because the data used to develop the average adjustments were derived from 5-cycle fuel economies, the mpg-based adjustments include the effect of high speeds, aggressive driving, air conditioning, and colder temperatures. However, they do so based on the impact of these factors on the average vehicle and do not reflect the fuel economy actually achieved during these types of driving by individual vehicles, which is the case with the 5-cycle formulae. As indicated by a comparison of the fuel economy label values developed using the mpg-based and 5-cycle approaches (see Figures II–1 and II–2), these ''fleet-average'' adjustments are reasonably accurate for most vehicles.

For example, for vehicles with FTP fuel economy ranging from 20 to 30 mpg, the mpg-based approach will adjust the FTP fuel economy result downward by 20–22 percent (*i.e.*, by 4 to 7 mpg), versus today's 10 percent downward adjustment. Thus, city fuel economy label values under the mpg-based approach will tend to be about 10–12 percent lower than today's label values. For vehicles with HFET fuel economy in the range of 25 to 35 mpg the mpg-based approach on average will adjust the HFET fuel economy downward by 28 percent (*i.e.*, by 7 to 10 mpg), versus today's 22 percent downward adjustment. Thus, highway fuel economy label values under the mpg-based approach will tend to be about 8 percent lower than today's label values.

The characteristics of the mpg-based equations can be seen in Figures II–1 and II–2 below. The 5-cycle fuel economies for 615 recent model year vehicles are represented by the individual data points on the charts. Hybrid vehicles are represented by large squares on the charts. The mpg-based fuel economy curve, represented by the regression line on the chart, was developed from these data. The horizontal axis is the measured FTP fuel economy.

Under the mpg-based approach, the city fuel economy value will be calculated as follows:

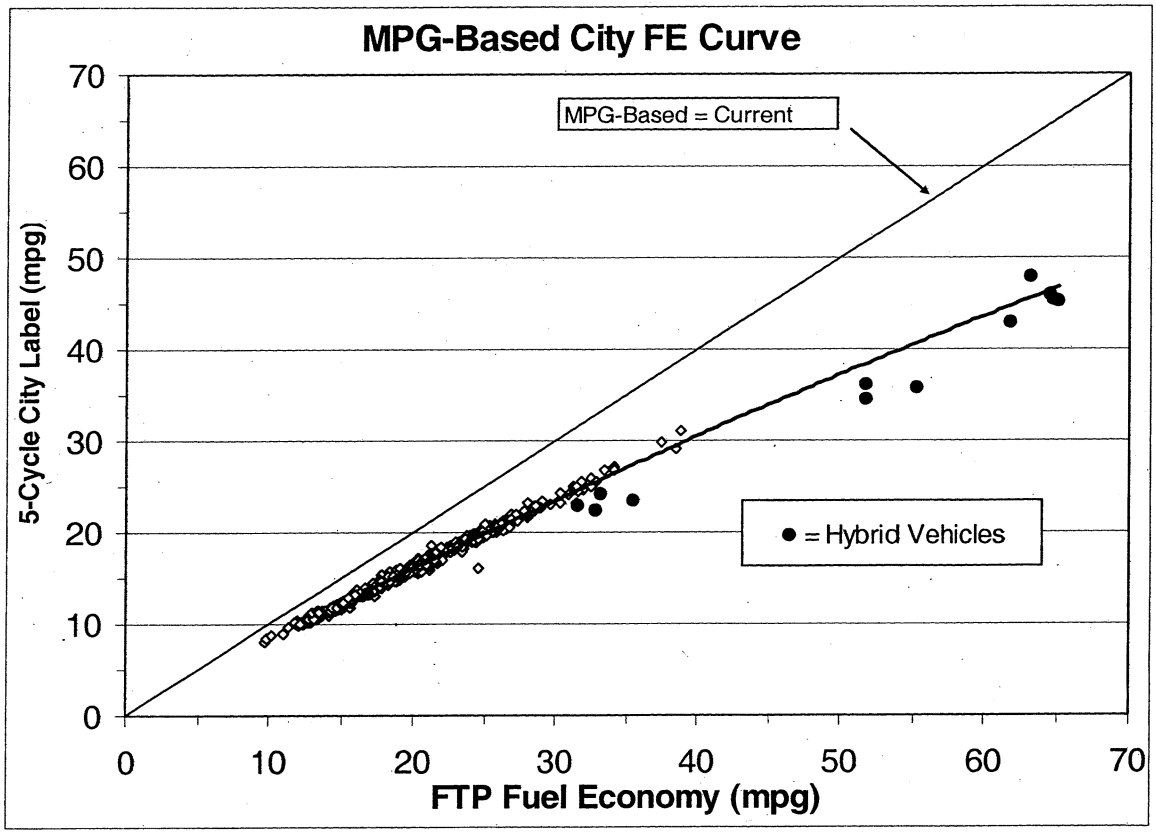
Equation 1:

$$\text{City MPG} = \frac{1}{\left(0.003259 + \frac{1.1805}{\text{FTP FE}} \right)}$$

Where:

FTP FE = the fuel economy in miles per gallon of fuel during the FTP test conducted at an ambient temperature of 75°F. This value is normally a sales-weighted average of the vehicle models included in the ''model type'' vehicle grouping as defined in 40 CFR 600.002–93.

Figure II-1: MPG-Based City Fuel Economy



Likewise, the highway fuel economy value will be calculated as follows:

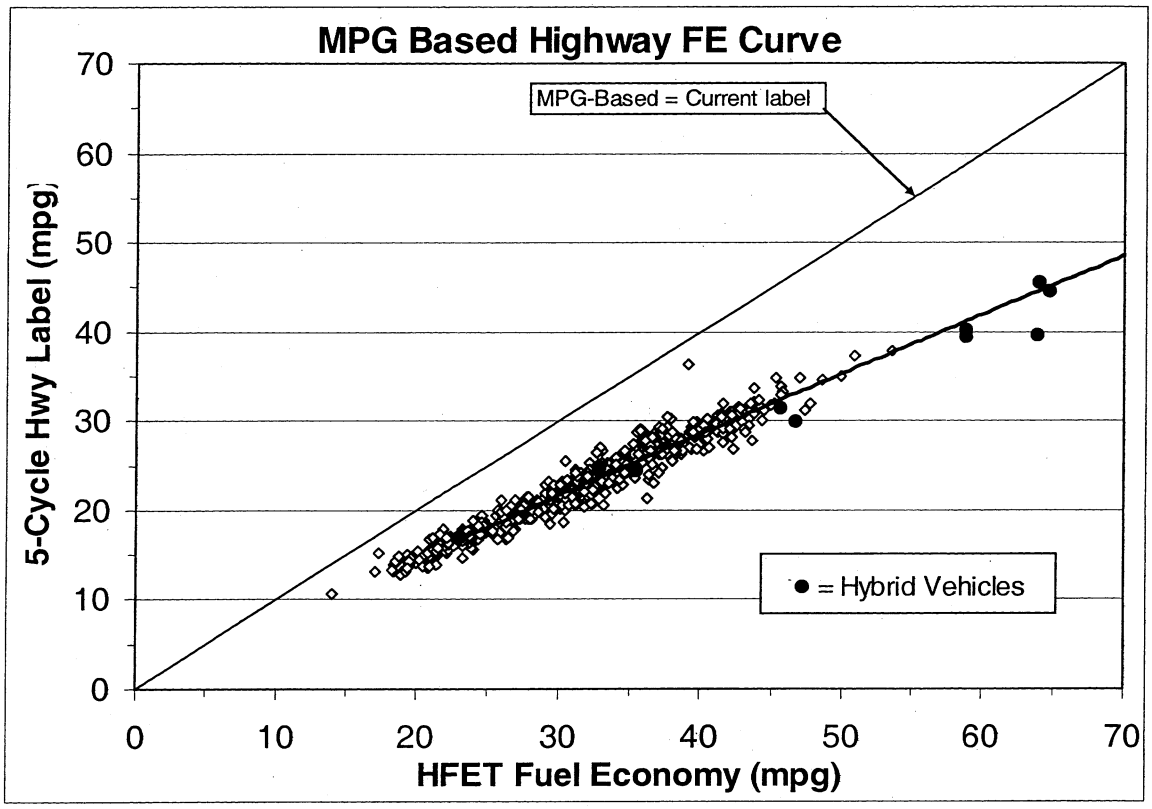
Equation 2:

$$\text{Highway MPG} = \frac{1}{\left(0.001376 + \frac{1.3466}{\text{HFET FE}}\right)}$$

Where:

HFET FE = fuel economy in mile per gallon over the HFET test. This value is normally a sales-weighted average of the vehicle models included in the ''model type'' vehicle grouping as defined in 40 CFR 600.002–93.

Figure II-2: MPG-Based Highway Fuel Economy



These equations differ from those that we proposed in two ways. First, as described above, we have modified the 5-cycle fuel economy formulae slightly based on additional information received since the proposal. Second, we have added 192 additional vehicles to our 5-cycle fuel economy database. The mpg-based equations developed for the proposal were based on 5-cycle fuel economy estimates for 423 2003 to 2005 model year vehicles, whereas the mpg-based equations shown above were based on 5-cycle fuel economy estimates for 615 2003 to 2006 model year vehicles. The net effect of these two changes is that the city and highway fuel economy adjustments to the FTP and HFET fuel economy values are a few percent smaller than those based on the proposed mpg-based equations.

As mentioned above, the mpg-based equations were developed from the 5-cycle fuel economy estimates for 615 2003–2006 model year vehicles. In order to keep the mpg-based equations up-to-date and reflecting changes in vehicle technology, EPA will update these equations periodically using the same methodology, but no more frequently than on an annual basis. We will update the mpg-based equations periodically, especially if we determine that doing so would significantly change the label results, using all of the available 5-cycle fuel economy estimates for the previous three or more model years. These revised mpg-based equations will be issued through the publication of an EPA guidance document. The final regulations contain the equations that are applicable to 2008 model year vehicles, as well as the components of the equations to be utilized for future model year vehicles.

We plan to update the mpg-based curves periodically using all of the available 5-cycle fuel economy estimates for the previous three or more model years. We proposed that these revised mpg-based equations would be issued through the publication of an EPA guidance document which would be released by January 1 of the calendar year prior to the model year to which the equations first apply. We suggested in the proposal that this meant, for example, that mpg equations for the 2012 year would be published prior to January 1 of 2011. However, we now recognize that the model year for many manufacturers can begin almost a full year before the start of the identically-named calendar year (*i.e.*, the 2012 model year can begin on January 2, 2011). Manufacturers commented that issuing guidance applicable to a given model year potentially mere days or weeks from the start of that model year for some vehicle lines did not provide adequate lead time. We agree, and we are finalizing regulations that require EPA to issue guidance regarding revisions to the equations by no later than July 1 of the calendar year prior to the earliest start of the model year that starts in the following calendar year. In other words, for new equations to be applicable to the 2010 model year (which can begin as early as January 2, 2009), EPA must issue guidance prior to July 1, 2008.

C. Effect of the New Methods on Fuel Economy Label Values

The impact of the new methodology on city and highway fuel economy label values was assessed using the same database of 615 recent model year vehicles used to develop the mpg-based adjustments discussed above. It is important to realize that these are projections based on historical data, and that the actual impacts on fuel economy label values will be dependent upon how a given vehicle performs over the specific tests. Figures II–3 and II–4 show, for city and highway fuel economy, respectively, how the label values would change under the 5-cycle

method for each vehicle in the 615-vehicle database. Figures II–5 and II–6 show, for city and highway fuel economy, respectively, the distributions of the percent change in label values relative to the current labels. More than 90 percent of the vehicles would have new city label values that are from 8 to 15 percent lower than their current label values. Figure II–3 also shows that the new city label values for most hybrid vehicles will be between 20 and 30 percent lower than today's city label values. Figure II–4 shows that about 90 percent of the vehicles in the database, including most hybrids, would have new highway label estimates that are from 5 to 15 percent lower than today's current highway estimates. Under the current method all vehicles would receive the same adjustment to account for the variety of factors now accounted for by the new methodology. Under the 5-cycle method vehicles receive differing ''adjustments'' relative to the current label values based on each vehicle's response to the five tests. Table II–1 presents the average results of this comparison for all 615 vehicles, as well as various sub-sets of vehicles.

Figure II-3: Change in City Fuel Economy: 5-Cycle vs. Current Label Values

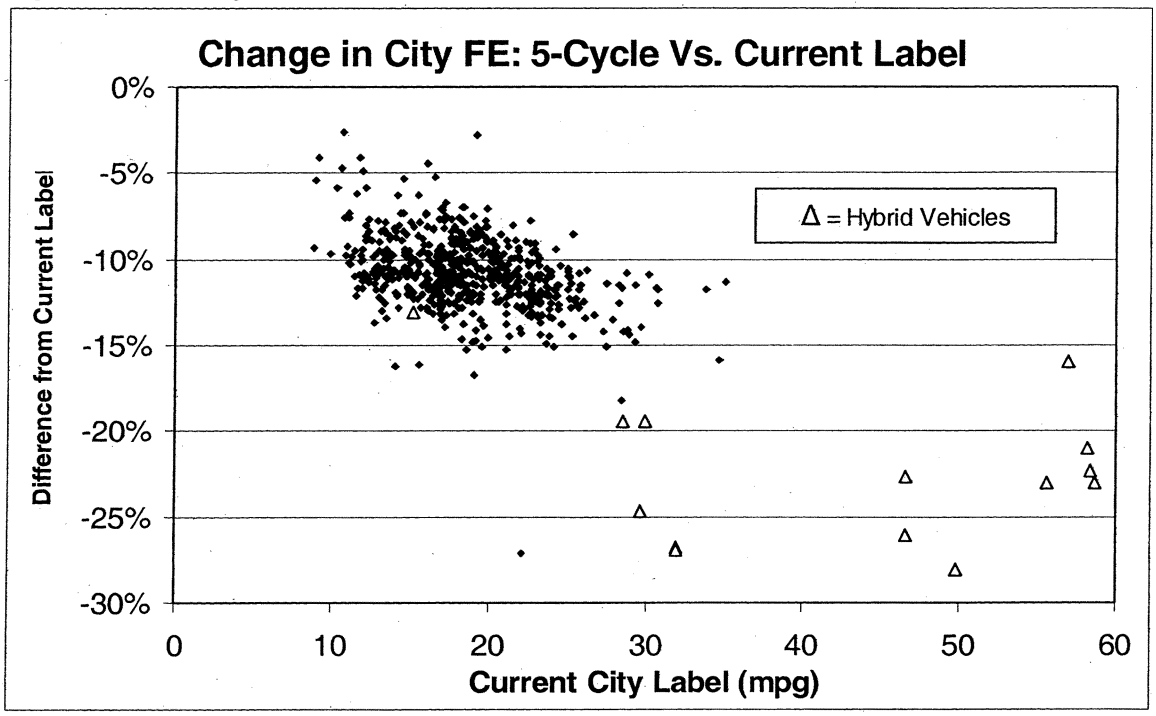


Figure II-4: Change in Highway Fuel Economy: 5-Cycle vs. Current Label Values

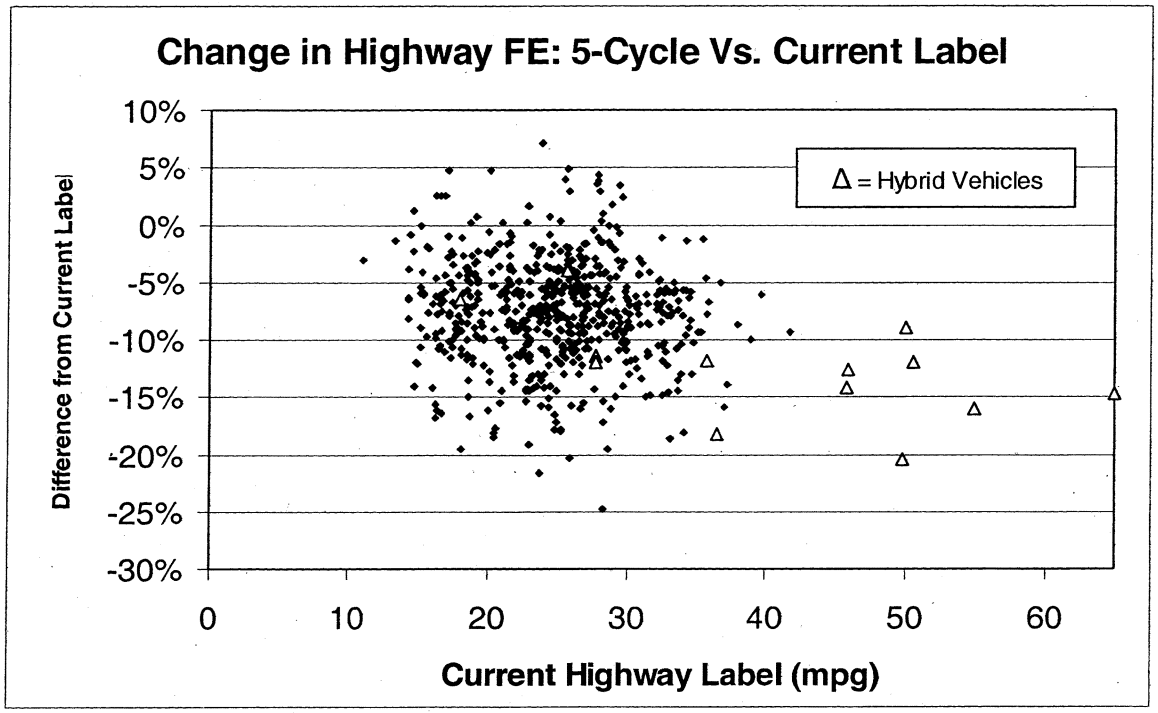


Figure II-5: Change in City Fuel Economy: Distribution of Percent Change in City Label Values

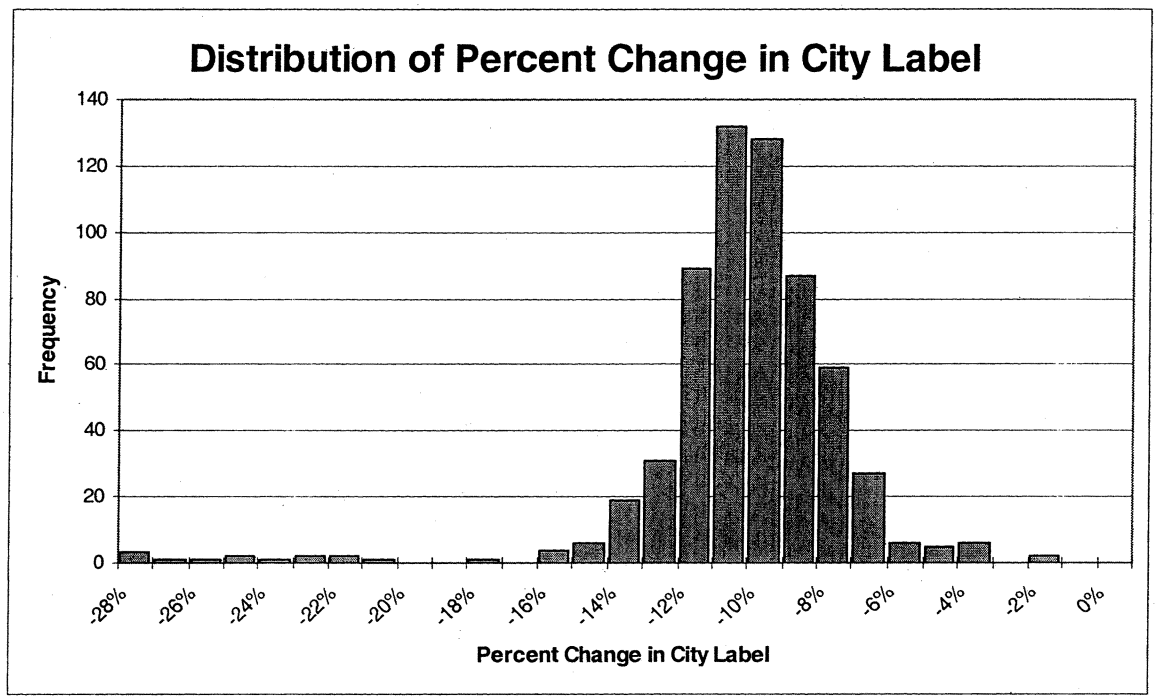


Figure II-6: Change in Highway Fuel Economy: Distribution of Percent Change in Highway Label Values

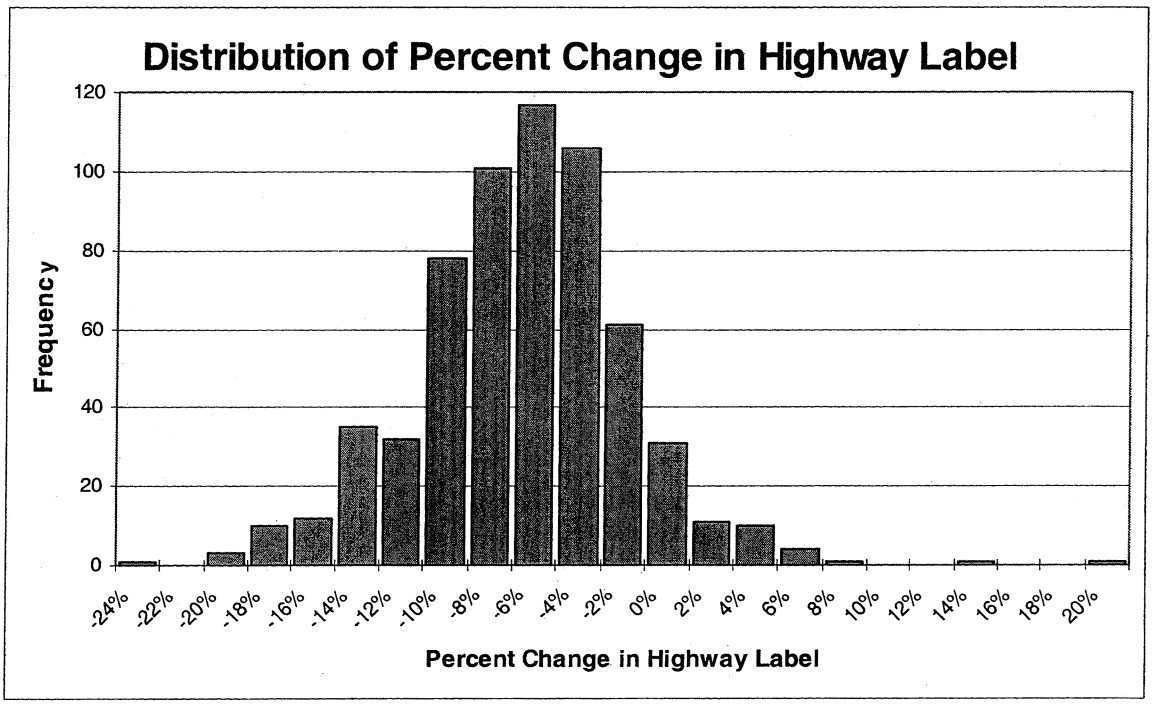


TABLE II–1.—EFFECT OF 5-CYCLE FORMULAE ON CITY AND HIGHWAY FUEL ECONOMY LABELS

	City			Highway			Combined*		
	Current (mpg)	5-Cycle (mpg)	Percent change (percent)	Current (mpg)	5-Cycle (mpg)	Percent change (percent)	Current (mpg)	5-Cycle (mpg)	Percent change (percent)
Hybrids	42.7	33.0	−22.3	42.8	36.9	−12.9	42.6	35.0	−17.1
Diesel (1 vehicle)	26.2	23.4	−10.7	35.3	32.0	−9.3	29.6	27.6	−6.7
Conventional Vehicles									
12 Highest FE	30.9	26.9	−12.9	36.6	34.0	−6.9	33.2	30.5	−8.0
12 Lowest FE	10.2	9.5	−6.9	14.8	14.8	−0.2	11.9	11.9	0.4
Average	18.6	16.5	−10.8	24.6	22.8	−7.4	20.9	19.6	−6.0

*Combined fuel economy for Current MPG is based on weighting of 55%/45% city/highway, respectively. Combined fuel economy for 5-cycle MPG is based on weighting of 43%/57% city/highway, respectively (discussed further in Chapter II.C of the Technical Support Document).

As can be seen from Table II–1, use of the 5-cycle formulae will reduce both current city and highway fuel economy label values. For conventional vehicles, city and highway fuel economy values will be reduced an average of 10.8 percent and 7.4 percent, respectively. The reduction in city fuel economy label values for conventional vehicles with higher than average fuel economy will be slightly higher than average (−12.9%), while the reduction for conventional vehicles with lower than average fuel economy will typically be slightly lower than average (−6.9%). The reduction in highway fuel economy for conventional vehicles varies less around the average in the same way that it does for city fuel economy. Vehicles with higher than average fuel economy will typically experience a reduction in the highway label value similar to all conventional vehicles, while vehicles with lower than average fuel economy at the other end of the spectrum will, on average, see little to no change in their highway label value (or possibly a modest increase in some cases). Again, this is explained by each vehicle's fuel economy response to the new test cycles, and some vehicles are more sensitive to the new test conditions than others.

The impact on hybrid vehicles will be greater, averaging a 22.3 percent reduction for city fuel economy and 12.9 percent for highway fuel economy.[29] This greater impact occurs primarily because a number of the fuel efficient aspects of hybrid vehicles produce their maximum benefit under conditions akin to the FTP and HFET tests, and are somewhat less beneficial during aggressive driving, colder ambient temperatures and when the air conditioner is turned on. However, these vehicles will still remain among the top fuel economy vehicles.

There is one diesel vehicle in our 5-cycle fuel economy database. The

[29] The database of 615 vehicles includes 14 hybrid vehicles. All the hybrid models available as of the 2006 model year are represented in the database: Honda Insight, Honda Civic, Honda Accord, Toyota Prius, Toyota Highlander/Lexus RX400h, Ford Escape/Mercury Mariner, and Chevrolet Silverado/GMC Sierra pickup truck.

impact of the 5-cycle formulae on this one diesel is very similar to that for the average conventional, gasoline-fueled vehicle.

The impact of the mpg-based formulae will be very similar on average to those shown in Table II–1 above for conventional vehicles. This is not surprising, since the mpg-based formulae are based essentially on the average results of the 5-cycle formulae. However, the mpg-based formulae will increase the city fuel economy of hybrid vehicles slightly, as indicated in Table II–2. This occurs because there are only 14 hybrid vehicles in the database, compared to 601 gasoline-fueled, conventional vehicles. The mpg-based regression of city fuel economy, therefore, represents essentially the impact of the 5-cycle formulae on conventional vehicles, which is less than that for hybrids. The mpg-based regression of highway fuel economy is essentially the same for conventional and hybrid vehicles.

TABLE II–2.—EFFECT OF MPG-BASED FORMULAE ON CONVENTIONAL AND HYBRID FUEL ECONOMY

	City			Highway		
	Current (mpg)	MPG-based (mpg)	Percent change (percent)	Current (mpg)	MPG-based (mpg)	Percent change (percent)
Conventional	18.6	16.5	−10.9	24.6	22.7	−7.8
Hybrids	42.7	35.1	−16.7	42.8	38.4	−9.8

Table II–3 summarizes the projected impact of the new methods (5-cycle and mpg-based) relative to the current label values of the 615 vehicle database.

TABLE II–3.—EFFECT OF NEW METHODS ON FUEL ECONOMY ESTIMATES

	City fuel economy estimate			Highway fuel economy estimate		
	Current	5-Cycle	MPG-based	Current	5-Cycle	MPG-based
Conventional Vehicles:						
MPG	18.6	16.5	16.5	24.6	22.8	22.7
Percent Change		−10.8%	−10.9%		−7.4%	−7.8%
Hybrid Vehicles:						
MPG	42.7	32.4	35.1	42.8	36.7	38.4
Percent Change		−23.6%	−16.7%		−13.2%	−9.8%

In addition to looking at the overall change in fuel economy estimates for all vehicles in the database, we also focused on those manufacturers responsible for the majority of sales in the U.S. This approach may better reflect the changes likely to be seen by the majority of consumers. In effect, Table II–3 above includes vehicles by Aston Martin and Rolls-Royce in the percent change, and these vehicles are weighted equally with cars made by GM, Ford, DaimlerChrysler, and other top-selling manufacturers. According to Autodata Corporation, the seven manufacturers with the greatest U.S. market share account for more than 90 percent of U.S. sales. Table II–4 shows these manufacturers, their 2005 U.S. market share, and the average percent change in city and highway fuel economy estimates for each of these manufacturers as represented in our database. As can be seen in the table, the city mpg estimates for these manufacturers will drop by about 12 percent on average relative to today's estimates, and highway estimates will drop by about 8 percent on average. It is important to note, however, that these estimates are not intended to represent or include the entirety of a manufacturer's product line, and should not be interpreted as such. These estimates are derived from our database of 615 test vehicles for which data on all five emission and fuel economy test procedures is available, and because of differing ways in which manufacturers test their vehicles and submit data to EPA, the database may not reflect the range of makes and models similarly across manufacturers.[30]

TABLE II.–4.—EFFECT OF NEW METHODS ON FUEL ECONOMY ESTIMATES FOR MAJOR MANUFACTURERS

Manufacturer	2005 U.S. market share (percent)*	Average change in city fuel economy estimate (percent)	Average change in highway fuel economy estimate (percent)
General Motors	25.9	−10	−11
Ford Motor Co.	17.9	−12	−10
DaimlerChrysler	14.9	−10	−11
Toyota	13.7	−11	−7
Honda	8.9	−13	−7

[30] The database spreadsheet is available in the public docket for review.

TABLE II.–4.—EFFECT OF NEW METHODS ON FUEL ECONOMY ESTIMATES FOR MAJOR MANUFACTURERS—Continued

Manufacturer	2005 U.S. market share (percent)*	Average change in city fuel economy estimate (percent)	Average change in highway fuel economy estimate (percent)
Nissan	6.1	−11	−7
Hyundai	2.9	−13	−8
Average		−12	−8

* Source: Autodata Corp., Woodcliff Lake, New Jersey.

D. Comparison to Other Onroad Fuel Economy Estimates

In the proposal, we compared fuel economy label values based on the current, mpg-based, and 5-cycle formulae to estimates of onroad fuel economy developed by a number of organizations. In the short time since the proposal, little new data has become available. Also, as described above, we are finalizing only minor changes to the proposed mpg-based and 5-cycle formulae. Thus, overall, the relative comparisons described in the proposal remain largely unchanged. We describe these generally below, and refer the reader to Chapter II of the Technical Support Document for a detailed description of these comparisons.

We begin with a comparison of 5-cycle fuel economy values with the fleetwide fuel economy estimates developed by the Federal Highway Administration (FHWA). There are several differences in these two estimates. First, we do not have fuel economy data for all vehicles sold over the past 20–30 years over all five test procedures. Therefore, we cannot develop a 5-cycle fuel economy estimate for the current onroad fleet directly. Instead, we compare 5-cycle fuel economy values to the current label values for the vehicles for which we have 5-cycle fuel economy data, and then extrapolate this relationship to the rest of the vehicle fleet. Also, the FHWA light truck class includes vehicles above 8,500 pound GVWR. The fuel economy estimated for this class therefore requires adjustment to be comparable to EPA's light-duty truck class. We also make this comparison for cars and light trucks combined, in order to avoid differences in the ways that FHWA categorizes vehicles.

Since the NPRM, FHWA has published onroad fuel economy estimates for the 2004 vehicle fleet and updated their estimates for 2003. FHWA's estimates of light truck fuel economy onroad are almost 20 percent lower than their previous estimate for the 2002–2003 fleets. After adjusting for the difference in light truck categories, FHWA data indicate that combined car and light truck fuel economy averaged 19.7–19.9 mpg during 2003 and 2004. Extrapolating the fuel economy label estimates from the 615 vehicles in our certification database to the entire fleet produces an average combined fuel economy of 19.9 mpg. This close match-up is not surprising, given that the value of the factor representing effects not simulated during the dynamometer tests (e.g., wind, road grade, etc.) was set using the FHWA estimates of onroad fuel economy.

Next, several governmental and non-governmental organizations perform their own fuel economy assessments. Of these, the American Automobile Association (AAA) and Consumer Report have tested the greatest number of vehicles. Oak Ridge National Laboratory (ORNL) has recently begun a program where drivers can submit their own fuel economy measurements via the Internet. Argonne National Laboratory (ANL) has also been operating an extensive hybrid demonstration project for a few years as part of DOE's Freedom Car project.

Each of these estimates of onroad fuel economy has their relative strengths and weaknesses. The strengths of the non-governmental organization testing include the fact that the vehicles are tested on actual roads, usually in traffic and under real environmental conditions. The primary weaknesses of this testing are:

(1) The driving patterns involved are not typically published, so they may or may not be representative of average U.S. driving,

(2) Vehicles are tested throughout the year, so some vehicles are tested in hot weather and others in cold weather, and some under moderate conditions, thus leading to results that are not comparable across vehicles and that may not reflect average U.S. driving, and

(3) In some cases, the actual test procedures used to measure the volume of fuel consumed during the test are not described, leaving some doubt as to their accuracy. Still, because of the public interest in these estimates, we have compared them to our mpg-based and 5-cycle label estimates.

We updated our comparison of mpg-based and 5-cycle fuel economy estimates to Consumer Report's fuel economy estimates for 2000–2005 model year vehicles which were also in our 5-cycle database. We were also able to match 70 of these vehicles with those in our 5-cycle fuel economy database.[31] As in the NPRM, we focused on Consumer Report's combined fuel economy, which is a harmonic average of its fuel economy measurements for city driving, highway driving, and a 150-mile trip. On average, the mpg-based combined fuel economy values are 3 percent higher than those of Consumer Report, while the 5-cycle fuel economy values are 2% higher than those of Consumer Report. Thus, there is an excellent match between the composite mpg-based fuel economy and the Consumer Report combined fuel economy.

[31] In the NPRM, we identified 151 vehicles which were both tested by Consumer Reports and in our certification database. However, many of these matching vehicles were not from the same model year.

TABLE II–5.—CONSUMER REPORTS AND CURRENT EPA AND MPG-BASED FUEL ECONOMY: 303 VEHICLES

	Consumer reports	Current EPA label		MPG-based	
	MPG	MPG	Difference* (percent)	MPG	Difference (percent)
City	14.2	20.4	−30	18.0	−21
Highway	29.3	26.9	9	24.7	19
Combined	20.7	22.9	−9	21.2	−3

Table II–6 presents the same comparisons, except that it includes the 5-cycle estimates and only includes the 70 matched vehicles.

TABLE II–6.—CR AND CURRENT EPA, 5-CYCLE AND MPG-BASED FUEL ECONOMY: 70 VEHICLES

	Consumer reports	Current EPA label		5-cycle		MPG-based	
	MPG	MPG	Difference* (percent)	MPG	Difference (percent)	MPG	Difference (percent)
City	14.3	20.4	−30	18.0	−21	17.8	−20
Highway	29.3	26.4	11	24.3	21	24.1	22
Combined	20.6	22.7	−9	21.0	−2	20.9	−2

We also updated our comparison to onroad fuel economy as estimated by AAA.[32] We were able to match 61 out of the 163 vehicles from their 2004 report to vehicles in our 5-cycle certification database. This is lower than the 98 models which we matched in the analysis described in the NPRM due to the use of a more stringent criterion that the vehicles match in terms of model year. As AAA only develops a single fuel economy estimate for each vehicle (i.e., no separate city or highway estimates), we compared their estimates to combined fuel economy values using the mpg-based and 5-cycle formulae. On average, the mpg-based combined fuel economy values exceeded those of AAA by 6.7%, while the 5-cycle fuel economy values exceeded those of AAA by 6.1%.

We obtained a recent compilation of consumer's onroad fuel economy estimates which have been submitted to the Oak Ridge National Laboratory's ''Your MPG'' database. Unlike Consumer Report and AAA, drivers submit their own estimates of onroad fuel economy and city/highway driving split to the YourMPG Web site. The strength of this type of data is the fact that the vehicle is being operated by the owner or regular driver in typical use. The weaknesses are the unknown representativeness of the sample, the unknown nature of the technique used by the owner/driver to measure fuel economy and the unknown time period over which fuel economy is generally assessed (e.g., a couple of tanks full or the past year). The database now contains 8180 estimates of fuel economy for 4192 vehicles, compared to 2544 estimates of fuel economy for 1794 vehicles at the time of the NPRM. The database does not provide sufficiently precise vehicle descriptions to match vehicles to those in our 5-cycle database. Thus, we limit our comparison to the mpg-based method. We combined the mpg-based city and highway label values using each driver's estimate of the percentage of their driving that was in city or highway conditions. If a driver did not provide an estimate of the breakdown of their driving pattern, we assumed that their driving was 43 percent city and 57 percent highway in terms of miles driven (not time driven).

Diesels appear to perform better onroad than gasoline vehicles compared to their current or mpg-based label values. Onroad fuel economy by diesels in the YourMPG database exceeded the current label combined label values by 4.3 percent. In contrast, conventional gasoline vehicles fell short of their current combined label values by 1.4 percent.

TABLE II–7. —YOURMPG VERSUS CURRENT AND MPG-BASED LABEL FUEL ECONOMY

Vehicle type	Number of estimates	YourMPG	Current label	Difference (percent)	MPG-based label	Difference (percent)
Conventional gasoline	7330	23.8	24.1	−1.4	21.7	9.1
High MPG Conventional Gasoline*	680	35.1	35.8	−1.7	31.6	11.2
Hybrid Gasoline	520	43.2	47.1	−8.2	40.5	6.3
Diesel	221	41.8	40.1	4.3	35.3	18.3

* Combined EPA Label fuel economy value of 32 mpg or greater, representing about the top 10% fuel economy conventional vehicles.

We also performed similar comparisons of EPA label and various onroad fuel economy estimates focusing specifically on hybrids and high fuel economy conventional vehicles. In the NPRM, we did this analysis for hybrids. However, we received some comments that highlighting the impact on hybrid vehicles specifically was misleading. The reason given was that, if hybrids performed differently on the road compared to their label values, it was

[32] AAA Auto Guide: 2004 New Cars and Trucks. AAA Publishing, 2004.

due to their relatively high fuel economy and not because of their hybrid technology. However, we found that the relationship between mpg-based and 5-cycle label values and the onroad fuel economy estimates for conventional vehicles with relatively high fuel economy is consistently more similar to that of lower fuel economy conventional vehicles than to hybrids.

There is a significant degree of scatter in the various estimates of onroad hybrid fuel economy. Those from DOE's FreedomCar program, Consumer Report and Edmunds [33] tend to be much lower than those from YourMPG and AAA. EPA's Kansas City data, although not representative of the entire country, tends to fall in between these other two sets of onroad hybrid estimates. The 5-cycle combined label values tend to be in line with the lower set of estimates. The mpg-based label values tend to be somewhat higher than the lower set of estimates, but well below those of YourMPG and AAA. As described in the NPRM, the fuel economy of hybrids is more sensitive to driving patterns and ambient conditions than conventional vehicles. The scatter in the various onroad fuel economy estimates for hybrids likely reflects this fact, as each estimate is based on a unique set of driving activity and ambient conditions.

Overall, the mpg-based and 5-cycle fuel economy label values compare favorably with estimates of onroad fuel economy made by other organizations. However, lack of detailed knowledge of the driving conditions and test procedures behind many of the latter estimates prevents systematic comparisons, especially involving individual weighting factors in the 5-cycle formulae.

E. Implementation of the New Fuel Economy Methods

1. 5-Cycle Vehicle Selection Criteria for 2011 and Later Model Years

In addition to finalizing the mpg-based adjustments for the 2008–2010 model years, as mentioned above, we are finalizing as proposed selection criteria for the continued use of this method for 2011 and later model years. These criteria will indicate for a given vehicle test group whether the full 5-cycle testing would result in significantly different fuel economy label values than the mpg-based approach. If not, then those vehicles could use the mpg-based method rather than the 5-cycle method. This approach is designed to avoid additional test burden where the fuel economy label values would not be significantly different under the 5-cycle method.

Each year, manufacturers must demonstrate compliance with federal emission standards by performing tests over all five test procedures. The vehicles on which these tests are performed are known as ''emission data vehicles'', which are selected to represent the ''worst-case'' emitting vehicle in a group of vehicles, known as a ''test group'', which share common engine and emission control designs.[34] EPA issues certificates of emission conformity for each test group of vehicles in each model year. Thus, for each test group, there exists a set of official certification test data from all five test cycles—FTP, HFET, US06, SC03 and Cold FTP. The fuel economy measured from these official certification tests can be inserted into the 5-cycle city and highway formulae to determine city and highway fuel economy values. Since FTP and HFET testing is included in the official certification data, the mpg-based city and highway fuel economy values can also be determined. Thus, for each emission data vehicle, the 5-cycle city and highway fuel economy values then can be compared to the mpg-based city and highway fuel economy values. We believe that it is reasonable to allow continued use of the mpg-based line when the available 5-cycle fuel economy data (from emissions certification) indicates that the mpg-based fuel economy determined from the official FTP and HFET tests performed for the test group are similar enough to the 5-cycle fuel economy determined from the official FTP, HFET, US06, SC03 and Cold FTP tests for that same test group. In that case, the manufacturer can use the mpg-based method for all model types covered under the EPA certificate of conformity that is represented by the 5-cycle data submitted to represent those vehicles. The manufacturer will not need to conduct 5-cycle testing for fuel economy labeling for these model types.

To accomplish this, we defined the lower bound of a tolerance band around the mpg-based line as the criteria for whether the mpg-based line could be used or whether 5-cycle testing would be required for further vehicle models within a test group. As proposed, we are finalizing four and five percent as the tolerance bands for the city and highway mpg lines, respectively. Mathematically, the tolerance line is defined by Y x mpg-based fuel economy, where Y is 0.96 for city fuel economy and 0.95 for highway fuel economy. In other words, if the 5-cycle city fuel economy value is greater than or equal to 0.96 times the mpg-based city fuel economy, all the vehicle model types covered under the certificate of conformity for that test group are eligible to use the mpg-based method to determine both city and highway fuel economy label estimates. Similarly, when the 5-cycle highway fuel economy is greater than or equal to 0.95 times the mpg-based highway fuel economy, all vehicle model types covered under the certificate of conformity in that test group are required to use the vehicle-specific 5-cycle approach. This can be done using analytically derived fuel economy estimates, when appropriate. This approach is appropriate because those vehicles with a 5-cycle value above the mpg-based line that used the mpg-based line would simply be reducing their fuel economy down to the average level, even though the 5-cycle data indicated better than average performance was likely for that vehicle group. Because of the better-than-average performance, we expect that most manufacturers will want to do complete 5-cycle testing for vehicles likely to be significantly above the mpg-based line.

This approach is illustrated in the Figures II–7 and II–8, below. The black squares in these figures represent situations where the mpg line does not do a good job (based on the tolerance criteria as shown by the dashed line) of predicting the 5-cycle fuel economy. Those vehicles with black squares in the two charts below may not use the mpg-based approach, but instead must perform additional testing to achieve better fuel economy estimates. Note that these charts do not show the entire range of FTP and HFET fuel economy on the x-axis, and thus do not show all those vehicles ''passing'' or ''failing'' the city or highway criteria. For the purpose of illustrating this concept it helps to isolate the FTP range from 20 to 30 mpg and the HFET range from 30 to 40 mpg.

[33] See *www.edmunds.com.*

[34] The ''emission data vehicle'' is the test vehicle chosen to represent a ''test group'' for emission certification purposes. A ''test group'' is made up of vehicles that share common combustion cycle, engine type, fuel type, fuel metering system, catalyst construction and precious metal content, engine displacement, number and arrangement of cylinders, and emission standards. The emission data vehicle is required to be the vehicle within the test group that is expected to be worst-case for exhaust emissions. In general the criteria that cause the emission data vehicle to be worst-case for emissions will also cause it to be worst-case for fuel economy (e.g., it will be the heaviest vehicle in the test group, with an automatic transmission, four-wheel drive, etc.). In general, the FTP, HFET, US06 and SC03 are performed on the emission data vehicle to demonstrate that the test group complies with the federal emission standards. The Cold FTP is performed on the worst-case vehicle within a durability group, which represents a larger group of vehicles, including those covered in the test group.

Figure II-7: MPG-Based City Fuel Economy Line Showing 4% Tolerance Criteria

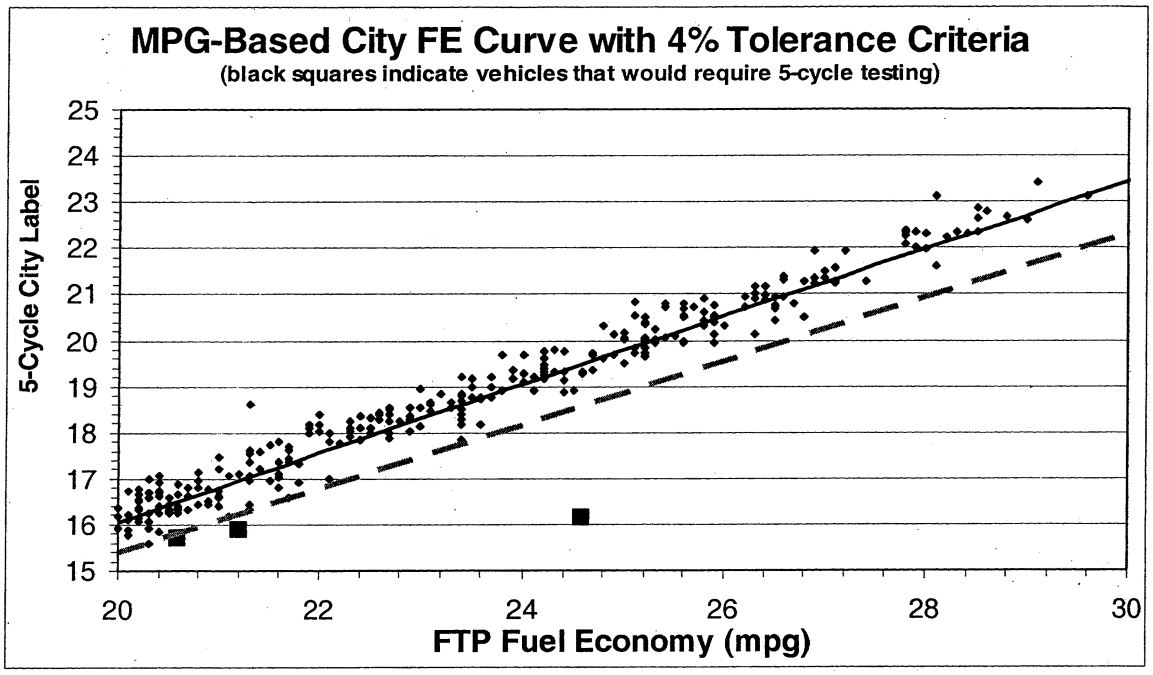
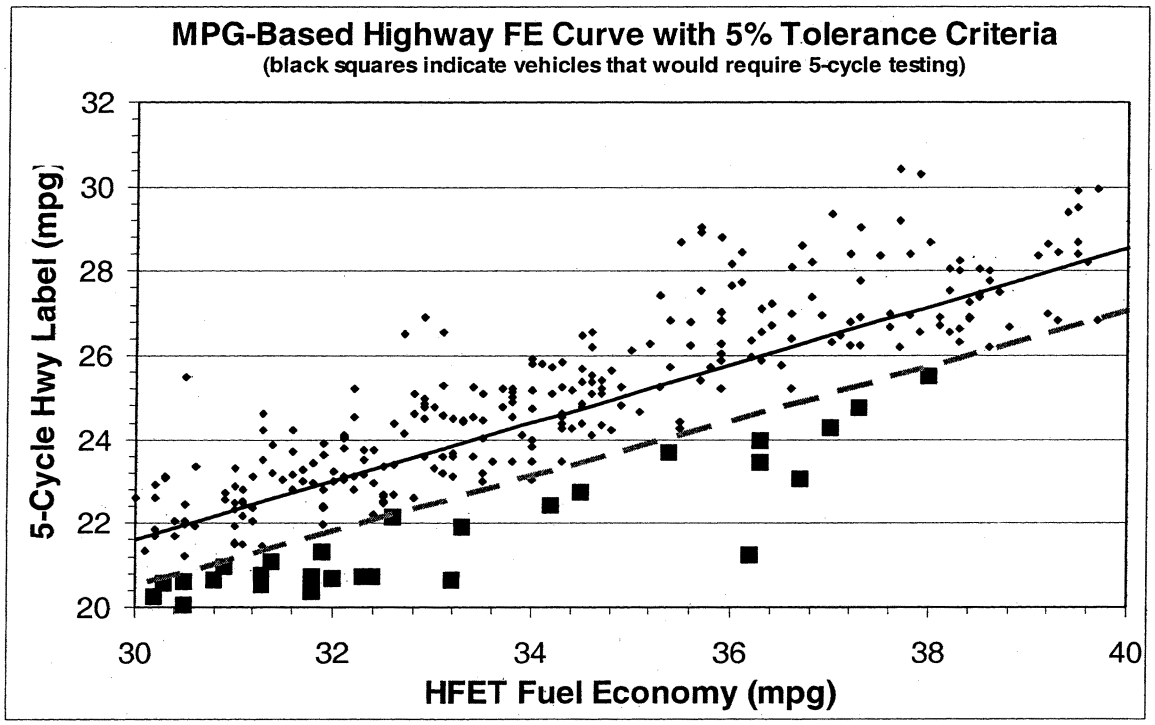


Figure II-8: MPG-Based Highway Fuel Economy Line Showing 5% Tolerance Criteria



If the 5-cycle city fuel economy falls below the mpg-based city fuel economy by more than four percent (i.e., below the tolerance line), but the 5-cycle highway fuel economy does not fall below the mpg-based highway fuel economy by more than five percent (i.e., above the tolerance line), all the vehicle configurations represented by the emission data vehicle are required to use the vehicle-specific 5-cycle approach for both city and highway fuel economy, since fuel economy values for all five cycles are important in estimating 5-cycle city fuel economy. However, if the 5-cycle highway fuel economy is less than the mpg-based highway fuel economy by more than five percent (i.e., below the tolerance line), but the 5-cycle city fuel economy is not more than four percent lower than the mpg-based city fuel economy (i.e., above the tolerance line), all the vehicle configurations represented by the emission data vehicle will use the mpg-based approach to estimate the city fuel economy label. For the highway label in

this case, all the vehicle configurations represented by the emission data vehicle may use an approximate 5-cycle formula. This formula includes vehicle-specific fuel economy measurements for the FTP, HFET and US06 tests, but the SC03 and cold FTP test values may be estimated based on relationships developed from other vehicles. This is appropriate because the impact of the cold FTP test on highway fuel economy in the 5-cycle formula is not vehicle-specific, but estimated (or modeled) based on known relationships. Also the impact of the SC03 test on highway fuel economy is very small, particularly compared to that for the US06 test.

The criteria for use of the mpg-based approach in model year 2011 and later (5-cycle city fuel economy above four percent and 5-cycle highway fuel economy above five percent) are based on the balance of three factors. First, we designed them to be sufficiently large so that typical test-to-test variability would not cause a test group to fail the criteria. This may be a greater concern for the highway fuel economy comparison, due to the dominance of the US06 fuel economy (which inherently has greater test-to-test variability than the other tests) in the 5-cycle formula. Second, we want to minimize the potential error in the fuel economy label. Label fuel economy values are rounded to the nearest whole mpg. Thus, we felt it important to keep the difference between the 5-cycle and mpg-based fuel economy values within roughly one mpg, if possible. In other words, if the difference between the two methods is less than 1 mpg, then the two methods would produce the same label value. If the difference is more than 1 mpg then we would expect the 5-cycle method to result in a different label value, and thus it is more important to trigger the requirement for additional testing. Third, we want to avoid requiring additional fuel economy testing that will have little to no impact on the label values.

The four percent tolerance band for city fuel economy is equivalent to roughly 0.6–0.7 mpg on average. Due to the contribution of a number of independent fuel economy measurements in the 5-cycle city formula, the effect of test to test variability should be much lower than four percent. Based on the 5-cycle test results of 615 recent model year vehicles, we estimate that about 96 percent of test groups would fall above the four percent tolerance line. Thus, we believe that this criterion adequately satisfies the three factors mentioned above.

The five percent tolerance band for highway fuel economy is equivalent to roughly 1.1 mpg on average. Thus, it is slightly higher than the typical error associated with rounding. However, due to the dominant contribution of the US06 fuel economy in the 5-cycle highway formula, and the fact that this test tends to have relatively high variability, we are concerned that test-to-test variability could be on the order of 3.0 percent in the 5-cycle highway formula. We estimate that about 87 percent of test groups would fall above the five percent tolerance line. Thus, again, we believe that this criterion adequately satisfies the three factors mentioned above.

Overall, allowing the continued use of the mpg-based approach in this way will reduce the number of additional SC03 and cold FTP tests by about 96 percent and reduce the number of additional US06 tests by about 87 percent. Moreover, this significant reduction in test burden is achieved with no significant impact on the fuel economy estimate.

2. Medium-Duty Passenger Vehicle Label Estimates

As noted in Section I, we are finalizing in this rule a fuel economy labeling program for Medium-Duty Passenger Vehicles (MDPVs), a subset of vehicles between 8,500 and 10,000 lbs GVWR. MDPVs were first defined in the regulation that put in place the ''Tier 2'' emission standards.[35] This newly-defined class of vehicles includes SUVs and passenger vans between 8,500 and 10,000 lbs GVWR, but excludes large pick-up trucks. The specific regulatory definition was designed to capture in the Tier 2 vehicle emissions program those vehicles that are designed predominantly for passenger use.[36]

Under the Energy Policy and Conservation Act (EPCA), EPA is required to establish regulations that require a manufacturer to attach a label to each ''automobile'' manufactured in a model year.[37] ''Automobile'' is defined as a vehicle not more than 6,000 lbs GVWR, and those vehicles between 6,000 and 10,000 lbs GVWR that DOT determines are appropriate for inclusion in the CAFE program.[38] ''Automobile'' for the purposes of labeling also includes vehicles at no more than 8,500 lbs GVWR whether or not DOT has included those vehicles in the CAFE program.[39] EPA has no authority to require labels on vehicles that are not automobiles, therefore EPA has no authority to require labeling of either vehicles above 10,000 lbs GVWR, or vehicles between 8,500 and 10,000 lbs GVWR that are not included by DOT in the CAFE program.

Since the time of EPA's proposal, DOT has included some vehicles above 8,500 lbs GVWR and below 10,000 lbs in its CAFE program, beginning in model year 2011.[40] Since these vehicles now meet the definition of automobile, EPA is authorized to include these vehicles in the labeling program. EPA is now requiring fuel economy labels on MDPVs (as defined in the CAFE program), beginning with model year 2011.

MDPVs are currently subject to emission standards that apply on the existing Federal Test Procedure, and many also undergo emission testing on the current Highway Fuel Economy Test due to requirements in California. Beginning with the 2011 model year, manufacturers will be routinely testing MDPVs over the FTP and the HFET tests in order to comply with the CAFE program. However, MDPVs are not today subject to all of the additional emission tests we are utilizing for the 5-cycle method.[41] Specifically, MDPVs are not subject to the 1996 SFTP regulations.[42] The SFTP regulations include the US06 and SC03 test procedures, both of which are necessary elements of the 5-cycle fuel economy methodology. These two test cycles represent high speed and aggressive driving (US06), and impacts of air conditioner operation (SC03). We do not believe it is appropriate to require SFTP testing for MDPVs for fuel economy purposes alone, but we are not prepared at this time to establish SFTP standards

[35] See 65 FR 6698 (Feb. 10, 2000).

[36] This is the regulatory definition of Medium-Duty Passenger Vehicle, found in 40 CFR 86.1803–01: Medium-duty passenger vehicle (MDPV) means any heavy-duty vehicle (as defined in this subpart) with a gross vehicle weight rating (GVWR) of less than 10,000 pounds that is designed primarily for the transportation of persons. The MDPV definition does not include any vehicle which:

(1) Is an ''incomplete truck'' as defined in this subpart; or

(2) Has a seating capacity of more than 12 persons; or

(3) Is designed for more than 9 persons in seating rearward of the driver's seat; or

(4) Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

[37] See 49 U.S.C. 32908(b).

[38] See 49 U.S.C. 32901(a)(3).

[39] See 49 U.S.C. 32908(a).

[40] See 71 FR 17565 (April 6, 2006).

[41] MDPVs are currently required under the Tier 2 program to meet a carbon monoxide standard on the cold FTP test; compliance with this standard is being phased in over the 2008 and 2009 model years.

[42] See 61 FR 54852 (Oct. 22, 1996).

for MDPVs. In the Tier 2 regulations, we acknowledged that MDPVs were not covered by SFTP requirements, and we specifically noted that SFTP emission standards would be addressed in a future regulation.[43] We believe that the appropriate time to consider 5-cycle fuel economy testing for MDPVs is during or after development of appropriate SFTP emission standards for MDPVs. We plan to address SFTP emission standards for MDPVs in the near future. At that time, we will also assess the appropriateness of 5-cycle fuel economy testing for MDPVs. However, we are finalizing a program that requires MDPVs to use the mpg-based adjustments to calculate fuel economy estimates. The database of 615 vehicles used to generate the mpg-based adjustments includes vehicles similar in many respects to existing MDPVs, with similar FTP and HFET fuel economy as measured today. For example, the database includes models of the Chevrolet Suburban below 8,500 lbs GVWR, which are very similar to the versions of the same vehicle that is above 8,500 lbs GVWR and classified as an MDPV. Additionally, because the mpg-based adjustment is essentially the average relationship between FTP and HFET fuel economy and 5-cycle fuel economy results, we believe that the resulting label values for MDPVs will be an adequate representation. The mpg-based approach does not require testing beyond what will be required to meet the CAFE program in model year 2011. Manufacturers will simply take their FTP and HFET test results (conducted for the CAFE program) and apply them to the mpg-based equation to determine their fuel economy label values.

3. Analytically Derived Fuel Economy

When a vehicle is required to generate data from all five test cycles, there are multiple ways for the manufacturer to accomplish this. One way would be to perform the three additional tests—the US06, SC03, and cold FTP tests (the FTP and HFET would be performed under current and future requirements). The other way is to estimate fuel economy values over the US06, SC03 and cold FTP tests analytically (i.e., analytically derived fuel economy, or ADFE) from testing of a similar vehicle over these three cycles. Under this method, manufacturers will be allowed to estimate the effect of differences in inertia test weight, road load horsepower, and N/V ratio (the ratio of engine revolutions to vehicle speed when the vehicle is in its highest gear) on fuel economy, and use these estimates to calculate predicted fuel economy over the three new fuel economy test cycles. A procedure to estimate the effect of these three vehicle parameters on FTP and HFET fuel economy has already been developed.[44] We plan to work with manufacturers to appropriately analytically derive fuel economy for the US06, SC03 and cold FTP tests, or otherwise utilize data for these tests already available from certification vehicles. We will implement these estimation procedures using agency guidance, as is currently done for FTP and HFET fuel economy.

III. Revisions to the Fuel Economy Label Format and Content

A. Background

We proposed to update the design of the fuel economy label to better convey its information to the public. We took comment on four alternative label designs. We received overwhelming public support for revamping the label and numerous constructive comments for enhancing the final label content. Based on these public comments, we developed additional alternatives for how information might be presented on the label. We gauged consumer reaction to these alternatives by conducting a series of focus groups in five cities across the country. These groups provided valuable feedback which we used to establish the final label. The docket to this rule includes the final report entitled ''Fuel Economy Focus Groups—Phase Two Findings'' that contains details about the focus groups.

The label format and content we are finalizing today reflects input from the public comments and focus group research. The modern design of this label more effectively communicates fuel economy estimates and related information to the customer. Section I of this preamble provides a graphic of the new fuel economy label and key considerations that went into developing its final design. This section presents the specific elements on the final label.

We plan to conduct public outreach and education to increase consumer awareness of the new label's design and content. We believe that we can increase consumer comprehension by jointly-sponsoring an outreach campaign with car dealers and other interested stakeholders that could include explanatory materials, such as a brochure that dealers could distribute to customers.

B. Label Size and Orientation

Although we proposed to maintain the label's size at 7 inches by 4.5 inches, we experimented with its orientation. Two of the four alternative labels proposed were positioned vertically (portrait), and two horizontally (landscape) as today's label. Public comments highly supported one of the vertically oriented versions (identified in the proposed rule as ''Alternative 4.''[45] The commenters that provided reasons for this preference indicated that the new look, along with the graphically presented comparison information, helped convey the fuel economy information desired by the customer, discussed further in Section III.C below.

Some automakers expressed concerns with the vertical label orientation. Their primary apprehension was that the new Department of Transportation—National Highway Traffic Safety Administration safety rating label, required on price stickers (''Monroney'' label) of all cars produced on or after September 1, 2007,[46] competes for space with the fuel economy label. Some manufacturers had already redesigned their price stickers to accommodate the safety rating label beside a horizontally positioned fuel economy label. These companies stated that because the price sticker contains a great deal of information, changing the fuel economy label orientation would be difficult from a graphic design standpoint. One manufacturer commented that it had already printed stock price stickers containing horizontally oriented fuel economy labels and would bear an added cost of redesigning and reprinting the stickers if EPA required the vertical label.

To consider further the above comment, we tested both horizontal and vertical versions of the label (Figure III–1) with the focus groups. While the focus groups expressed a slight preference for the vertical orientation, this preference was not strongly held. Some participants remarked that the vertical label was easier to read ''top to bottom''; however, a contrasting observation made in many of the focus groups was that on the vertical label the text within the gray area of the fuel pump was more difficult to read. [Insert photo Figure III–1: Preliminary vertical

[43] See 65 FR 6789 (Feb. 10, 2000).

[44] U.S. EPA Memorandum ''Updated Analytically Derived Fuel Economy (ADFE) Policy for 2005 MY and Later,'' CCD–04–06 (LDVLDT), March 11, 2004. Available in the public docket for review.

[45] Note that the NPRM contained four label alternatives, printed in the Appendix to the proposed regulations on pages 5510–5513, labeled Alternative 1, 2, 3, and 4. These same labels were posted on EPA's Web site, but in a slightly different order and with different nomenclature (Label A, B, C, and D). In the following discussion we refer to the labels printed in the NPRM and use that nomenclature.

[46] See 71 FR 53572 (Sept. 12, 2006).

and horizontal designs for focus group review.]

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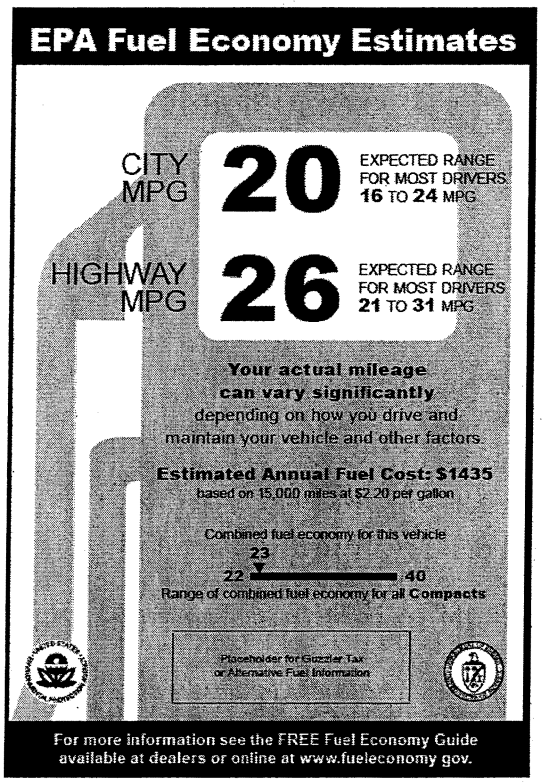
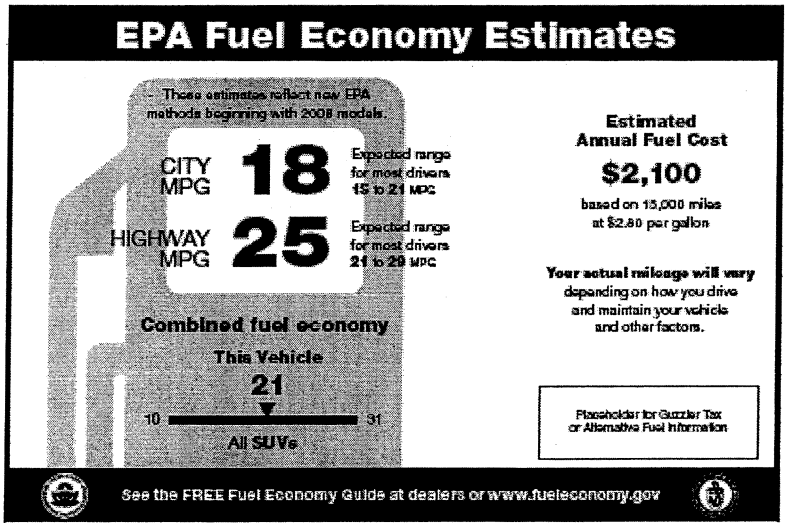
Figure III-1: Preliminary vertical and horizontal designs for focus group review.





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Although public comments indicated a preference for the vertical orientation, the primary reasons given were more relevant to the design elements (particularly the gray ''watermark'' fuel pump design with information it its ''window'' and the bar graphic showing comparable fuel economy) rather than the label orientation itself. Therefore, in order to address both the consumers' needs and the automakers' concerns, our final label contains the new design elements supported by public comments and its appearance is oriented horizontally. The label size remains unchanged from the current label, at 7″ wide by 4.5″ high, and the final layout incorporates several important changes

to improve legibility and consumers' understanding of the label information.

C. Fuel Economy of Comparable Vehicles

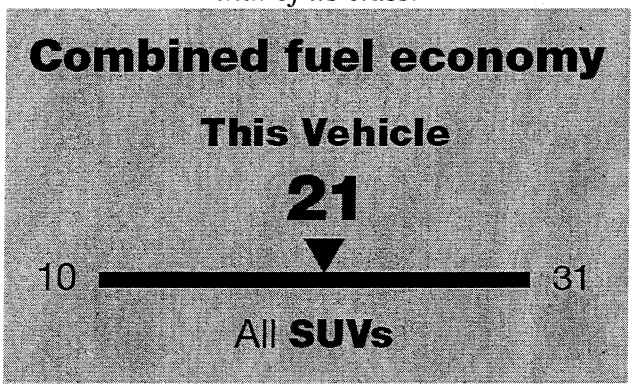
We proposed two contrasting depictions comparing a particular vehicle's fuel economy to that of all other vehicles in its class: a text statement and a graphic depiction (Figure III–2). On three of the proposed labels, we specified separate city and highway comparable fuel economy information on the bottom half of the label in a text statement, similar to the current label. On one of the vertically oriented labels (Alternative 4) we proposed a graphical bar scale that indicated where the vehicle's combined fuel economy would fall compared to all other vehicles in its class.

Figure III-2: Proposed options for comparing fuel economy with other vehicles.

Option #1 – Text statement of fuel economy information of a particular vehicle to that of its class

For comparison shopping, the range of fuel Economy for all **Sport Utility Vehicles** is **15** to **30** MPG city and **20** to **40** MPG highway.

Option #2 – Graphical representation of fuel economy information of a particular vehicle that of its class.



Public commenters strongly favored the graphical version, many noting that it was similar to the Federal Trade Commission's EnergyGuide ratings placed on new appliances.

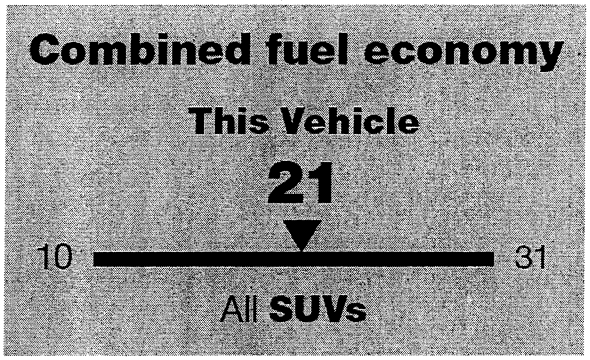
One industry comment suggested that the graphical way of presenting comparable fuel economy highlighted a weakness in the comparable vehicle class designations. Automakers expressed concern that ''the graphic representation may portray a significant volume of sales as having low fuel economy, even though many consumers would be shopping in only subgroups of EPA's classes.'' They recommended that EPA retain its current text portrayal of comparable fuel economy, but if significant comments were to favor the graphic design, they asked to work with EPA and through additional focus groups to develop a design that addresses their competitive concerns. Although their concerns were directed at the graphic, the underlying issue is EPA's comparable class designations. A separate discussion of comparable classes is in Section VI.F.

We also tested these representations of comparable fuel economy with the focus groups and they responded positively to the graphic version of combined fuel economy. Participants indicated that they were more likely to use this information, since it was much more clearly displayed in the graphical version. Many participants commented further that the range of combined fuel economy was more useful than the city/highway ranges of the verbal text.

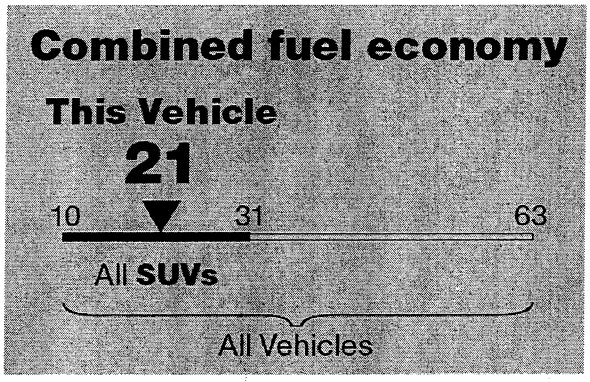
One commenter stated that the within-class graphic did not provide enough context for consumers because many people do not shop within a single class, but instead may be simultaneously considering a variety of types of vehicles (for example, SUVs or minivans). The commenter suggested an alternate version of this graphic containing a bar scale that represents the fuel economy range of all vehicles, with the range of the specific vehicle class embedded in the overall range. We tested this alternative with the focus groups, along with an enhanced graphic, similar to the one proposed in the Alternative 4 label. These alternatives are shown in Figure III–3.

Figure III-3: Fuel economy comparison options tested with focus groups

Option 1: Within-Class Range of Vehicles
Graphical presentation of a particular vehicle's estimated fuel economy compared to that of its class.



Option 2: Added Range of All Vehicles
Graphical presentation of a particular vehicle's estimated fuel economy compared to that of its class and of all fleet vehicles.



The focus groups slightly preferred Option 1 because of its simplicity, many participants noting that they already knew which class of vehicles they would be considering. Others preferring Option 2 mentioned that it could influence some people to reconsider vehicles with higher fuel economy. Although some participants thought the added fuel economy range in Option 2 was useful, many thought it was too much information or were confused by what it represents.

Because public comment and focus group reaction has been positive, we are finalizing a comparable fuel economy graphic similar to Option 1 (Figure III–3). This graphic shows the range of fuel economy for the comparable class of vehicles and indicates where the specific vehicle falls on that range. The focus groups comprehended it easily at a glance, an important consideration given how briefly most viewers look at the labels on dealer lots. We recognize that the added information provided by revealing the fuel economy range of all vehicles may be valuable to some, but because of clarity and ease of comprehension, we are finalizing the simpler within-class graphic. Those desiring more detailed information about comparable fuel economy can find it on the Fuel Economy Guide and at *http://www.fueleconomy.gov*, referenced at the bottom of the label.

D. Estimated Annual Fuel Cost

We proposed to elevate the visibility of the estimated annual fuel cost information by increasing its size and location on the label (Figure III–4, Option 1). Additionally, we proposed to include further information on which the estimated annual fuel costs are determined—specifically the number of miles driven per year and the price of fuel per gallon. (This information is currently optional on the label, but manufacturers typically do not include it). Public commenters and focus group participants responded favorably to these changes.

One commenter suggested that a single cost estimate would not match most drivers' experiences, and that a cost range would be more valuable for those who drove more exclusively under city or highway conditions. To explore this comment, we developed an option that showed three separate fuel cost estimates (Figure III–4, Option 2):

(1) Combined estimate based on a mix of city and highway driving;

(2) City estimate based on all city driving; and

(3) Highway estimate based on all highway driving.

Both options were tested with the focus groups.

Figure III-4: Estimated Annual Fuel Cost Options

Option 1: Proposed fuel cost info
Presentation of Estimated Annual Fuel Cost based on only the combined city/highway driving scenario.

Estimated Annual Fuel Cost

$2,100

based on 15,000 miles
at $2.80 per gallon

Option 2: Added city and highway fuel cost info
Presentation of Estimated Annual Fuel Cost based on combined city/highway driving, city-only driving, and highway-only driving scenarios

Estimated Annual Fuel Cost

Combined: **$2,100**

City $2,333
Highway $1,680

based on 15,000 miles
at $2.80 per gallon

The focus groups had mixed reactions to these options, but slightly preferred Option 1 because it was simpler and provided all of the vital information. Others thought that the combined estimate would be more accurate, since they did not drive exclusively in either city or highway conditions. Alternatively, those that preferred seeing the added city/highway fuel costs did so because they did drive under one condition more often than another; others simply preferred having more information.

We are finalizing Option 1 based on positive response from both public commenters and focus groups. While the option to include separate city and highway annual fuel costs may provide additional useful information for some consumers, others may disregard it altogether because of its complexity. Furthermore, there is enough information provided on the simpler graphic that a person could determine their own customized fuel cost estimate by modifying one or more parameters (*e.g.* mpg, dollars-per-gallon, or miles-per-year).

As explained in further detail in Section III.I, the estimated annual fuel cost is determined using a weighted combination of estimated city and highway fuel economy values. Currently the combined fuel economy is based on a weighting of 55% city mpg and 45% highway mpg. We proposed changing the weighting to 43% city mpg and 57% highway mpg, but as discussed in Section III.I we are not finalizing this as proposed, choosing instead to retain the 55/45 weighting factors.

E. "Your mileage will vary" Statement

We proposed to include a statement on the label stating, "Your actual mileage can vary significantly depending on how you drive and maintain your vehicle and other factors." This statement reinforces to customers that the mpg values are estimates only and that drivers will experience different fuel economy depending on many factors. Most commenters favored some sort of disclaimer statement and provided a number of suggestions. Some proposed that the statement both highlight the inexact nature of the estimate and educate consumers on which factors may lead to improved fuel economy. Others suggested that the statement distinguish between factors that drivers could and could not control. We tested three alternative versions with the focus groups: a slight modification to the proposed version, one having a list of fuel economy tips, and the other simply pointing to a Web site where one could find the tips. These are shown in Figure III–5.

Figure III-5: "Mileage will vary"statement options

Option 1 Proposed "Mileage will vary"statement	**Your actual mileage will vary** depending on how you drive and maintain your vehicle and other factors.
Option 2 "Mileage will vary"statement with details	**Your actual mileage will vary.** For best mileage avoid high speeds and rapid acceleration, keep tires properly inflated and reduce air conditioning.
Option 3 "Mileage will vary"statement with web link and no details	**Your actual mileage will vary.** For tips on improving your fuel economy see www.fueleconomy.gov.

The focus group reaction was divided uniformly between the three options provided. Some liked seeing the more-detailed tips, while others preferred the Web link, since the list of tips was incomplete. Some thought that fewer details coupled with a Web link would be appropriate.

All factors that impact fuel economy cannot be listed on the fuel economy label because they are too numerous. Our proposed statement was designed to capture two of the biggest categories that drivers can control: Driving style and vehicle maintenance, with a blanket ''and other factors'' clause added. ''How you drive'' covers such factors such as speed, acceleration, use of air conditioning, braking, and driving predominantly in either city or highway conditions. ''How you maintain your vehicle'' covers factors like tire pressure, oil changes, tune-ups, and other maintenance. Both of these categories include factors that the driver can control in most cases.

The focus groups generally thought that the ''other factors'' clause was unnecessary. To increase the likelihood that consumers will read and understand the message that fuel economy will vary, we believe that a simpler statement is preferable. We considered adding the Web address to the statement in order to reflect the desire within the focus groups for access to more detailed information. However, in designing the final label format, we realized that it would be redundant because it is located directly above the identical Web site that is provided at the bottom right border of the label. Therefore, we are finalizing a statement that states, ''Your actual mileage will vary depending on how you drive and maintain your vehicle,'' to be located near the Web address at the bottom of the label.

F. Environmental Information Statement

Historically, EPA has rated fuel economy and emissions from 0–10 on the Green Vehicle Guide Web site (*www.epa.gov/greenvehicles/*). We sought comment on allowing companies to voluntarily include EPA air pollution and/or greenhouse gas ratings on the fuel economy label. While auto manufacturers supported alerting consumers to these issues, they did not favor adding emissions ratings to the label, because they may dilute the fuel economy information. Another comment from the auto industry was that the emissions factors and weights associated with the ratings presented in the Green Vehicle Guide are subjective and debatable. Thus, they recommended that we continue to present environmental ratings on the web, where there is ample space for elaboration.

One environmental group did not support rating a vehicle's greenhouse gas emissions from 0–10 because the scale was ''too coarse,'' but recommended that we instead educate consumers on how their vehicle choice impacts the environment. Two different environmental groups favored mandating both greenhouse gas and smog scores on the label. One of these groups disagreed with the auto manufacturers, stating that there was ample space on the label to present the scores without interfering with fuel economy information. The other group further suggested that we compare these scores numerically and graphically to all vehicles, as in the NPRM, and that we include an official EPA ''Seal of Approval'' to the most environmentally benign vehicles. Because some comments suggested further improvements to our method for calculating these scores, and because a clear preference for how to present this information did not emerge from the comments, we are not finalizing provisions for including this information on the label at this time. We remain open to suggestions for a voluntary environmental labeling program that could be implemented in the future.

To further consider those comments suggesting that we instead educate consumers on the relation of fuel economy and environmental and societal issues, we tested the following ''environmental statement'' with the focus groups: ''Buying a vehicle with better fuel economy helps protect the environment and reduces dependence on oil.'' Focus groups were strongly divided on this statement. Some asserted that it was ''preachy'' and ''stating the obvious,'' while others argued that it was consistent with EPA's mission and, even if obvious, addressed a concern felt by most of the population.

We are finalizing a label design that does not incorporate an environmental statement. While we agree that it is important to make a connection between a vehicle's fuel efficiency and the environment, we agree with focus group comments that most consumers already recognize this relationship. Additionally, since most of the new label space is utilized by statutorily-required information, a practical concern was that we would not be able to add this statement without creating a ''fine print'' look. However, both the Fuel Economy Guide and the *www.fueleconomy.gov* Web site (referenced on the label) include details

about the impact of fuel economy on the environment, for consumers wishing to explore these issues further.

G. Government Logos and Web Site Link

We proposed to include prominent EPA and DOE logos on the label and a prominent reference to ''EPA'' on the label title. These changes reflect earlier market research indicating that people were unaware of the fuel economy estimates' origin, and that knowing the government was the source of this information added to its credibility. Since public commenters and focus groups responded favorably to this proposal, the final label design includes the government logos at the bottom and ''EPA Fuel Economy Estimates'' in the title.

We also proposed to require placement of the jointly-sponsored EPA–DOE Web site *www.fueleconomy.gov* on the label. Since commenters and focus group members reacted positively to adding a web link, we are finalizing this requirement.

H. Temporary Transitional Statement

We asked commenters if the label should include transitional language indicating that the estimates are based on new methods. Such a statement could help customers understand why the fuel economy estimates are lower, especially when 2007 models having current fuel economy estimates are on dealer lots with 2008 models having new estimates. Commenters generally responded positively. Automakers suggested a brief statement, while another commenter suggested slightly longer wording. We tested the following transitional statement with the focus groups: ''These estimates reflect new EPA methods beginning with 2008 models.'' The meaning of this sentence was generally clear to the groups. A few participants wondered what the ''new EPA methods'' were, but determined after some discussion that the Web site provided on the label may give further explanation. We are finalizing this transitional statement for inclusion on the final fuel economy label.

We asked the groups how long this statement should be retained, and responses varied widely, from one year to the duration of an average consumer's vehicle purchase cycle. We believe that the transitional statement should be used while both the old and the new label formats appear simultaneously on vehicles on dealer lots. When all vehicles on the lot have labels with the new format (estimates based on new methods), there will be less potential for confusion. By the time 2010 models can be offered for sale (as early as January 2, 2009), all new vehicles on dealer lots will have the new label format and the transitional statement will no longer be necessary. Therefore, we are requiring the transition statement on the labels of all 2008 and 2009 model year vehicles.

I. Combined Fuel Economy Basis

For calculating the combined fuel economy displayed on the label (and also factored into the estimated annual fuel cost calculation), we proposed a weighting of 43% city and 57% highway. Currently this value is based on a 55% city/45% highway weighting. The 43/57 weighting was based on the new 5-cycle method and reflects average miles driven (not time spent) at speeds below and above 45 mph respectively, based on existing data for on-road driving patterns. This analysis is detailed in the Technical Support Document. We received comments that the 43/57 split was not intuitive to most drivers and that consumers may think more in terms of the percent of time they spend driving in city or highway conditions, rather than in percent of *distance* traveled. Some commenters suggested a simple 50/50 split, which is more intuitive to car buyers; others suggested retaining the 55/45 split since it is closer to the intuitive 50/50 split.

The basis for the 43/57 city-highway weighting as used to assess 5-cycle fuel economy fleetwide is discussed in the Technical Support Document. The issue for the label is how best to convey the fuel economy information most relevant to consumers and which city/highway weighting supports that purpose.

We agree with the comments that a 43/57 split based on distance is not intuitive to consumers. We considered the suggested 50/50 split, since likely most consumers think of ''combined'' fuel economy as an equal mix of city and highway driving. The 55/45 split was used historically to determine combined fuel economy since it is consistent with the statutory requirements for determining fuel economy for CAFE standards and the Gas Guzzler tax.[47] Thus, since it will remain the required weighting for the Gas Guzzler tax that appears on the label for applicable vehicles, it is most consistent to continue using the 55/45 split for combined fuel economy as well. We do not want to cause consumer confusion by using different city/highway weightings to calculate different numbers appearing on the label. Therefore, we are finalizing that a 55/45 weighting be used to calculate the combined fuel economy displayed on the label and used to calculate the estimated annual fuel costs. This decision does not impact the underlying city/highway split used analytically to determine fleetwide composite 5-cycle fuel economy, as discussed in the Technical Support Document.

J. Labeling Requirements for Dual Fueled Vehicles

Flexible-fueled vehicles (FFVs) (also called dual-fueled or bi-fueled vehicles) are vehicles that can operate either on gasoline or diesel fuel, or on an alternative fuel such as ethanol or methanol. Currently, for FFVs, manufacturers may voluntarily include the fuel economy estimates (and estimated annual fuel costs) for the alternative fuel on the label. This is part of the EPCA statute which requires that for dual fueled vehicles, the label must:

''(A) indicate the fuel economy of the automobile when operated on gasoline or diesel fuel;

(B) clearly identify the automobile as a dual fueled automobile;

(C) clearly identify the fuels on which the automobile may be operated; and

(D) contain a statement informing the consumer that the additional information required by subsection (c)(2) of this section is published and distributed by the Secretary of Energy.''[48]

The current labeling requirements for dual-fueled vehicles are consistent with these EPCA requirements. We did not propose changes to these requirements, and we did not seek comment on the topic. However, EPA received a late public comment from several environmental and consumer groups urging EPA to require manufacturers to include for FFVs the fuel economy and estimated annual fuel costs of both gasoline and E85 (mixture of 85% ethanol and 15% gasoline).

Historically, the EPA did not require fuel economy on the label for ethanol FFVs, because a vast majority of these vehicles operated on gasoline only, since ethanol was not widely available, and many owners were unaware they were driving an FFV. However, in recent months there has been a sharp increase in national interest in alternatives to fossil-based fuels, flexible-fueled vehicles, and ethanol in particular. With increased awareness and availability of these vehicles, the late comment suggested that the label be required to not only display separate gasoline and E85 fuel economy and annual cost estimates, but also to provide EPA smog and greenhouse gas

[47] See 49 U.S.C. 32904(c) and 26 U.S.C. 4064(c)(1).

[48] See, 49 U.S.C. 32908(c)(3).

scores and the ratio of ethanol to gasoline (which is not always 85:15) on the label. These additions would help alert customers that although the fuel economy of dual fuel models may be lower than gasoline-only models, they are still reducing environmental impact by using alcohol fuel.

Since we did not request comments on this topic, we are not finalizing requirements today that differ from the current regulations. However, we agree that it is important to provide consumers with complete fuel economy information on alternatively fueled vehicles, particularly in light of the rising sale of flex-fueled vehicles and a developing E85 fuel infrastructure. We agree that it is important for consumers to understand that fuel economy on E85 is typically about 20% to 30% lower than on gasoline, due to the lower energy density of E85.[49] Consumers can view the gasoline and E85 estimates of all FFVs in the Fuel Economy Guide and on the *www.fueleconomy.gov* Web site. We reiterate that manufacturers may voluntarily include the E85 (or other alternative fuel) mpg and estimated annual fuel costs on the label today, and we strongly encourage them to do so. The final label design includes a placeholder for such information.

We are not finalizing a requirement today, because we believe the issue (for manufacturers to display E85 fuel economy information on the label in addition to gasoline) deserves a more carefully considered approach. The label design we are finalizing was developed based on extensive public comments and focus group input. None of the options considered included E85 fuel economy information. Before requiring the inclusion of E85 fuel economy for FFVs, there are many questions we would consider for the design and placement of this information, such as: (1) How to clearly present E85 mpg relative to gasoline; (2) how to educate consumers that E85 helps reduce greenhouse gases and reduce oil consumption; (3) how to best convey estimated annual fuel costs of E85 (particularly given the volatility of E85 prices across the country), and (4) how to graphically depict comparable class fuel economy for E85 in addition to gasoline. In the next year, EPA will evaluate its legal authority to require manufacturers to include E85 fuel economy on the label. If we determine that we have statutory authority, we would then plan to work with interested stakeholders to assess how best to present E85 fuel economy information on the label. We welcome the input of stakeholders in this process, and we look forward to suggestions on how to best convey both the fuel economy and environmental benefit information on E85 relative to gasoline.

K. Addition of Final Regulatory Specifications for Label Content and Design

We proposed ''placeholder'' regulatory text that specifies the label content and design, knowing that the final label design would depend on the outcome of both the public comments and the focus group research. The final regulations contain the details for the format and content of the label.

IV. Testing Provisions

A. Testing Requirements for Vehicles Currently Exempt From Certain Emission Tests

Certain vehicles are currently exempt from some of the emission tests that we are including in the 5-cycle method.[50] These vehicles include diesel vehicles and alternative-fueled vehicles. In order to update the fuel economy methods for these vehicles, we proposed additional provisions and are finalizing them in this rulemaking.

1. Diesel Vehicles

Diesel fuel vehicles are not currently subject to Cold FTP emission standards and thus do not have a 20 °Fahrenheit (F) FTP (i.e., Cold FTP) fuel economy result to use in the 5-cycle formulae. Therefore, we proposed that beginning with the 2008 model year for certification diesel vehicles, a Cold FTP be performed for the purpose of collecting fuel economy data.

Accordingly, we also proposed and requested comments on winter-grade diesel fuel specifications for use during the Cold FTP test. Specifically, we proposed the use of a #1–D (winter-grade) diesel fuel as specified in ASTM D975–04c ''Standard Specification for Diesel Fuel Oils,''[51] and that complies with 40 CFR Part 80,[52] where the level of kerosene added shall not exceed 20 percent. We further proposed the use of a manufacturer-specified diesel fuel, with EPA approval, in lieu of a conventional diesel fuel under the alternate test procedure provisions in 40 CFR 86.113–94, where the level of kerosene added shall not exceed 20 percent. Since we did not receive any comments regarding the winter-grade diesel fuel specification, we are finalizing these provisions as proposed.

However, we did receive comments regarding requiring the Cold FTP for diesel vehicles. The auto industry cited the potential for major laboratory retrofitting, which required additional lead time, and suggested that EPA not require diesels to perform the Cold FTP until the 2011 model year. They further suggested that Cold FTP testing for diesels be optional in the 2008–2010 model years.

We have evaluated the comments regarding additional lead time for laboratory retrofitting to perform the Cold FTP test for diesel vehicles and believe they have merit. To accommodate Cold FTP testing of diesel vehicles, manufacturers may need to add a heated flame ionization detection (FID) system, including heated probes, lines and filters. Some manufacturers may need to further modify their facilities for site specific designs and configurations, such as additional insulation to prevent water condensation in the sampling system or modifying the length of the exhaust collection hoses.

As a result, we are changing the provisions for requiring Cold FTP diesel testing from the proposal, as follows. First, we are providing additional lead time by extending the requirement for Cold FTP diesel testing from the 2008 model year to the 2011 model year. This will allow manufacturers additional lead time to address any facility modifications. Second, we will not require the measurement of particulate matter (PM) during the Cold FTP diesel test, since PM is not part of the fuel economy carbon balance calculation, and thus has no impact on fuel economy. Third, for manufacturers voluntarily using the 5-cycle method during the 2008–2010 model years, fuel economy over the Cold FTP may be reported based on carbon monoxide (CO) and carbon dioxide (CO_2) measurements only, excluding the hydrocarbon (HC). Based on limited existing data showing that HC makes up a negligible fraction of the total cold fuel economy results (less than 0.1%), the

[49] Based on fuel economies of gasoline and E85 reported in the Model Year 2006 Fuel Economy Guide, p. 18.

[50] See the applicable regulations at 40 CFR 86.1810(i)(4) and 40 CFR 86.1811–04(g).

[51] ASTM International Specification D975–04C ''Standard Specification for Diesel Oil Fuels'' (November 1, 2005) describes the seven grades of diesel fuel oils suitable for various types of diesel engines. This specification is under the jurisdiction of ASTM Committee D02 on Petroleum Products and Lubricants and is the direct responsibility of subcommittee D02.E0 on Burner, Diesel, Non-Aviation Gas Turbine, and Marine Fuels.

[52] 40 CFR Part 80—Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engines and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Final Rule and Regulation of Fuels and Fuel Additives: Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years.

measure of HC will not be required during the 2008–2010 model years. This interim provision is another way to address manufacturers' concern about lead time for diesel cold testing facility upgrades, as measuring HC at cold temperatures requires the use of a heated FID, which many manufacturers do not have in existing cold facilities. In the 2011 model year and beyond, manufacturers will be required to conduct and report the results from the Cold FTP diesel testing, including the CO, CO_2, and HC measurements.

2. Alternative-Fueled Vehicles

There are two types of alternative-fueled vehicles: (1) Flexible-fuel vehicles (FFVs; also known as dual-fueled, bi-fueled, or multi-fueled vehicles) that can operate on gasoline or diesel and/or some alternative fuel (*e.g.*, ethanol or methanol), and (2) dedicated alternative fueled vehicles that operate only on the alternative fuel (*e.g.*, such as compressed natural gas (CNG) vehicles).

FFVs are subject to the SFTP (which includes the US06 and SC03 tests) and Cold CO emission standards and test requirements, but only when operating on gasoline. Thus, we proposed that the fuel economy label values of FFVs when operating on gasoline be determined using the same mpg-based or 5-cycle approaches applicable to gasoline vehicles and thus additional testing for US06, SC03 and Cold FTP while operating on the alternative fuel would not be required. Although the fuel economy values when operating on an alternative fuel are not required to be reported on the label, manufacturers may voluntarily include these values on the label and they are also reported in the annual Fuel Economy Guide. In addition, the mpg-based and 5-cycle approaches only use fuel economy values measured in terms of miles per gallon of gasoline or diesel fuel. Thus, we proposed an approach to specify how manufacturers of FFVs must determine and report the fuel economy label values when the vehicle is operated on an alternative fuel. We proposed that the city and highway fuel economy label values must reflect the same adjustment factors relative to FTP and HFET fuel economy, respectively, developed using the applicable mpg-based or 5-cycle approach for gasoline. Specifically, the city and highway fuel economy values when the FFV is operated on gasoline would be used to calculate the mpg-based or 5-cycle approach (whichever applicable). Then, the city and highway fuel economy values calculated from the mpg-based or 5-cycle approach would be divided by the city and highway fuel economy during FFV gasoline operation to determine a ratio. This ratio would then be applied to the city and highway fuel economy values when the FFV is operated on an alternative fuel. This would allow the manufacturer to determine a mpg-based or 5-cycle, alternative fuel equivalent value for the purpose of voluntary labeling and Fuel Economy Guide reporting purposes.

For example, assume that the measured FTP and HFET fuel economy is 24 and 32 mpg, respectively, for an FFV operating on gasoline, and 18 mpg and 26 mpg, respectively, for a FFV operating on the alternative fuel. Using the measured gasoline values and the mpg-based approach,[53] we can calculate the city and highway fuel economy, as shown below:

$$\text{FE gasoline}_{\text{mpg, city}} = \frac{1}{0.0033563 + \frac{1.17895}{24\text{ mpg}}} = 19\text{ mpg}$$

$$\text{FE gasoline}_{\text{mpg, highway}} = \frac{1}{0.0013934 + \frac{1.34619}{32\text{ mpg}}} = 23\text{ mpg}$$

The resulting city and highway label values for the FFV when operating on gasoline are 19 mpg and 23 mpg, respectively. We divide these values (19 and 23 mpg) by the measured city and highway fuel economy values, 24 and 32 mpg, during FFV gasoline operation to determine the ratios.

$$\text{ratio}_{\text{city}} = \frac{19\text{ mpg}}{24\text{ mpg}} = 0.826$$

$$\text{ratio}_{\text{highway}} = \frac{23\text{ mpg}}{32\text{ mpg}} = 0.719$$

For this example, the ratios would be 0.826 (*e.g.*, 19 mpg divided by 24 mpg) for the city ratio and 0.719 (23 mpg divided by 32 mpg) for the highway ratio. To calculate the mpg-based city and highway fuel economy values for an FFV operating on alternative fuel (for voluntary inclusion on the label or in the Fuel Economy Guide,) multiply the measured values (18 mpg and 26 mpg) by their respective ratios.

$$\text{FE altfuel}_{\text{city}} = \text{FTP altfuel} \times \frac{\text{FE gasoline}_{\text{mpg, city}}}{\text{FTP gasoline}} = 18\text{ mpg} \times 0.826 = 15\text{ mpg}$$

$$\text{FE altfuel}_{\text{highway}} = \text{HFET altfuel} \times \frac{\text{FE gasoline}_{\text{mpg, highway}}}{\text{HFET gasoline}} = 26\text{ mpg} \times 0.719 = 19\text{ mpg}$$

The estimates reported on the label and in the Fuel economy guide would be 15 mpg (*e.g.*, 18 mpg times 0.826, the city ratio from gasoline operation) for the city fuel economy and 19 mpg (*e.g.*, 26 mpg times 0.719, the highway ratio from gasoline operation) for the highway fuel economy. This can also be done using the 5-cycle approach, as applicable.

We did not receive any comments on the proposed label methods for FFVs

[53] Section II contains a derivation of these equations. This method for determining the fuel economy label values for FFVs can be used when the city and highway values are determined by either the mpg-based method or the 5-cycle method, whichever is applicable. In this example we demonstrate the use of the mpg-based method.

and, as such, we are finalizing the provisions as stated in the proposal.

Manufacturers of FFVs may optionally use the 5-cycle approach at their discretion for reporting fuel economy when operating on the alternative fuel. If this option is used, the manufacturer would be required to conduct all applicable 5-cycle test procedures on the alternative fuel and use both the 5-cycle city and highway calculation methods to determine fuel economy label. In addition, for Cold FTP testing under the 5-cycle approach, the use of a manufacturer-specified alternative fuel, with EPA approval, will be used under the alternate test procedure provisions in 40 CFR 86.113–94. As stated above, manufacturers will report these values in the annual Fuel Economy Guide and may voluntarily include these values on the label.

Dedicated alternative-fueled vehicles are also exempt from the SFTP and Cold FTP emission standards. As a result, these vehicles will not have the SFTP and Cold FTP fuel economy data needed to determine 5-cycle fuel economy values. We proposed that manufacturers of dedicated alternative-fueled vehicles be able to use the mpg-based approach in the 2011 model year and beyond, as well as during the 2008–2010 model years, in order to avoid conducting additional tests for fuel economy reasons only. Further, since the mpg-based approach uses fuel economy values measured in terms of miles per gallon of gasoline or diesel fuel, the fuel economy of dedicated alternative fuel vehicles must be expressed in terms of its gasoline equivalent prior to using the mpg-based formula. Currently, all dedicated alternative-fueled vehicles express fuel economy values in terms of a gasoline equivalent.[54] For this case, we proposed that the fuel economy values for a dedicated alternative vehicle expressed in gasoline equivalents are directly determined using the mpg-based approach.

We did not receive any comments on the proposed provisions for dedicated alternative-fueled vehicles and, as such, we are finalizing the provisions as stated above.

Finally, we proposed that manufacturers of dedicated alternative-fueled vehicles may optionally use the 5-cycle approach at their discretion. If this option is used, the manufacturer would be required to conduct all applicable 5-cycle test procedures on the alternative fuel, and then convert all the alternative fuel values into gasoline equivalents prior to use in the 5-cycle formulae for city and highway label values. Because dedicated alternative fuel vehicles are not subject to the Cold FTP test procedures today, there is no cold test fuel specification for alternative fuel (e.g., CNG or E85). Thus, if a manufacturer wishes to do 5-cycle testing, it would need to request EPA approval of the cold test fuel under the special test procedure provisions in 40 CFR 86.113–94.

We did not receive any comments on the proposed provisions for dedicated alternative-fueled vehicles to optionally use the 5-cycle approach and, as such, we are finalizing the provisions as stated in the proposal.

B. Modifications to Existing Test Procedures

To ensure that the 5–cycle method is more reflective of real-world operating conditions, there are a few procedural changes that need to be made to certain existing emission tests procedures. First, we proposed procedural changes in the US06 tests, as described below. Second, we sought comment on the issue of requiring manufacturers to run the heater and/or defroster during the cold FTP test. Third, we proposed to codify the existing practice of requiring four-phase FTP measurements for gasoline-electric hybrid vehicles.

1. Splitting the US06 Test Into City and Highway Segments

The US06 driving schedule contains elements of both city and highway driving, yet the exhaust sample is collected in only one sample, or ''bag.'' In order to more accurately reflect the city portion of the driving schedule into the city fuel economy estimate, and the highway portion of the driving schedule into the highway fuel economy estimate, we proposed a revised test protocol that would require collecting the exhaust sample into two bags. This has the benefit of more accurately capturing how a vehicle's fuel economy would be impacted over the various types of driving reflected in the driving schedule.

We undertook a test program to determine the technical feasibility of splitting the US06 exhaust sample in two bags, and whether it would impact emissions results for compliance purposes. We evaluated the effects of conducting a US06 split-phase (i.e., two bag) emissions test versus the current US06 single-phase (one bag) emission test on ten vehicles at EPA's National Vehicle and Fuel Emissions Laboratory (NVFEL) in Ann Arbor. Based on this evaluation, the US06 split-phase sampling methodology was shown to be feasible for fuel economy purposes and required only initial software reprogramming for the revised sampling periods and minimal hardware changes to enable the emissions analyzers to perform US06 split-phase emission testing. In addition, creating a US06 split-phase sampling period did not result in any significant difference in criteria pollutant emissions results. The full report on this US06 split phase evaluation program is available in the docket.[55]

We received comments from the auto industry that the costs of collecting US06 exhaust emissions into two bags are substantial, but they did not provide any cost data to substantiate this claim. Further, the auto industry claimed that there will be decreased accuracy and increased variability if the US06 test is split into two phases, yet they did not provide additional data or analysis to support this claim. Finally, the auto industry claimed that significant software changes and lead time would be required to implement the two-phase bag software for diesel vehicles due to necessary one-phase PM sample collection systems for diesels, integrated real-time total hydrocarbon (THC) data collection for fuel economy calculations, and the alignment with methane (CH_4) bag measurements for compliance with the emission standard. The auto industry recommended that we allow the use of alternative methods of determining the US06 city and highway fuel economy in lieu of conducting a two-bag US06 test. One suggested method was to use second-by-second data over a one-bag US06 test, either from modal bench analyzers or via On-Board Diagnostic (OBD) data stream information, to determine the city portion and highway portion and develop a two-bag US06 fuel economy calculation. Finally, it was suggested that we allow some flexibility for future methods that may be developed to measure or derive the city and highway US06 fuel economies.

While we continue to believe the two-bag US06 measurement proposed is a valid approach that will not lead to significant differences in emission results, we also believe that the alternative approaches suggested by the auto industry could yield technically valid results and thus have merit. As a result of the comments, we have revised the proposal and are finalizing the requirements below for the two-bag US06 measurement.

For the 2008 through 2010 model years, those manufacturers choosing to

[54] See § 600.113–93.

[55] Mitcham, A. & Fernandez, A., ''Feasibility of Revising the US06 Test Cycle into a Split Phase Sampling Test Procedure'' U.S. EPA, Office of Transportation & Air Quality, 2005.

use the 5-cycle approach must either conduct the two-bag US06 test or determine two-bag results from a one-bag test using an alternative method (as discussed below). For the 2011 model year and beyond, for all certified test groups, the two-bag US06 must be conducted or data supplied in two-bag US06 format.

To determine US06 two-bag fuel economy, manufacturers may use alternate test methods in lieu of conducting an actual two-bag US06. Such alternate test methods include: (1) Conducting a one-bag US06 and using emissions analyzer modal data to determine the appropriate ratio of city and highway operation; or (2) conducting a one-bag US06 and using OBD fuel rate (e.g., grams of fuel per second) data to determine the appropriate ratio of city and highway operation over the one-bag US06. Additionally, the manufacturers may use other methods based on good engineering judgment, with EPA review and approval, as long as these methods achieve equivalent or better, technically valid results based on manufacturer submitted data. For the case of conducting a one-bag US06 and using the emissions analyzer modal or OBD fuel rate data, the ratio of city and highway operation over the one-bag US06 is applied to the CO, CO_2 and HC results in order to determine the city and highway US06 fuel economy values, constituting a ''virtual'' two-bag US06. However, this option only applies for determining the city and highway US06 fuel economy and, thus, is not applicable for determining US06 emissions. The requirements for conducting a two-bag US06 and the options for alternately measuring or deriving the two-bag US06 outlined above are applicable to both gasoline and diesel vehicles.

2. Heater/Defroster Usage During the Cold FTP

The current Cold FTP conducted at 20 °F includes the option to use the heater and/or defroster.[56] While we understand that some manufacturers today are using the heater and/or the defroster during the Cold FTP, it is not mandatory and therefore subject to inconsistent usage across manufacturers and vehicle lines. We expect that, in the real-world, it would be highly unusual for drivers not to use the heater/defroster when the temperature is cold, including at 20 °F experienced during the Cold FTP. In order to more closely reflect real world operation, and to ensure a level playing field across manufacturers and vehicle lines when performing this test, we sought comment on requiring manufacturers to operate the heater and/or defroster during the Cold FTP.

As discussed in the NPRM, we conducted a test program through the Southwest Research Institute (SwRI) that measured the impacts of heater and defroster operation on fuel economy for three vehicles during a 20 °F Cold FTP. We compared the fuel economy results with heater/defroster operational to the results of the heater/defroster non-operational on each vehicle. The Cold FTP fuel economy with the heater/defroster on was significantly lower than that with the heater/defroster off, ranging from –6.0 percent (~1 mile per gallon lower on a non-hybrid vehicle) to –17.9 percent (~8 miles per gallon lower on a hybrid vehicle). We did not observe a significant impact on CO or other measured emissions as a result of the use of the heater/defroster on the Cold FTP. The results of this test program indicated that different vehicles were impacted more than others, indicating that it is important to capture the impact on fuel economy of heater and defroster use during cold conditions. The full report of this test program is contained in the docket.[57]

The auto industry commented that the heater/defroster requirement should be deferred until we have a better understanding of real-world operation of heater/defroster systems. Some manufacturers suggested that there is a far smaller impact on fuel economy due to defroster/heater operation than EPA estimates in the proposal based on the SwRI test program, but they provided no data to support this claim.

Several state and environmental organizations supported the requirement to use the heater/defroster on the Cold FTP test and recommended that we develop a standardized methodology based on realistic usage patterns. One commenter also cited the level playing field aspect, noting that manufacturers who choose to use more realistic test conditions may be penalized relative to those who do not.

We believe, as we stated in the proposal, that it is important to reflect the heater/defroster operation in our fuel economy test procedures since heater/defroster operation can have an additional impact on fuel economy,[58] these accessories are used in the real-world at cold temperatures including 20 °F, and it is necessary to maintain a level playing field across manufacturers to prevent gaming of the test procedure.

We support the need for the heater/defroster test procedure to reflect real world operation. However, we believe that a standardized test protocol must be implemented as soon as possible so that this real-world impact is taken into account in the new fuel economy test methods. There are many approaches for how the heater and defroster usage could be incorporated into the Cold FTP test procedures, including specifying appropriate fan speed settings, timing of turning on the heater/defroster during the test, and accounting for various vehicle climate control designs. Therefore, we sought comment on the methods for how heater/defroster usage could be specified in the cold FTP procedure.

Specifically, we discussed a concept that started the test with the airflow directed to the windshield for optimal defrosting, the airflow source set to outside air (not recirculation), and the air temperature set to high. Approximately 2 minutes into the test, the fan speed could be turned to maximum and left there for the duration of the test. This would mimic typical driver behavior in that we expect many drivers would not turn the fan to maximum until the engine is producing some level of heat, which most vehicles will do within a couple minutes of driving. The second concept involved the automatic climate control systems set to achieve an inside air temperature of 72°F, and the fan speed, if independently selectable, would be operated as described above. The third concept related to vehicles with multiple zones (either driver and passenger, or front and rear) and required operating the controls for all zones as described above. Finally, since some climate control systems might not be compatible with these instructions, we proposed to allow a manufacturer to request the use of special test procedures, under 40 CFR 86.1840–01, subject to EPA approval.

We received comments from the auto industry that the test protocol for running the heater/defroster should mimic as closely as possible how drivers typically operate the heater/defroster system in the real-world. Specifically, they commented that a driver would not keep the fan speed at

[56] See 40 CFR 86.230–94(f).

[57] Southwest Research Institute (SwRI), ''VOC/PM Cold Temperature Characterization and Interior Climate Control Emissions/Fuel Economy Impact; Final Report Volume II.'' Prepared for U.S. EPA under contract 68–C–05–018, SwRI Project No. 03.11382.04.

[58] Southwest Research Institute (SwRI), ''VOC/PM Cold Temperature Chracterization and Interior Climate Control Emissions/Fuel Economy Impact: Final Report Volume II.'' Prepared for U.S. EPA under contract 68–C–05–018, SwRI Project No. 03.11382.04.

maximum for 43 minutes, the effective length of the test, and that many electronic systems automatically bring the fan speed down as the vehicle warms up, and that some vehicles can not simultaneously be in defrost mode and have the blower off. They also commented on the potential impact of this operation on the stringency of existing and proposed emission standards (e.g., proposed Mobile Source Air Toxics cold hydrocarbon standards).[59]

We are finalizing mandatory heater/defroster operation during the Cold FTP, but with some changes to the test protocol to more closely reflect real world operation. Further, we are addressing issues of lead time with respect to applicable model years for mandatory heater/defroster operation during the Cold FTP.

We are revising the applicable model years for implementation of mandatory heater/defroster operation during the Cold FTP. For the 2008 through 2010 model years, only those manufacturers choosing to optionally use the 5-cycle approach are required to operate the heater/defroster during the Cold FTP. This will allow manufacturers time to fully assess any impacts related to the EPA's Mobile Source Air Toxic (MSAT) cold hydrocarbon proposed standards,[60] which would also be determined based on the Cold FTP test. Again, we reiterate that our heater/defroster testing, run under a worst-case protocol, did not indicate an impact on emissions. However, we understand that some manufacturers desire additional lead time for conducting their own analyses to confirm these results. For the 2011 model year and beyond when the 5-cycle approach becomes effective, manufacturers are required to operate the heater/defroster during the Cold FTP.

The test protocol we are finalizing has been revised from that outlined in the proposal as follows. At the start of the test, manually controlled climate control systems will have the airflow will be directed to the windshield for optimal defrosting, the airflow source set to outside air (not recirculation), the fan speed set to off or ''low'' and the air temperature set to the hottest setting. At the second idle of the test (approximately two minutes into the test, allowing the engine to accumulate some heat) the fan speed will be set to maximum. At the sixth idle of the test, at approximately 505 seconds into the test (corresponds with the end of bag 1 and the start of bag 2 of the Cold FTP), the fan speed setting will be reduced to the lowest possible setting to maintain air flow, and the temperature setting will remain at the hottest setting. These settings will be held for the remainder of the test, including the final bag following the 10 minute soak period. For automatic climate control systems, the manufacturer can manually override the system and use the provisions specified for manual systems, or the system selector will be set to heater or defroster mode and the temperature will be set to 72°F for the duration of the test. All other aspects of heater/defroster operation and climate control settings during the Cold FTP discussed in the proposal will be finalized unchanged. For vehicles with multiple zone climate control systems (e.g., front and rear temperature/fan controls and/or separate driver/passenger temperature/fan controls), the same fan and temperature settings should be set and maintained for all the zones for both manual and automatic interior climate control systems, if feasible. If these settings are not feasible, manufacturers may request and use alternate settings, with prior agency approval, only for vehicles with multiple zone climate control systems. If a manufacturer does request alternate settings for multiple zone systems, at a minimum, the settings for the front passenger zone of the multiple zone system must follow the protocols set forth above.

The regulations specify that the manufacturer must use good engineering judgment and consider potential engine control changes that may be directly impacted by the temperature setting on the manually controlled systems (e.g. has direct input to, or can directly affect, the engine control logic). For example, when the heater or defroster is engaged a system may employ such strategies as disabling of engine-off idling features, disabling of cylinder deactivation, or different engine idling speed. Also, at the 20°F ambient temperature of the Cold FTP, it is highly unlikely that vehicles will experience any use of the air conditioning compressor during defroster operation and any fuel economy differences between heater and defroster operation would be related to engine control changes (e.g., engine off logic, idle speed changes, spark advance changes).

We recognize that there may be unique climate control systems that are not addressed through these protocols. To address such systems, manufacturers can request in writing EPA approval of alternative heater/defroster test protocols/procedures.

3. Hybrid Electric Vehicle Testing Provisions

The FTP consists of two parts referred to as the ''cold start'' and the ''hot start'' portion of the test. The ''cold start'' portion is performed following an eight to twelve hour soak at a stable temperature of 72°F that stabilizes the vehicle and brings the engine coolant temperature to a ''cold'' condition. The ''hot start'' portion is performed following prescribed driving sufficient to bring the vehicle (and engine coolant) up to full operating temperature, and then a ten minute soak that stabilizes the vehicle. The cold start and hot start are divided into two periods, or ''phases'': A ''transient'' phase and a ''stabilized'' phase (i.e., the vehicle is warmed up), which constitute what is known as the Urban Dynamometer Driving Schedule (UDDS). The emissions for each of the FTP phases are collected in ''bags,'' terminology that results from the sample bags in which the exhaust samples are collected. The full four phases of the FTP are conducted in the following order: Cold start transient phase (bag 1), cold start stabilized phase (bag 2), hot start transient phase (bag 3), and hot stabilized phase (bag 4).

For conventional vehicles, the stabilized phase of the hot start test (bag 4) is assumed to be identical to the stabilized phase of the cold start test (bag 2). Thus, the hot stabilized phase (bag 4) is typically not performed for conventional vehicles and is accounted for in the emission and fuel economy results mathematically by including the cold stabilized phase (bag 2) results twice in the calculation. However, since hybrid-electric vehicles have dual energy sources that can be operated in synergistic modes, the gasoline or diesel engine is supplemented by the electric motor and may not be at peak, optimized operating temperatures during the entire FTP. Based on this, the EPA and manufacturers recognized that the assumption regarding the equivalence of the cold and hot stabilized phases, and counting the cold stabilized phase twice in the calculation, may not be valid for hybrid vehicles. Consequently, we currently require hybrid-electric vehicles to conduct all four phases of the FTP.

For hybrid-electric vehicles, the emissions collection process for the FTP can be performed in two different ways: (1) ''4-bag procedure—the emissions are collected in an individual bag (e.g., bag 1, bag 2, bag 3, and bag 4) for each phase and analyzed, a total composite emissions number is calculated based on the emissions in all the bags, and the

[59] See 60 FR 15804, ''Control of Hazardous Air Pollutants From Mobile Sources'' (March 29, 2006).

[60] Ibid.

emissions numbers for each of the bags and the composite emissions are reported; or (2) the emissions from the cold start transient phase and cold start stabilized phase are collected in bag 1 and analyzed, the emissions from the hot start transient phase and hot start stabilized phase emissions are collected in bag 2 and analyzed, a composite number is calculated based on the emissions in both bags, and the emissions for both bag 1 and bag 2, and composite emissions are reported. The first collection method, a 4-bag FTP, and the second collection method, a 2-bag FTP, are similar in that the emissions are collected over the full four-phases of the FTP. However, the two methods differ in that for the 2-bag FTP, the bags are combined as follows: bag 1 is a combination of bag 1 and bag 2 of the 4-bag FTP, and bag 2 is a combination of bag 3 and bag 4 of the 4-bag FTP.

Therefore, for the purposes of this rulemaking in relation to hybrid-electric vehicles, we are concerned about two distinct things: (1) The number of phases (e.g., four phases for hybrid-electric vehicles versus three phases for conventional vehicles, as described above) required to be conducted during the FTP and (2) the number of bags (e.g. two bags versus 4 bags, as described above) that the emissions are collected in over the FTP, in particular, for hybrid-electric vehicles, which we want to require the full four phases for the FTP.

We currently require hybrid-electric vehicles to perform the complete set of four phases of the FTP and referenced the existing, special test procedure provisions in the regulations (40 CFR 86.1840–01) as the basis for this. Rather than continue using the special test procedure provisions, we proposed to develop explicit regulatory language to require full-four phase testing of hybrid-electric vehicles. Additionally, the 5-cycle formula for hybrid-electric vehicles requires the four phases of the FTP as inputs for these vehicles. Therefore, we also proposed to develop explicit regulatory language that requires hybrid-electric vehicles to conduct all four phases of the FTP for both emissions and fuel economy testing. Finally, we proposed to require that the emissions from the full four phases of the FTP be collected in individual bags (i.e., four bags; one bag for each phase) for all tests using the FTP, including the cold temperature FTP, for those vehicles defined as hybrid-electric vehicles. We also requested comment on the proposal, and on whether use of the phrase ''hybrid electric vehicle'' is sufficient to describe and identify vehicles for which the four-bag FTP would be required.

We received the following comments regarding requiring the hybrid electric vehicle test procedures. First, the auto industry commented that 40 CFR 86.1811–04(n) of our regulations, which aligns with California, already requires the full four phases of the FTP for hybrid-electric vehicles for emissions testing, and therefore suggested we should retain section 86.1811–04(n) as-is without further codifying language requiring the full four phase FTP. Second, the comments suggested that we also define the four-phase, two-bag FTP and four-phase, four-bag FTP in part 600 of our regulations so that it is only applicable to fuel economy measurement, not for emissions measurement, which is contained in part 86 of our regulations. Third, the comments supported our proposal to extend the full four-phase FTP testing for hybrid vehicles to the Cold FTP. Finally, the comments cited that requiring four bags would force facility modifications with significant costs and lead time issues and identified the benefits of the four-phase, two-bag approach, including improved accuracy and alignment with California. To address this, the comments recommended that we add 5-cycle fuel economy equations for both two-bag and four-bag testing with appropriate bag fuel consumption weighting by theoretical distance traveled to ensure consistent label adjustments between two- and four-bag data. Finally, we did not receive any comments on whether the use of the phrase ''hybrid electric vehicle'' is sufficient to describe and identify vehicles for which the four-bag FTP would be required.

As a result of these comments, we have revised the proposal and are finalizing the requirements for hybrid electric vehicle test procedures as follows. First, for requiring the full, four-phase FTP testing for emissions, we agree that 40 CFR 86.1811–04(n) does properly reference the California procedures which require the full four phase FTP. In addition, part 600 refers back to procedures in part 86, including 40 CFR 86.1811–04(n) which references the California procedure for four-phase FTP testing. Therefore, it is not necessary to develop further language to require the full four phase FTP.

Second, we proposed to extend the requirement for full, four phase FTP testing of hybrid vehicles to the Cold FTP. Upon further analysis of this provision, we are not finalizing this requirement. As discussed in Chapter III of the Final Technical Support Document, vehicles may not be fully warmed up during bag 2 of the Cold FTP. Thus, fuel economy over a bag 4 of the Cold FTP would likely be higher than that over bag 2. Thus, vehicles tested over a 4-bag Cold FTP would likely have higher fuel economy per the 5-cycle formulae than those tested over a three bag test. This would result in inconsistent fuel economy estimates for conventional and hybrid vehicles. Therefore, we will continue the current practice of only requiring a three-bag Cold FTP for both conventional and hybrid vehicles.

Third, we understand that some manufacturers may require some new software and additional test equipment to implement a four-phase, 4-bag test. In addition, since our test procedures are aligned with California requiring full four phase FTP testing for hybrid-electric vehicles, this essentially is an issue of how to divide and analyze the emissions results. While we are finalizing a requirement for four-phase FTP results, manufacturers may choose to collect the sample either in four bags or two bags, as discussed above. Accordingly, we are finalizing today an option for a 5-cycle formula that allows for four-phase, 2-bag FTP inputs for hybrid-electric vehicles. Our analysis of this option in the Technical Support Document shows that there is no significant difference in fuel economy results from using a 2-bag versus 4-bag equation.

Finally, since we did not receive any comments on whether the use of the phrase ''hybrid electric vehicle'' is sufficient to describe and identify vehicles for which the four-bag FTP would be required, we believe this terminology is sufficient and will use ''hybrid electric vehicle'' in reference to the four-phase, four-bag FTP.

V. Projected Cost Impacts

The majority of the costs of this rule are due to an increase in the manufacturer test burden. While manufacturers conduct tests today for emissions compliance and fuel economy reporting, they test a more limited set of vehicles than will be necessary for the fuel economy labeling calculations in model years 2011 and beyond. There are also startup costs to implement the new fuel economy reporting requirements beginning during the transition period from model year 2008 through 2010.

The final rule requires calculation of fuel economy values based on the 5-cycle formulae beginning with model year 2011 for some vehicle test groups. As discussed in detail elsewhere in this preamble, for model years 2008 through 2010, manufacturers may use the mpg-based calculation for the five-cycle fuel

economy values or they may conduct voluntary testing. For model years 2011 and beyond, if the five-cycle city and highway fuel economy values for an emission data vehicle group are below 96 percent and 95 percent of the mpg-based regression line, respectively, then all the vehicle configurations represented by the emission data vehicle (e.g., all vehicles within the vehicle test group) would use the 5-cycle approach. Vehicles within a test group falling below the city fuel economy band would be required to conduct US06, SC03, and Cold FTP tests; those falling below the 5 percent tolerance band for highway fuel economy values but not below the city tolerance band would be required to conduct US06 tests (the effects of cold temperature and air conditioning would be modeled). In addition, we expect that some of these vehicles falling below the tolerance band may be eligible to estimate fuel economy for a given test through the application of analytically derived fuel economy values. Some data are currently available for vehicles that have conducted all 5 tests; based on these data, EPA has estimated the number of vehicles for which additional testing would be required because they fall below the 4 and 5 percent tolerance bands, as discussed further in Section II.

EPA received no comments on the overall methodology of its cost analysis or the general cost assumptions used in that analysis. However, we received comments on a number of specific proposal issues having cost implications, including changes to various test procedures. These issues are specified in Section IV and the Response to Comments document. The impacts of the resolution of these issues on the final cost analysis are summarized here and are discussed in more detail in the Technical Support Document.

As in the cost study for the proposed rule, we are presenting low and high estimates of the economic impact for two time frames: (1) Model years 2008 to 2010, and (2) model year 2011 and thereafter. The low and high estimates of testing burden scenarios provide boundaries on the potential testing costs and informational startup costs.

A. Incorporation of New Test Cycles Into Fuel Economy Label Calculations

1. Testing Burden for 2008 Through 2010 Model Years

We are finalizing as proposed our estimate that no additional tests will be required during model year (MY) 2008 through MY 2010. Manufacturers may simply apply the mpg-based adjustments to the same FTP and HFET test results that they otherwise would conduct for the fuel economy labeling program today (see Section II). While manufacturers have the option of conducting and reporting full 5-cycle test results, such tests are not required by this final rule, and we have not included this testing in our cost estimates. Manufacturers that voluntarily choose to conduct full 5-cycle testing would incur some additional testing costs, which we have not included in our cost estimates, since we do not have any means of predicting which manufacturers would choose this option, or for which vehicle models, or the amount of additional testing that would be performed.

2. Testing Burden for 2011 and Later Model Years

To derive low and high estimates for the number of additional tests required for our proposal, we used EPA data on the number of FTP/HFET, US06, SC03, and Cold FTP tests. Based on MY 2004 data[61], 1,250 fuel economy vehicles were tested with the FTP and highway fuel economy tests.[62] Data show that 330 SFTP (US06 and SC03) tests were conducted and 220 Cold FTP tests. Consequently, if all fuel economy vehicles were required to undergo full 5-cycle tests, approximately 920 additional SFTP tests and 1,030 Cold FTP tests would be required. EPA estimated, based on an analysis of our 423 vehicle dataset, that 8 percent of the test groups will fall outside a band approximately less than or equal to 96 percent of the regression for the city test and 23 percent outside a band approximately less than or equal to 95 percent of the highway regression. Taking the 2004 numbers above as a baseline, 92 percent of the additional SC03 and Cold FTP tests otherwise required would be avoided for city fuel economy; 77 percent of the additional US06 tests would be avoided. Thus, for example, the initial estimate of increased testing burden for SC03 would be 8 percent of the difference between 1250 and 330. The low and high estimates under these assumptions are generated by differing estimates of the effect of another feature that will be available for MY 2011 and after—and expanded use of ADFE as an alternative to conducting vehicle tests. The low and high burden estimates assumes that 20 percent and 0 percent of the additional tests would thereby be avoided, respectively.[63] Based on this analysis in our proposal, we estimated that potential increases in yearly testing could range as follows: 169–212 additional US06 tests, 59–74 additional SC03 tests, and 66–82 additional Cold FTP tests.

This approach is retained in the final cost analysis, with one adjustment. The percent falling outside the tolerance band for the city test and for the highway test should only count the vehicles that are below the tolerance band in both cases, that is, only those vehicles with fuel economy lower than 4 and 5 percent below the regression lines, respectively. With this correction, 4 percent of the test groups would trigger additional testing as falling below the city fuel economy regression tolerance and 13 percent below the highway regression tolerance. With the ADFE assumptions unchanged, the corrected additional test estimates range as follows: 96–120 additional US06 tests; 29–37 additional SC03 tests, and 33–41 Cold FTP tests.

Based on manufacturer comments, we have further revised the estimated test burden as a result of the four issues discussed in the following sections.

a. Fuel Economy Labeling for Medium-Duty Passenger Vehicles

As discussed in Section I, MDPVs will be included in the labeling program beginning with model year 2011. This change is based on NHTSA's expansion of the CAFE program to include MDPVs beginning the same model year. As discussed in Section I, we are finalizing fuel economy test methods for MDPVs that will not require additional testing beyond that which the CAFE program will require beginning in model year 2011 (i.e., the FTP and HFET tests). Therefore, we are projecting no additional costs in this final rule to extend labeling to MDPVs.

b. Cold FTP Diesel Testing

EPA proposed to require Cold FTP testing for light-duty diesel vehicles beginning with the 2008 model year. As discussed in Section IV, Cold FTP diesel testing is now optional until model year 2011, except for those manufacturers that voluntarily choose to do 5-cycle testing. Auto manufacturers commented that the proposed cost analysis neglected to account for Cold FTP diesel testing costs during MY 2008–MY 2010. The test burdens, including capital

[61] Model year 2004 certification data was the latest complete model year of data available at the time of the proposal. The certification data for model year 2005 is not significantly different.

[62] The figure is approximate because the city FTP test may be used and recorded primarily as a fuel economy test, an emissions test, or both.

[63] Based on EPA's current guidance to auto manufacturers on the use of ADFE, up to 20% of FTP/HFET tests are allowed to be calculated through ADFEs.

costs, were addressed in the proposal in terms of the number of tests estimated for MY 2011 and after. The preamble noted that eight city/highway test pairs were conducted for the five light-duty diesel vehicles certified in MY 2006.

Estimating the number of light-duty diesel vehicles certified in MY 2011 and beyond is difficult at this point, but several manufacturers have announced plans to expand or introduce diesel products in this time frame. As a result, for the final rule cost analysis we have doubled the number of certified light-duty diesel test groups in MY 2011 from five to ten. Accordingly, we have increased the estimated Cold FTP test volume from our proposed range of 66–82 tests and the corrected range of 33–41 tests to a range of 41–49 tests for the final rule. For the final rule, both low and high estimates for testing costs increase approximately $20,000 per year reflecting the increased number of tests under the unchanged testing cost assumptions of the proposal (Cold FTP facility upgrades are considered separately below). Additionally, the additional testing requirement is reflected in an increase in the corrected total capital costs (unamortized) for Cold FTP facilities of $770,000–$1,373,000 to a $957,000–$1,640,000 (unamortized).

In addition, commenters raised a number of technical issues regarding laboratory configurations and the difficulty of establishing cold test facility retrofits to accommodate diesel testing without a transition period. Extending the beginning of diesel cold testing requirement to 2011 is intended to address some of these concerns, particularly the lead time needed to implement laboratory modifications. To more fully account for the cost of these laboratory upgrades, we have revised the estimate by increasing capital costs by $55,000 for each of ten manufacturers to account for these upgrades.

c. Two-Bag US06 Measurements

The proposal included the costs of the requirement for two-bag US06 measurements as startup costs involving information system programming and validation tests, but not new facility costs. We are retaining these estimates for the final rule.

As discussed in Section IV, we received comments on the costs of collecting US06 exhaust emissions in two bags, particularly in view of software changes and the lead time needed to implement two-bag software. In response, EPA will accept alternative methods of calculating two-bag data. These alternatives are available for those manufacturers choosing to use the 5-cycle approach in the 2008 through 2010 model years, as well as manufacturers required to perform 5-cycle testing in model years 2011 and beyond. Our evaluation indicated that the new provisions provide ample lead time to be implemented. Therefore, accommodating two-bag US06 measurements would not significantly impact the cost analysis presented in our proposal.

d. Four-Phase FTP for Gasoline-Electric Hybrid Vehicles

The proposal included no additional costs for the four-phase FTP requirement for hybrid-electric vehicles. As discussed in Section IV, we received comments on costs of the proposed four-phase FTP in terms of lead time and installation of new hardware, software, and test equipment. In response to these comments, four-phase FTP testing will be required, but may be conducted as either a 2-bag or 4-bag measurement as suggested by the auto industry, as discussed in Section IV. Consequently, we foresee no additional cost impacts.

3. Cost Analysis of the Testing Burden

a. Capital Costs

The proposal estimated a capital cost of $4 million for a facility able to perform 750 US06 tests a year, $9 million for an environmental facility able to conduct 300 to 428 SC03 tests per year, and $10 million for an environmental facility able to conduct 300 to 428 Cold FTP tests per year. These costs were applied on a per-test basis to the increased tests required by the proposal, amortized at 7% and annualized over ten years. The resulting capital cost was $524,000 to $866,000 per year. Correcting the estimated number of new tests, applying the same facility costs to the increased estimate for Cold diesel testing, and adding the facility upgrades for Cold diesel, as discussed above, this capital cost has been adjusted to a low/high range of $375,000 to $560,000.

b. Labor and Operations and Maintenance (O&M) Costs

The proposal included costs of $1,860 to $2,441 for running each of the tests, allocated between labor and O&M based on prior Information Collection Requests. Adjusting for the corrected and additional testing as discussed above, we have changed our cost estimates from a proposed range of $606,000–$757,000 to a range of $343,000–$424,000 for the final rule.

c. Startup Costs

Startup costs are treated like capital costs, annualized over ten years and discounted at 7% beginning with model year 2008. The proposal included $3,472,000 in total information system costs, including reprogramming to report the new data, label design changes, plus $28,000 to $196,000 for information systems for the US06 split phase sample system. Finally, $195,000 to $651,000 was provided for validation testing of the US06 split phase sampling. Discounted and annualized, this came to $526,000 to $615,000 per year, industry-wide.

For the final rule, we have increased our range of estimated startup costs to $663,000–$752,000 to account for the additional information systems needed to manage the increased complexity of the fuel economy labeling reporting system. The auto industry commented that existing database management systems would need to be modified to accommodate the changes in fuel economy labeling calculations. EPA proposed to apply the mpg-line label calculations (i.e., ''derived 5-cycle'') at the vehicle test level, meaning the FTP or HFET results from a test vehicle would undergo the derived 5-cycle calculations to determine a fuel economy label value. The final rule requires applying the derived 5-cycle equation at the model-type rather than test level; however, this approach is not available for the vehicle-specific 5-cycle label calculation option and MY 2011 requirements. Therefore, the cost analysis has been updated to account for this increased information system burden.

Manufacturers will incur a one-time cost to upgrade their fuel economy data and reporting systems to account for the new fuel economy calculation procedures. Based on a projection of EPA's information development contract costs, we have increased the industry information startup costs (unamortized) by $933,450. This increases the annualized and discounted startup costs to a low/high range of $659,000 to $748,000 for the industry as a whole.

B. Revised Label Format and New Information Included

This cost item was included in the startup information portion of the cost analysis in the proposal. No adjustments have been made in the final analysis.

C. Reporting of Fuel Economy Data for SC03, US06, and Cold FTP Tests

As proposed, we do not expect capital or operating costs to increase due to

submission of additional information associated with additional tests. However, we do expect additional startup costs for information system programming. The startup burden has been modified as discussed above.

D. Impact on Confirmatory Testing

As proposed, the final rule does not include an increase in the number of vehicles targeted for confirmatory testing. We are not revising our proposed estimation of manufacturer confirmatory testing under the criteria of failed or high emission levels, unexpectedly high fuel economy, fuel economy leader within class, and fuel economy near the Gas Guzzler tax threshold.

E. Fees

The proposed rule did not include an increase in the fees to cover any increase in costs of issuing certificates of conformity under the new label rule. Instead, EPA will monitor its compliance testing and associated costs and, if necessary, in the future adjust the fees to include any new costs. We have retained this approach in the final rule.

F. Summary of Final Cost Estimate

As discussed above and summarized in the table below, aggregate annual costs for MY 2008 through MY 2010 are estimated to range from $663,000–$752,000, compared with the proposed range of $526,000–$615,000. For MY 2011 and beyond, aggregated annual costs are estimated to range from $1,377,000–$1,732,000 compared with the proposed range of $1,655,000–$2,238,000.

TABLE 5–1—AGGREGATE ANNUAL COSTS TO INDUSTRY

Cost Element	MY 2008 through MY 2010		MY 2011 and after	
	Minimum	Maximum	Minimum	Maximum
Test Volume (Labor, O&M)	$0	$0	$343,000	$424,000
Facilities (Capital, Annualized)	0	0	375,000	560,000
Startup (Capital, Annualized)	663,000	752,000	659,000	748,000
Total	663,000	752,000	1,381,000	1,732,000

VI. Implementation and Other Provisions

A. Revisions to Classes of Comparable Vehicles

The EPCA requires that the label include the range of fuel economy of comparable vehicles of all manufacturers.[64] EPA's comparable class structure provides a basis for comparing a vehicle's fuel economy to that of other vehicles in its class. We proposed to add separate classes for SUVs and minivans, which were previously included in the Special Purpose Vehicle category. We also proposed to modify the definition of ''small pickup trucks'' by increasing the weight limit from 4,500 pounds GVWR to 6,000 pounds GVWR. All comments on these proposals were favorable. Auto manufacturers suggested minor clarifications to the definition of minivan in order to distinguish it further from SUVs. We agree with these suggestions and are finalizing changes accordingly.

So-called ''crossover'' vehicles are those that meet the definition of more than one vehicle class, and thus are difficult to categorize. EPA currently uses discretion to assign these vehicles to a class on a case-by-case basis. For example, we attempt to determine which class assignment makes sense from a consumer perspective (e.g., is it more likely to be considered by consumers looking for a minivan or for an SUV) and what marketing segment is being targeted by the manufacturer. We did not propose to change how we are addressing the recent proliferation of ''crossover'' vehicles, but we requested comments on whether we should create a separate ''crossover'' class. Some public comments supported the creation of this class, but did not suggest how to define it. Auto companies were opposed to it, citing the difficulties in creating a meaningful class definition. Lacking such a definition that would clearly distinguish between a ''crossover'' vehicle and other vehicle classes, we are not creating a separate class for crossover vehicles. It should also be noted that the EPA-defined vehicle classes are used only to provide consumer information about fuel economy and serve no other regulatory purpose.

In portraying the range of fuel economy for comparable vehicles on the label, several commenters noted that the comparable class structure does not adequately provide consumers with meaningful fuel economy comparisons, and that class distinctions have been blurring in recent years. Commenters noted that many consumers shop across classes. These commenters did not suggest any specific revisions to the class structure to address these concerns; rather, their suggestions relate to the presentation of the comparable class information on the label, which is addressed in Section III. Additionally, manufacturers expressed concern that the wide fuel economy ranges of some classes are not necessarily representative of vehicles that consumers would normally compare (the example they cite is the midsize class, which contains the Toyota Prius and the Rolls Royce Phantom). Auto manufactures further noted that the highest sales vehicles are typically near the midpoint of the range, and that vehicles at either end of the range (low and high fuel economy) are typically vehicles with low sales volume or ''niche'' vehicles. They suggest that consumers usually shop within subsets of the defined vehicle classes, and not across the entire class. To address these concerns, manufacturers recommended against using a graphical representation of the comparable class fuel economy, and that EPA should continue to use the text that is used today. However, they did not suggest any specific changes to the class structure to address these concerns.

We believe that with the changes we are finalizing today, the comparable class structure generally represents the distinctions between vehicle types offered in the fleet today. Absent suggestions during the public comment period for new comparable vehicle classifications, we are finalizing the comparable class structure largely as proposed, with minor changes as discussed above. We welcome interested parties to continue working with EPA in the future on how to ensure that the comparable classes are kept current with the dynamic vehicle fleet. If it becomes necessary in the future to further modify the comparable class

[64] See 49 U.S.C. 32908(b)(1)(C).

structure, EPA would do so through a rulemaking.

B. Fuel Economy Ranges for Comparable Fuel Economy Graphic

Along with the label's new graphic of comparable fuel economy (Figure III.3), we proposed both how EPA would inform manufacturers of the within-class fuel economy ranges for the label, and how they are to present this information on the label if range data is not available in time for printing (which can occur for models introduced early in the year). For example, between August and September of each year, EPA typically issues guidance to the manufacturers specifying the fuel economy ranges for the comparable classes to be used on labels. Since we did not know the final design of the comparable fuel economy element at the time of the proposal, we suggested regulatory text nearly identical to the existing language, which requires the term ''N/A'' (for ''Not Applicable'') to replace actual range values when data is not yet available. However, since we are finalizing a graphical presentation of comparable fuel economy instead of regulatory text, it is necessary to use a different method to illustrate this information when the range is not yet available. Without the upper and lower range bounds, it is impossible to indicate where the vehicle's actual combined fuel economy falls on the range bar. Therefore, in cases when range data for the current model year is not available in time for printing the label, manufacturers must use the ranges of the previous model year. The vehicle's combined fuel economy will appear on the range bar relative to where it falls within the previous model year's range.

Model year 2008 vehicles introduced to the public before EPA can determine the 2008 fuel economy ranges must be considered further, because the previous model year range data is based on the 2007 methods for determining fuel economy, and is thus not comparable to the new data. Therefore, until EPA issues guidance on model year 2008 comparable class ranges, manufacturers must include the 2007 range data adjusted to account for the new methods. Upon issuance of this rule, we will provide these ''2007-adjusted'' ranges to manufacturers via guidance letter as soon as possible.

C. Temporary Option To Add ''Old Method'' City and Highway Estimates on Early Introduction Model Year Vehicle Labels

As discussed previously, all model year 2008 vehicles are required to calculate the city and highway fuel economy label estimates using the new methods being finalized today. Some manufacturers indicated that they may introduce model year 2008 vehicles as early as January 2, 2007. Consumers will then be comparing vehicles having fuel economy estimates based on the new methods to a large volume of model year 2007 vehicles having estimates based on the old methods. To address this, we are finalizing a temporary option allowing manufacturers to add additional information in fine print to model year 2008 vehicle labels indicating what the fuel economy estimates would have been using the old method. In other words, all model year 2008 vehicles are still required to estimate the city and highway fuel economy estimates using the new methods, but manufacturers may optionally add—in fine print only—information indicating what the estimates would have been under the previous methods. This option is available only until June 1, 2007, when a more significant number of 2008 models should be available for sale, and, thus, there will be few model year 2007 vehicles on dealer lots with which to compare. This option is available for labels with either the old or new design.[65]

D. Consideration of Fuel Consumption vs. Fuel Economy as a Metric

EPCA defines fuel economy as ''* * * the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator* * *''[66] Thus, EPA's fuel economy labeling program has historically expressed fuel economy in miles per gallon (mpg). We requested comments on how a gallons-per-mile fuel consumption metric could be used and presented publicly, such as in the Fuel Economy Guide. A few manufacturers suggested that it may be more meaningful to express fuel efficiency in terms of consumption (gallons per 100 miles) than in terms of economy (miles per gallon), because consumption directly measures the amount of fuel used, a metric related to cost that consumers may consider when filling up.

This final rule maintains the requirement that the label must express the estimates in terms of fuel economy, instead of fuel consumption. Since historically we have expressed fuel efficiency in miles per gallon, it is a metric that Americans understand. Our concern is that without a long-term, comprehensive public awareness campaign, any changes to the metric could confuse the public. Some commenters mentioned their interest in pursuing research and public education on the fuel consumption metric, and we look forward to learning more in the future from those stakeholders exploring the issue.

However, the labels currently provide an easy way to compare the fuel consumption of different vehicles. The estimated annual fuel cost information on the label is based on the fuel consumption metric: it is the dollar equivalent of the number of gallons consumed over 15,000 miles. Thus we believe that including the estimated annual fuel cost on the label is a valuable metric for consumers, because it relates directly to fuel consumption. We are also locating the estimated annual fuel cost information more prominently on the new label to raise public awareness.

E. Web-Based Driver-Specific Fuel Economy Calculator

In the proposed rule, we suggested implementing a web calculator in which consumers could input their own customized information in order to estimate more accurately their expected in-use fuel economy. User-specific information could include such factors as number of miles driven, mix of city and highway driving, air conditioner usage, average speed driven, ambient temperature, per gallon price of fuel, and others. We received several positive comments that a web calculator would be a useful tool, and could provide users with valuable insight on the effects of these factors on their fuel economy. Another commenter urged EPA to ensure that the tool would provide accurate results. We plan to consider further how to best design and implement a calculator tool, and we may seek additional input from interested stakeholders.

F. Fuel Basis for Estimated Annual Fuel Costs

To determine the estimated annual fuel cost, we currently require that manufactures use the same fuels that they require or recommend to customers. In the proposal we did not intend to change this, but we inadvertently omitted the text, ''or recommended,'' from the parenthetical statement in the regulatory text at 600.307–08(a)(3)(iv), regarding the fuel type used to determine the estimated annual fuel cost on the label. Therefore, we are adding the words, ''or

[65] As discussed in Section III, the new fuel economy label design becomes mandatory on September 1, 2007, before which manufacturers may optionally use it.

[66] See 49 U.S.C. 32901(a)(10).

recommended,'' to the regulations, which means that manufactures must use the fuel that they require or recommend to customers as a basis for the estimated annual fuel cost.

G. Electronic Distribution of Dealer-Supplied Fuel Economy Booklet

We proposed adding language to the regulations that allows dealers to fulfill their requirement to provide customers with copies of the Fuel Economy Guide booklet by using an on-site computer.[67] This method has been used on a trial basis in recent years. One commenter opposed this idea, citing that people are disinclined to use computers, and that the success of this method has been neither studied nor proven. However, the National Auto Dealer Association commented that this proposal should be finalized, because it is a more efficient, effective way of providing customers with this information. We agree that there are people who are disinclined to use computers, but we expect dealers who opt to provide the guide electronically to also provide assistance as needed to customers who want to access and/or print portions of the Fuel Economy Guide using the dealership's computer. Regulations that provide dealers with the option to provide the Fuel Economy Guide in this way do not relieve dealerships of the responsibility to make the Guide ''available to prospective buyers.'' [68] We are finalizing this requirement as proposed.

VII. Relevant Statutes and Regulations

A. Energy Policy and Conservation Act

The Energy Policy and Conservation Act of 1975 (EPCA) established two primary fuel economy requirements: (1) Fuel economy information, designed for public use, in the form of fuel economy labels posted on window stickers of all new motor vehicles, and the publication of an annual booklet of fuel economy information to be made available free to the public by car dealers; and (2) calculation of a manufacturer's average fuel economy and compliance with a standard (later, this compliance program became known as the Corporate Average Fuel Economy (CAFE) program).[69] The responsibilities for these requirements were split between EPA, DOT and the Department of Energy (DOE). EPA is responsible for establishing the test methods and calculation procedures for determining the fuel economy estimates to be posted on the window stickers and in the annual booklet (the Fuel Economy Guide), and for determining a manufacturer's corporate average fuel economy.[70] DOT is responsible for administering the CAFE compliance program, including establishing standards for non-passenger automobiles and determining if manufacturers are complying with the applicable CAFE standards, and assessing any penalties as needed.[71] DOE is responsible for publishing and distributing the annual fuel economy information booklet.[72]

EPA published regulations implementing portions of the EPCA statute in 1976. These regulations are codified at 40 CFR part 600. The provisions in this regulation, effective with the 1977 model year, established test methods and procedures to calculate fuel economy values for labeling and CAFE purposes that used the Federal Test Procedure (FTP or ''city'' test) and the Highway Fuel Economy Test (HFET or ''highway'' test) data as the basis for the calculations. At that time, the fundamental process for determining fuel economy was the same for labeling as for CAFE, except that the CAFE calculations combined the city and highway fuel economy into a single number.[73]

Under EPCA, EPA's fuel economy labeling regulations require manufacturers to label each ''automobile'' they produce. EPCA defines ''automobile'' in 49 U.S.C. 32901(a)(3) as:

> * * * a 4-wheeled vehicle * * * rated at—
>
> (A) Not more than 6,000 pounds gross vehicle weight; or
>
> (B) More than 6,000, but less than 10,000 pounds gross vehicle weight, if the Secretary decides by regulation that—
>
> (i) An average fuel economy standard * * * for the vehicle is feasible; and
>
> (ii) An average fuel economy * * * for the vehicle will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6,000 pounds gross vehicle weight.

Further, section 32902 authorizes DOT to set CAFE standards for ''automobiles,'' and section 32908 authorizes EPA to set labeling requirements for ''automobiles.'' Specifically, section 32908 states that, for the purpose of section 32908, '' 'automobile' includes an automobile rated at not more than 8,500 pounds gross vehicle weight regardless of whether [DOT] has applied this chapter to the automobile under section 32901(a)(3)(B).'' The effect of this is to essentially expand EPA's labeling authority to vehicles between 6,000 and 8,500 pounds GVWR, without the need for any finding by DOT to bring such vehicles into the definition of automobile under section 32901(a)(3)(B). Therefore, based on the definition of ''automobile'' in EPCA, EPA's labeling regulations are required to cover (1) all vehicles below 8,500 lbs GVWR, and (2) those vehicles between 8,500 and 10,000 lbs GVWR that DOT has determined by regulation should be subject to CAFE standards under EPCA. EPA has no authority under EPCA to require fuel economy labeling for vehicles above 10,000 lbs GVWR, or for vehicles between 8,500 and 10,000 lbs GVWR where DOT has not made the requisite regulatory determination to apply the CAFE standards. Those vehicles do not meet the definition of ''automobile,'' and EPA's authority to require fuel economy labeling is limited to ''automobiles.''

The Department of Transportation, through NHTSA, has recently determined that certain vehicles between 8,500 and 10,000 GVWR will be considered automobiles and subject to CAFE standards starting with model year 2011 (see 71 FR 17565 (April 6, 2006)). Based on this determination EPA is amending its labeling regulations in this final rule to include these vehicles. See the discussion regarding the adoption of fuel economy labeling regulations for medium-duty passenger vehicles in Section I.C.2.

EPCA requires manufacturers of automobiles to attach a fuel economy label to a prominent place on each automobile manufactured in a model year and also requires the dealers to maintain the label on the automobile.[74] EPCA specifies minimum requirements for the information to be included on the fuel economy label.[75] This final rule retains these items, as required:

a. The fuel economy of the automobile.

b. The estimated annual fuel cost of operating the automobile.

c. The range of fuel economy of comparable automobiles of all manufacturers.

d. A statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year.

e. The amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064).

[67] See 49 U.S.C. 32908(c)(3).

[68] See 49 U.S.C. 32908 (c)(3).

[69] See Pub. L. 94–163.

[70] See 49 U.S.C. 32904, 32908.

[71] See 49 U.S.C. 32904.

[72] See 49 U.S.C. 32908(c)(3).

[73] See 41 FR 38685 (Sept. 10, 1976).

[74] See 49 U.S.C. 32908(b)(1).

[75] See 49 U.S.C. 32908(b)(2)(A) through (F).

f. Other information required or authorized by the Administrator that is related to the information required [within items a. through d.].

EPCA also defines ''fuel economy'' as the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by EPA.[76] Thus, this final rule retains the requirement to report fuel economy as miles-per-gallon.

EPCA also requires EPA to prepare a fuel economy booklet containing information that is ''simple and readily understandable.'' [77] This booklet is more commonly known as the annual ''Fuel Economy Guide.'' EPCA further instructs DOE to publish and distribute the booklet. EPA is required to ''prescribe regulations requiring dealers to make the booklet available to prospective buyers.'' [78] This final rule makes minor changes to these regulations by allowing manufacturers and dealers to make the Fuel Economy Guide available electronically to customers as an option.

B. Energy Policy Act of 2005

Section 774 of the Energy Policy Act of 2005 directs EPA to ''update or revise the adjustment factors in sections 600.209 85 and 600.209 95, of the Code of Federal Regulations, CFR Part 600 (1995) Fuel Economy Regulations for 1977 and Later Model Year Automobiles to take into consideration higher speed limits, faster acceleration rates, variations in temperature, use of air conditioning, shorter city test cycle lengths, current reference fuels, and the use of other fuel depleting features.'' [79]

In this final rule, the 5-cycle approach revises the test methods and procedures for calculating fuel economy, including updating and revising the adjustment factors, by establishing a new method to calculate fuel economy estimates that uses fuel economy results from additional test procedures combined with a changed adjustment factor. The mpg-based approach uses the same test methods as the current fuel economy program (i.e., the FTP and HFET tests), but changes the adjustment factors applied to those test results. These options satisfy EPA and the EPAct provisions as follows.

First, the 5-cycle method directly includes the effects of higher speed limits, faster acceleration rates, variations in temperature, and use of air conditioning by including fuel economy measured during tests that incorporate these features. The mpg-based approach also takes these factors into consideration, but less directly, as it incorporates the effects of these factors by basing the adjustment factor on an analysis of data developed from the 5-cycle method. Under the new regulations, the mpg-based approach is an interim option to establish an appropriate period of lead time for manufacturers. We also allow its continued use only where the average effects reflected under the mpg-based adjustments (of higher speed/acceleration, air conditioning, and cold temperature) on a specific vehicle configuration is representative of those measured under actual 5-cycle testing.

Second, we interpret the statute's reference to ''shorter city test cycle lengths'' to mean shorter than the current FTP cycle used to determine city fuel economy. We have addressed that concern by including updated factors for ''cold starts'' and ''hot starts'' (where the engine is not warmed up or has been parked for a brief amount of time and then restarted) in the equation for determining city fuel economy. This simulates shorter city test cycle lengths where a vehicle's engine is more frequently shut down and restarted than in the current FTP test. Also, the US06 and SC03 test cycles are physically shorter in length than the FTP (the FTP is about 11 miles in length, whereas the US06 is about 8 miles, and the SC03 is about 3.6 miles.)

Third, we interpret the statutory reference to ''current reference fuels'' to mean the laboratory fuels used to perform the fuel economy tests, and that the underlying concern of Congress was that the high-quality lab fuels would give higher fuel economy than the typical commercial fuel used by consumers. The quality of the laboratory test fuel is specified in EPA regulations for emission compliance. The test gasoline fuel is roughly equivalent to premium, high-octane fuel available at the pump. The impact of the higher-octane test fuel on fuel economy is less significant but there are other real-world fuel differences that can have a noticeable impact, as discussed in Section II. For instance, ethanol has a lower energy content than gasoline, and when blended with gasoline, with all other things being equal, will slightly lower fuel efficiency. Other seasonal variations in fuel composition (e.g., oxygenates in winter fuel) may also cause a slight reduction in fuel economy. EPA is proposing an adjustment factor to account for fuel differences and other fuel-depleting features as described further in Section II.

C. Other Statutes and Regulations

1. Automobile Disclosure Act

The Automobile Information Disclosure Act (AIDA) [80] requires the affixing of a retail price sticker to the windshield or side window of new automobiles indicating the Manufacturer's Suggested Retail Price, that is, the ''sticker price.'' Additional information, such as a list of any optional equipment offered or transportation charges, is also required.The Act prohibits the sticker from being removed or altered prior to sale to a consumer.

Under EPCA, manufacturers and importers of new automobiles are required to affix a label to such vehicles with an EPA label containing fuel economy information.[81] Normally, the price sticker label and EPA label are combined as one large label. Failure to maintain the EPA label on the vehicle is considered a violation of AIDA.

2. Internal Revenue Code

EPCA requires ''Gas Guzzler'' tax information to be included on the fuel economy label, under 26 U.S.C. 4064(c)(1). This code contains the provisions governing the administration of the Gas Guzzler Tax. It contains the table of applicable taxes and defines which vehicles are subject to the taxes. The IRS code specifies that the fuel economy to be used to assess the amount of tax will be the combined city and highway fuel economy as determined by using the procedures in place in 1975, or procedures that give comparable results (similar to EPCA's requirements for determining CAFE for passenger automobiles). This final rule does not impact these provisions.

3. Clean Air Act

EPCA states that fuel economy tests shall to the extent practicable be carried out with the emissions tests required under Section 206 of the Clean Air Act § 32904(c). This final rule incorporates three additional emissions tests, required under the Clean Air Act regulations, for fuel economy testing, as discussed in detail in Section II. We are also making several changes to existing emissions tests. These changes are being finalized under the authority of Section 206 of the Clean Air Act, which permits the Administrator to define, and to

[76] See 49 U.S.C. 32901(a)(10).

[77] See 49 U.S.C. 32908(c).

[78] Id.

[79] See Pub. L. 109–58.

[80] More commonly known as the Monroney Act (Senator Mike Monroney was the chief sponsor of the Act) or Price Sticker Act. See 15 U.S.C. 1231–1233.

[81] See 49 U.S.C. 32908(b)(2).

revise from time to time, the test procedures used to determine compliance with applicable emission standards.

4. Additional Provisions in the Energy Policy Act of 2005 and Transportation Equity Act of 2005

This action is expected to have no impact on the federal income tax credits for consumers who purchase new hybrid, diesel, dedicated alternative fuel, or fuel cell vehicles that meet certain eligibility requirements beginning on January 1, 2006 that the Internal Revenue Service (IRS) has established under Section 1341 of the Energy Policy Act of 2005.[82] IRS uses ''unadjusted'' laboratory FTP (city) fuel economy test values to determine tax credit eligibility for light-duty vehicles. Accordingly, the changes being finalized today for ''adjusted'' fuel economy values will have no impact on the tax credit program.

Similarly, this action is expected to have no impact on the ''High Occupancy Vehicle (HOV) Facilities'' regulations EPA is establishing under Section 1121 of the Transportation Equity Act of 2005. EPA is in the process of developing proposed regulations to identify low emission and energy-efficient vehicles for the purpose of assisting states administering high-occupancy vehicle facility transportation plans. EPA anticipates that the fuel economy values used to identify these vehicles will be the ''unadjusted'' FTP-based fuel economy test values. Accordingly, the changes in this final rule are anticipated to have no impact on the HOV facilities program.

5. Federal Trade Commission Guide Concerning Fuel Economy Advertising for New Vehicles

In the mid-1970's when EPCA was passed, the Federal Trade Commission (FTC) ''took note of the dramatic increase in the number of fuel economy claims then being made and of the proliferation of test procedures then being used as the basis for such claims.'' [83] They responded by promulgating regulations in 16 CFR part 259 entitled ''Guide Concerning Fuel Economy Advertising for New Vehicles'' (''Fuel Guide''). The Fuel Guide, adopted in 1975 and subsequently revised twice,[84] provides guidance to automobile manufacturers to prevent deceptive advertising and to facilitate the use of fuel economy information in advertising. The Fuel Guide advises vehicle manufacturers and dealers how to disclose the established fuel economy of a vehicle, as determined by the Environmental Protection Agency's rules pursuant to the Automobile Information Disclosure Act (15 U.S.C. 2996), in advertisements that make representations regarding the fuel economy of a new vehicle. The disclosure is tied to the claim made in the advertisement. If both city and highway fuel economy claims are made, both city and highway EPA figures should be disclosed. A claim regarding either city or highway fuel economy should be accompanied by the corresponding EPA figure. A general fuel economy claim would trigger disclosure of the EPA city figure, although the advertiser would be free to state the highway figure as well. The authority for the Fuel Guide is tied to the Federal Trade Commission Act (15 U.S.C. 41–58) which, briefly stated, makes it illegal for one to engage in ''unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.''

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the Technical Support Document. A copy of the analysis is available in the docket for this action and the analysis is summarized in Section VI of this document.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information being collected is used by EPA to calculate the fuel economy estimates that appear on new automobile and light truck (and, starting with model year 2011, medium-duty passenger vehicle) sticker labels. EPA currently collects this information annually as part of its vehicle certification and fuel economy program, and will continue to do so. This final rule changes some of the content of the information submitted. Responses to this information collection are mandatory to obtain the benefit of vehicle certification under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and as required under Title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 *et seq.*). Information submitted by manufacturers is held as confidential until the specific vehicle to which it pertains is available for purchase. After vehicles are available for purchase, most information associated with the manufacturer's application is available to the public. Under section 208 of the Clean Air Act (42 U.S.C. 7542(c)), all information, other than trade secret processes or methods, must be publicly available. Proprietary information is granted confidentiality in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

The projected increased cost within the three-year horizon of the pending information collection request is $747,830 in one-time startup costs, after being annualized and discounted at 7%. No increase in other capital costs, or in operations and maintenance or labor costs, are anticipated during this period. The estimated number of likely respondent manufacturers is 35. Responses are submitted annually by engine family, with the number of responses per respondent varying widely depending on the number of engine families being certified. Under the current information authorization, an average of 8.4 responses a year are approved for each of 35 respondents requiring 549.2 hours per response and 56.6 hours of recordkeeping at a total cost of $46,427 per response for an industry total of 178,109 hours and $14.2 million annually, including capital, operations and maintenance, and labor costs. This rule will increase this burden by 0 hours and $747,830 per year during the next three years (high estimate) for an industry total of $14.9 million annually.

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

[82] See Pub. L. 109–58.

[83] See 40 FR 42003 (Sept. 10, 1975).

[84] See 43 FR 55747 (Nov. 29, 1978); and 60 FR 56230 (Nov. 8, 1995).

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA) by category of business using North America Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. A small business that manufactures automobiles has a NAICS code of 336111. Based on Small Business Administration size standards, a small business for this NAICS code is defined as a manufacturer having less than 1000 employees. Out of a total of approximately 80 automotive manufacturers subject to this final rule, EPA estimates that approximately 10 of these could be classified as small entities based on SBA size standards. Unlike large manufacturers with complex and diverse product lines, we expect that the small entities (generally these are vehicle importers and vehicle converters) will be able use the results of tests they are already conducting for emissions compliance to satisfy the proposed fuel economy labeling requirements. Therefore, we expect that these small entities will face minimal additional burden due to the new fuel economy labeling requirements.

Independent Commercial Importers (ICIs) have averaged about 50 imported engine families per year for the last three model years. There are approximately 10 ICIs subject to this final rule. If we assume that the ICIs and other small entities account for five percent of the vehicle models for which fuel economy labels are needed (a proportion that is certainly an overestimate, but useful for placing an upper bound on the estimated cost impacts for small entities), then these entities must generate about 65 different fuel economy labels. Using the total estimated costs from Section V of this preamble, the average annual cost per labeled vehicle configuration is about $1,280–1,760, and the total annual cost for 20 small entities can be estimated to be $85,000–114,000. The total average annual cost for an individual importer or small manufacturer can therefore be estimated to be a maximum of $4,250–5,700. We have recently collected data on the currently operating small entities in the ICI and vehicle conversion categories; this data indicates that the average annual revenue for these companies is approximately $4.8 million. Therefore, the projected cost increase is a maximum of 0.12 percent of the average revenue for small importers or manufacturers. Because of the limited range of vehicle configurations typically offered by these small entities, we believe that the maximum cost for these entities will be even lower than the low end of the ranges shown above. Our methodology for estimating costs in Section V assumes that manufacturers have diverse product lines, and thus ultimately will need to perform some level of additional testing in 2011 and later model years. Using costs based on such an assumption will tend to overestimate costs for ICIs and vehicle converters, who typically produce or import a single model or configuration.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in expenditures of more than $100 million to the private sector in any single year. We believe that this rule represents the least costly, most cost effective approach to achieve the goals

of the final rule. The costs are discussed in Section V and in the Technical Support Document. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

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

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on motor vehicle manufacturers. Tribal governments will be affected only to the extent they purchase and use motor vehicles. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The regulations do not require manufacturers to improve or otherwise change the fuel economy of their vehicles. The purpose of this regulation is to provide consumers with better information on which to base their vehicle purchasing decisions. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on January 26, 2007.

IX. Statutory Provisions and Legal Authority

Statutory authority for the fuel economy labeling program can be found in 42 U.S.C. 7401–7671q, 49 U.S.C. 32901–32917, and Pub. L. 109–58.

List of Subjects

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedure, Electric power, Fuel economy, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

Dated: December 11, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, parts 86 and 600 of title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. The table of references in § 86.1(b)(1) is amended by revising the entry for ''ASTM D 975–04c Standard Specification for Diesel Fuel Oils'' to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document No. and name	40 CFR part 86 reference
* * * * *	
ASTM D 975–04c Standard Specification for Diesel Fuel Oils.	86.1910, 86.213–11.

Subpart B—[Amended]

■ 3. A new § 86.158–08 is added to read as follows:

§ 86.158–08 Supplemental Federal Test Procedures; overview.

The procedures described in §§ 86.158–08, 86.159–08, 86.160–00, and 86.162–00 discuss the aggressive driving (US06) and air conditioning (SC03) elements of the Supplemental Federal Test Procedures (SFTP). These test procedures consist of two separable test elements: A sequence of vehicle operation that tests exhaust emissions with a driving schedule (US06) that tests exhaust emissions under high speeds and accelerations (aggressive driving); and a sequence of vehicle operation that tests exhaust emissions with a driving schedule (SC03) which includes the impacts of actual air conditioning operation. These test procedures (and the associated standards set forth in subpart S of this part) are applicable to light-duty vehicles and light-duty trucks.

(a) Vehicles are tested for the exhaust emissions of THC, CO, NO_X, CH_4, and CO_2. For diesel-cycle vehicles, THC is sampled and analyzed continuously according to the provisions of § 86.110.

(b) Each test procedure follows the vehicle preconditioning specified in § 86.132–00.

(c) *US06 Test Cycle.* The test procedure for emissions on the US06 driving schedule (see § 86.159–08) is designed to determine gaseous exhaust emissions from light-duty vehicles and light-duty trucks while simulating high speed and acceleration on a chassis dynamometer (aggressive driving). The full test consists of preconditioning the engine to a hot stabilized condition, as specified in § 86.132–00, and an engine idle period of 1 to 2 minutes, after which the vehicle is accelerated into the US06 cycle. A proportional part of the diluted exhaust is collected continuously for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler. Optionally, as specified in § 86.159–08 and in part 600 of this chapter, a proportional part of the diluted exhaust may be collected continuously in two bag samples, one representing US06 City driving and the other representing US06 Highway driving. If two bag samples are collected, for petroleum-fueled diesel-cycle vehicles for which THC is sampled and analyzed continuously according to the provisions of § 86.110, the analytical system shall be configured to calculate THC for the US06 City phase and the US06 Highway phase as described in § 86.159–08.

(d) *SC03 Test Cycle.* The test procedure for determining exhaust emissions with the air conditioner operating (see § 86.160–00) is designed to determine gaseous exhaust emissions from light-duty vehicles and light-duty trucks while simulating an urban trip during ambient conditions of 95 °F, 100 grains of water/pound of dry air (approximately 40 percent relative humidity), and a solar heat load intensity of 850 W/m^2. The full test consists of vehicle preconditioning (see § 86.132–00 paragraphs (o)(1) and (2)), an engine key-off 10 minute soak, an engine start, and operation over the SC03 cycle. A proportional part of the diluted exhaust is collected continuously during the engine start and the SC03 driving cycle for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler.

(e) The emission results from the aggressive driving test (§ 86.159–08), air conditioning test (§ 86.160–00), and FTP test (§ 86.130–00 (a) through (d) and (f)) (conducted on a large single roll or equivalent dynamometer) are analyzed according to the calculation methodology in § 86.164–08 and compared to the applicable SFTP emission standards in subpart S of this part.

(f) These test procedures may be run in any sequence that maintains the applicable preconditioning elements specified in § 86.132–00.

■ 4. A new § 86.159–08 is added to read as follows:

§ 86.159–08 Exhaust emission test procedures for US06 emissions.

(a) *Overview.* The dynamometer operation consists of a single, 600 second test on the US06 driving schedule, as described in appendix I, paragraph (g), of this part. The vehicle is preconditioned in accordance with § 86.132–00, to bring it to a warmed-up stabilized condition. This preconditioning is followed by a 1 to 2 minute idle period that proceeds directly into the US06 driving schedule during which continuous proportional samples of gaseous emissions are collected for analysis. US06 emissions may optionally be collected in two bag samples representing US06 City and US06 Highway emissions, as provided for in this section and in part 600 of this chapter. Emissions from seconds 0–130 and seconds 495–596 are collected in one bag to represent US06 City emissions, and emissions from seconds 130–495 are collected in a second bag to represent US06 Highway emissions. If engine stalling should occur during cycle operation, follow the provisions of § 86.136–90 (engine starting and restarting). For gasoline-fueled Otto-cycle vehicles, the composite samples collected in bags are analyzed for THC, CO, CO_2, CH_4, and NO_X. For petroleum-fueled diesel-cycle vehicles, THC is sampled and analyzed continuously according to the provisions of § 86.110. Parallel bag samples of dilution air are analyzed for THC, CO, CO_2, CH_4, and NO_X.

(b) *Dynamometer activities.* (1) All official US06 tests shall be run on a large single roll electric dynamometer, or an approved equivalent dynamometer configuration, that satisfies the requirements of § 86.108–00.

(2) Position (vehicle can be driven) the test vehicle on the dynamometer and restrain.

(3) Required US06 schedule test dynamometer inertia weight class selections are determined by the test vehicles test weight basis and corresponding equivalent weight as listed in the tabular information of § 86.129–94(a) and discussed in § 86.129–00 (e) and (f).

(4) Set the dynamometer test inertia weight and roadload horsepower requirements for the test vehicle according to § 86.129–00 (e) and (f). The dynamometer's horsepower adjustment settings shall be set to match the force imposed during dynamometer operation with actual road load force at all speeds.

(5) The vehicle speed as measured from the dynamometer rolls shall be used. A speed vs. time recording, as evidence of dynamometer test validity, shall be supplied on request of the Administrator.

(6) The drive wheel tires may be inflated up to a gauge pressure of 45 psi (310 kPa), or the manufacturer's recommended pressure if higher than 45 psi, in order to prevent tire damage. The drive wheel tire pressure shall be reported with the test results.

(7) The driving distance, as measured by counting the number of dynamometer roll or shaft revolutions, shall be determined for the test.

(8) Four-wheel drive and all-wheel drive vehicles may be tested either in a four-wheel drive or a two-wheel drive mode of operation. In order to test in the two-wheel drive mode, four-wheel drive and all-wheel drive vehicles may have one set of drive wheels disengaged; four-wheel and all-wheel drive vehicles which can be shifted to a two-wheel mode by the driver may be tested in a two-wheel drive mode of operation.

(9) During dynamometer operation, a fixed speed cooling fan with a maximum discharge velocity of 15,000 cfm will be positioned so as to direct cooling air to the vehicle in an appropriate manner with the engine compartment cover open. In the case of vehicles with front engine compartments, the fan shall be positioned within 24 inches (61 centimeters) of the vehicle. In the case of vehicles with rear engine compartments (or if special designs make the above impractical), the cooling fan(s) shall be placed in a position to provide sufficient air to maintain vehicle cooling. The Administrator may approve modified cooling configurations or additional cooling if necessary to satisfactorily perform the test. In approving requests for additional or modified cooling, the Administrator will consider such items as actual road cooling data and whether such additional cooling is needed to provide a representative test.

(c) The flow capacity of the CVS shall be large enough to virtually eliminate water condensation in the system.

(d) Practice runs over the prescribed driving schedule may be performed at test point, provided an emission sample is not taken, for the purpose of finding the appropriate throttle action to maintain the proper speed-time relationship, or to permit sampling system adjustment.

(e) Perform the test bench sampling sequence outlined in § 86.140–94 prior to or in conjunction with each series of exhaust emission measurements.

(f) *Test activities.* (1) The US06 consists of a single test which is directly preceded by a vehicle preconditioning in accordance with § 86.132–00. Following the vehicle preconditioning, the vehicle is idled for not less than one minute and not more than two minutes. The equivalent dynamometer mileage of the test is 8.0 miles (1.29 km).

(2) The following steps shall be taken for each test:

(i) Immediately after completion of the preconditioning, idle the vehicle. The idle period is not to be less than one minute or greater than two minutes.

(ii) With the sample selector valves in the ''standby'' position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(iii) Start the CVS (if not already on), the sample pumps, the temperature recorder, the vehicle cooling fan, and the heated THC analysis recorder (diesel-cycle only). The heat exchanger of the constant volume sampler, if used, petroleum-fueled diesel-cycle THC analyzer continuous sample line should be preheated to their respective operating temperatures before the test begins.

(iv) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

(A) For gaseous bag samples (except THC samples), the minimum flow rate is 0.17 cfm (0.08 liters/sec).

(B) For THC samples, the minimum FID (or HFID in the case of diesel-cycle vehicles) flow rate is 0.066 cfm (0.031 liters/sec).

(C) CFV sample flow rate is fixed by the venturi design.

(v) Attach the exhaust tube to the vehicle tailpipe(s).

(vi) Start the gas flow measuring device, position the sample selector valves to direct the sample flow into the exhaust sample bag, the dilution air sample bag, turn on the petroleum-fueled diesel-cycle THC analyzer system integrator, mark the recorder chart, and record both gas meter or flow measurement instrument readings, (if applicable).

(vii) Place vehicle in gear after starting the gas flow measuring device, but prior to the first acceleration. Begin the first acceleration 5 seconds after starting the measuring device.

(viii) Operate the vehicle according to the US06 driving schedule, as described in appendix I, paragraph (g), of this part. Manual transmission vehicles shall be shifted according to the manufacturer recommended shift schedule, subject to review and approval by the Administrator. For further guidance on transmissions see § 86.128–00.

(ix) Paragraphs (f)(2)(ix)(A) and (B) of this section apply to vehicles for which the manufacturer is collecting US06 City and US06 Highway emissions for subsequent analysis according to the provisions of part 600 of this chapter. Vehicles for which emissions are being collected in a single continuous sample for subsequent analysis must be tested according to paragraph (x) of this section, and this paragraph (f)(2)(ix) will not apply.

(A) At two seconds after the end of the deceleration which is scheduled to occur at 128 seconds (*i.e.*, at 130 seconds), simultaneously switch the sample flows from the ''US06 City'' bags and samples to the ''US06 Highway'' bags and samples, switch gas flow measuring device No. 1 (and the petroleum-fueled diesel hydrocarbon integrator No. 1 and mark the petroleum-fueled diesel hydrocarbon recorder chart if applicable) to ''standby'' mode, and start gas flow measuring device No. 2 (and the petroleum-fueled diesel hydrocarbon integrator No. 2 if applicable). Before the acceleration which is scheduled to occur at 136 seconds, record the measured roll or shaft revolutions.

(B) At two seconds after the end of the deceleration which is scheduled to occur at 493 seconds (i.e., at 495 seconds), simultaneously switch the sample flows from the ''US06 Highway'' bags and samples to the ''US06 City'' bags and samples, switch off gas flow measuring device No. 2 (and the petroleum-fueled diesel hydrocarbon integrator No. 2 and mark the petroleum-fueled diesel hydrocarbon recorder chart if applicable), and start gas flow measuring device No. 1 (and the petroleum-fueled diesel hydrocarbon integrator No. 1 if applicable). Before the acceleration which is scheduled to occur at 500 seconds, record the measured roll or shaft revolutions and the No. 2 gas meter reading or flow measurement instrument. As soon as possible transfer the ''US06 Highway'' exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.140–94 obtaining a stabilized reading of the bag exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(x) Turn the engine off 2 seconds after the end of the last deceleration (i.e., engine off at 596 seconds).

(xi) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 1 (and the petroleum-fueled diesel hydrocarbon integrator No. 1 and mark the petroleum-fueled diesel hydrocarbon recorder chart if applicable) and position the sample selector valves to the ''standby'' position. Record the measured roll or shaft revolutions and the No. 1 gas meter reading or flow measurement instrument.

(xii) As soon as possible, transfer the exhaust and dilution air bag samples (or the US06 City exhaust and dilution air bag samples, if applicable) to the analytical system and process the samples according to § 86.140–94 obtaining a stabilized reading of the bag exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(xiii) Immediately after the end of the sample period, turn off the cooling fan, close the engine compartment cover, disconnect the exhaust tube from the vehicle tailpipe(s), and drive the vehicle from dynamometer.

(xiv) The CVS or CFV may be turned off, if desired.

■ 5. A new § 86.164–08 is added to read as follows:

§ 86.164–08 Supplemental Federal Test Procedure calculations.

(a) The provisions of § 86.144–94 (b) and (c) are applicable to this section except that the NO_X humidity correction factor of § 86.144–94(c)(7)(iv) must be modified when adjusting SC03 environmental test cell NO_X results to 100 grains of water according to paragraph (d) of this section. These provisions provide the procedures for calculating mass emission results of each regulated exhaust pollutant for the test schedules of FTP, US06, and SC03.

(b) The provisions of § 86.144–94(a) are applicable to this section. These provisions provide the procedures for determining the weighted mass emissions for the FTP test schedule (Y_{wm}).

(c)(1) When the test vehicle is equipped with air conditioning, the final reported test results for the SFTP composite (NMHC+NO_X) and optional composite CO standards shall be computed by the following formulas.

(i) $Y_{WSFTP} = 0.35(Y_{FTP}) + 0.37(Y_{SC03}) + 0.28(Y_{US06})$

Where:

(A) Y_{WSFTP} = Mass emissions per mile for a particular pollutant weighted in terms of the contributions from the FTP, SC03, and US06 schedules. Values of Y_{WSFTP} are obtained for each of the exhaust emissions of NMHC, NO_X and CO.

(B) Y_{FTP} = Weighted mass emissions per mile (Y_{WM}) based on the measured driving distance of the FTP test schedule.

(C) Y_{SC03} = Calculated mass emissions per mile based on the measured driving distance of the SC03 test schedule.

(D)(*1*) Y_{US06} = Calculated mass emissions per mile based on the measured driving distance of the US06 test schedule; or,

(*2*) In the case of a 2-phase US06 test run according to the provisions of § 86.159–08(f)(2)(ix) and part 600 of this chapter:

Y_{US06} = Calculated mass emissions per mile, using the summed mass emissions of the ''US06 City'' phase (sampled during seconds 1–130 and seconds 495–596 of the US06 driving schedule) and the ''US06 Highway'' phase (sampled during seconds 130–495 of the US06 driving schedule), based on the measured driving distance of the US06 test schedule.

(ii) Composite (NMHC+NO_X) = Y_{WSFTP}(NMHC) + Y_{WSFTP}(NO_X)

Where:

(A) Y_{WSFTP}(NMHC) = results of paragraph (c)(1)(i) of this section for NMHC.

(B) Y_{WSFTP}(NO_X) = results of paragraph (c)(1)(i) of this section for NO_X.

(2) When the test vehicle is not equipped with air conditioning, the final reported test results for the SFTP composite (NMHC+NO_X) and optional composite CO standards shall be computed by the following formulas.

(i) $Y_{WSFTP} = 0.72(Y_{FTP})+0.28(Y_{US06})$

Where:

(A) Y_{WSFTP} = Mass emissions per mile for a particular pollutant weighted in terms of the contributions from the FTP and US06 schedules. Values of Y_{WSFTP} are obtained for each of the exhaust emissions of NMHC, NO_X and CO.

(B) Y_{FTP} = Weighted mass emissions per mile (Ywm) based on the measured driving distance of the FTP test schedule.

(C)(*1*) Y_{US06} = Calculated mass emissions per mile based on the measured driving distance of the US06 test schedule; or,

(*2*) In the case of a 2-phase US06 test run according to the provisions of § 86.159–08(f)(2)(ix) and part 600 of this chapter:

Y_{US06} = Calculated mass emissions per mile, using the summed mass emissions of the ''US06 City'' phase (sampled during seconds 1–130 and seconds 495–596 of the US06 driving schedule) and the ''US06 Highway'' phase (sampled during seconds 130–495 of the US06 driving schedule), based on the measured driving distance of the US06 test schedule.

(ii) Composite (NMHC+NO_X) = Y_{WSFTP}(NMHC) + Y_{WSFTP}(NO_X)

Where:

(A) Y_{WSFTP}(NMHC) = results of paragraph (c)(2)(i) of this section for NMHC.

(B) Y_{WSFTP}(NO_X) = results of paragraph (c)(2)(i) of this section for NO_X.

(d) The NO_X humidity correction factor for adjusting NO_X test results to the environmental test cell air conditioning ambient condition of 100 grains of water/pound of dry air is:

K_H (100) = 0.8825/[1–0.0047(H–75)]

Where:

H = measured test humidity in grains of water/pound of dry air.

Subpart C—[Amended]

■ 6. A new § 86.201–11 is added to read as follows:

§ 86.201–11 General applicability.

(a) This subpart describes procedures for determining the cold temperature carbon monoxide (CO) emissions from 1994 and later model year new gasoline-fueled light-duty vehicles and light-duty trucks, and for emissions sampling for determining fuel economy according to part 600 of this chapter for 2011 and later model year new gasoline-fueled and diesel-fueled light-duty vehicles and light-duty trucks.

(b) All of the provisions of this subpart are applicable to testing conducted at a nominal temperature of 20 °F (−7 °C).

(c) The provisions that are specifically applicable to testing at temperatures between 25 °F (−4 °C) and 68 °F (20 °C) are specified in § 86.246–94 of this subpart.

■ 7. A new § 86.205–11 is added to read as follows:

§ 86.205–11 Introduction; structure of this subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform gaseous exhaust emission tests on gasoline-fueled and petroleum-fueled diesel cycle (where applicable under part 600 of this chapter) light-duty vehicles and light-duty trucks. Subpart A of this part sets forth testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model years.

(c) Three topics are addressed in this subpart. Sections 86.206 through 86.215 set forth specifications and equipment requirements; §§ 86.216 through 86.226 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.227 through 86.245.

■ 8. A new § 86.206–11 is added to read as follows:

§ 86.206–11 Equipment required; overview.

This subpart contains procedures for exhaust emission tests on gasoline-fueled and petroleum-fueled diesel cycle (where applicable under part 600 of this chapter) light-duty vehicles and light-duty trucks. Equipment required and specifications are as follows:

(a) *Exhaust emission tests.* Exhaust from gasoline-fueled and petroleum-fueled diesel cycle (where applicable under part 600 of this chapter) vehicles is tested for gaseous emissions using the Constant Volume Sampler (CVS) concept (§ 86.209). Equipment necessary and specifications appear in §§ 86.208 through 86.214.

(b) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust emission testing for gasoline-fueled and petroleum-fueled diesel cycle vehicles are specified in § 86.213. Analytical gases are specified in § 86.214. The EPA Urban Dynamometer Driving Schedule

(UDDS) for use in gasoline-fueled emission tests is specified in § 86.115 and Appendix I to this part.

■ 9. A new § 86.210–08 is added to read as follows:

§ 86.210–08 Exhaust gas sampling system; Diesel-cycle vehicles not requiring particulate emissions measurements.

(a) *General applicability.* The exhaust gas sampling system requirements of § 86.109–4 (which apply to Otto-cycle vehicles), also apply to diesel vehicles that are not required to undergo particulate measurement as allowed under § 600.111–08(e) of this chapter, except that heated flame ionization detector (HFID), probe, sample lines and filters are required as described below.

(1) Petroleum-fueled diesel-cycle vehicles require a heated flame ionization detector (HFID) (375 °±20 °F (191 °±11 °C)) sample for total hydrocarbon (THC) analysis. The HFID sample must be taken directly from the diluted exhaust stream through a heated probe and continuously integrated measurement of diluted THC is required. Unless compensation for varying mass flow is made, a constant mass flow system must be used to ensure a proportional THC measurement.

(2) For natural gas-fueled and liquefied petroleum gas-fueled diesel vehicles either a heated flame ionization detector (HFID) [375°±20 °F (191°±11 °C)] or a non-heated flame ionization detector may be used for hydrocarbon analysis.

(3) Other sampling systems may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

(b) *Component description.* The components necessary for petroleum-fueled diesel vehicle exhaust sampling shall meet the following requirements:

(1) The PDP system shall conform to all of the requirements listed for the exhaust gas PDP-CVS (§ 86.109–94(a)(3)).

(2) The CFV-CVS sample system shall conform to all of the requirements listed for the exhaust gas EFC sample system (§ 86.109–94(a)(5)).

(3) The THC probe (when the THC probe is required) shall be:

(i) Installed at a point where the dilution air and exhaust are well mixed.

(ii) Heated and insulated over the entire length to maintain a 375 °±20 °F (191 °±11 °C) wall temperature.

(iii) 0.19 in. (0.48 cm) minimum inside diameter.

(4) It is intended that the THC probe be free from cold spots (i.e., free from spots where the probe wall temperature is less than 355 °F). This will be determined by a temperature sensor located on a section of the probe wall outside of the walls of the sampling system. The temperature sensor shall be insulated from any heating elements on the probe. The sensor shall have an accuracy and precision of ±2 °F (1.1 °C).

(5) The dilute exhaust gas flowing in the THC sample system shall be:

(i) At 375 °F±10 °F (191 °C±6 °C) immediately before the heated filter. This will be determined by a temperature sensor located immediately upstream of the filter. The sensor shall have an accuracy and precision of ±2 °F (1.1 °C).

(ii) At 375 °F±10 °F (191 °C ±6 °C) immediately before the HFID. This will be determined by a temperature sensor located at the exit of the heated sample line. The sensor shall have an accuracy and precision of ±2 °F (1.1 °C).

(6) It is intended that the dilute exhaust gas flowing in the THC sample system be between 365 °F and 385 °F (185 °C and 197 °C).

(7) The requirements for the continuous HC measurement system are as follows:

(i) The system must use an ''overflow'' zero and span system. In this type of system, excess zero or span gas spills out of the probe when zero and span checks of the analyzer are made. The ''overflow'' system may also be used to calibrate the HC analyzer per § 86.1321(b), although this is not required.

(ii) No other analyzers may draw a sample from the continuous HC sample probe, line or system, unless a common sample pump is used for all analyzers and the sample line system design reflects good engineering practice.

(iii) The overflow gas flow rates into the sample line shall be at least 105% of the sample system flow rate.

(iv) The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the CVS duct or dilution tunnel.

■ 10. Section 86.211–94 is revised to read as follows:

§ 86.211–94 Exhaust gas analytical system.

The provisions of § 86.111–94 apply to this subpart, except that the NO_X analyzer is optional. The exhaust gas analytical system must contain components necessary to determine hydrocarbons, carbon monoxide, carbon dioxide, methane, and formaldehyde. The exhaust gas analytical system is not required to contain components necessary for determining oxides of nitrogen.

■ 11. A new § 86.213–11 is added to read as follows:

§ 86.213–11 Fuel specifications.

(a) *Gasoline-fueled light-duty vehicles and light-duty trucks.* Gasoline having the following specifications will be used by the Administrator except that the Administrator will not use gasoline having a sulfur specification higher than 0.0045 weight percent. Gasoline having the specifications set forth in the table in this section, or substantially equivalent specifications approved by the Administrator, may be used by the manufacturer except that the octane specification does not apply. In lieu of using gasoline having these specifications, the manufacturer may, for certification testing, use gasoline having the specifications specified in § 86.113–04 provided the cold CO emissions are not decreased. Documentation showing that cold CO emissions are not decreased must be maintained by the manufacturer and must be made available to the Administrator upon request. The table listing the cold CO fuel specifications described in the text in this section follows:

TABLE—COLD CO FUEL SPECIFICATIONS

Item	ASTM test	Cold CO low octane value or range	Cold CO high octane [1] value or range
(RON+MON)/2, min	D 2699	87.8±.3	92.3±0.5.
Sensitivity, min	D 2699	7.5	7.5.
Distillation range:			
IBP, deg.F	D 86	76–96	76–96.
10% point, deg.F	D 86	98–118	105–125.
50% point, deg.F	D 86	179–214	195–225.
90% point, deg.F	D 86	316–346	316–346.

TABLE—COLD CO FUEL SPECIFICATIONS—Continued

Item	ASTM test	Cold CO low octane value or range	Cold CO high octane [1] value or range
EP, max, deg.F	D 86	413	413.
Sulfur, wt. %	D 3120	0.0015–0.008	0.0015–0.008.
Phosphorous, g/U.S gal, max	D 3231	0.005	0.005.
Lead, g/gal, max		0.01	0.01.
RVP, psi	D 4953	11.5±.3	11.5±.3.
Hydrocarbon composition	D 1319.		
Olefins, vol. pct		12.5±5.0	10.0±5.0.
Aromatics, vol. pct		26.4±4.0	32.0±4.0.
Saturates		Remainder	Remainder.

[1] Gasoline having these specifications may be used for vehicles which are designed for the use of high-octane premium fuel.

(b) *Petroleum-fueled diesel-cycle light-duty vehicles and light-duty trucks.* Diesel test fuel used for cold temperature FTP testing under part 600 of this chapter must be a winter-grade diesel fuel as specified in ASTM D975–04c ''Standard Specification for Diesel Fuel Oils.'' (incorporated by reference, see § 86.1) Such test fuel must also comply with the requirements of part 80 of this chapter. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The Administrator may approve the use of a different diesel test fuel, provided that the level of kerosene added shall not exceed 20 percent.

■ 12. A new § 86.230–11 is added to read as follows:

§ 86.230–11 Test sequence: general requirements.

(a) *Sequence steps.* Figure C94–1 of § 86.230–94 shows the steps encountered as the test vehicle undergoes the procedures subsequently described, to determine conformity with the standards set forth.

(b) *Driving schedule.* The Urban Dynamometer Driving Schedule (UDDS) test procedure (see § 86.115 and appendix I to this part) is used for vehicle preconditioning and testing.

(c) *Ambient temperature level.* (1) Ambient temperature levels encountered by the test vehicle shall average 20 ° ±5 °F (−7 °C ±2.8 °C) and shall not be less than 10 °F (−14 °C) nor more than 30 °F (−1 °C) during vehicle preconditioning, except for preconditioning performed in accordance with § 86.232(a)(7), and during all emission testing.

(2) The ambient temperature reported shall be a simple average of the test cell temperatures measured at constant intervals no more than one minute apart. Before the driving cycle may begin, the test cell temperature shall be 20 °F ±3 °F (−7 °C ±1.7 °C) when measured in accordance with paragraph (e)(2) of this section. The temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes during the test.

(d) *Vehicle positioning.* The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

(e) *Engine compartment cooling.* (1) Fixed speed air cooling of the engine compartment with the compartment cover open shall be utilized during testing that is conducted by the Administrator and, optionally for certification testing, by the manufacturer. If a separate movable fan is used, it shall be squarely positioned within 12 inches (30.5 centimeters) of the front of vehicles with front engine compartments. In the case of vehicles with rear engine compartments (or if special designs make the normal front engine positioning impractical), the cooling fan shall be placed in a position to provide sufficient air to maintain vehicle cooling. The fan capacity shall normally not exceed 5,300 cfm (2.50 cubic meters per second). If, however, the manufacturer showed (as provided in § 86.135–94(b)) that additional cooling is necessary, the fan capacity may be increased or additional fans used if approved in advance by the Administrator. The cooling air temperature shall be measured at the inlet to the fan.

(2) In lieu of using a separate fan, an air handling system that is integral with the test cell may be used provided comparable air movement is obtained. The cooling air temperature shall be measured in the center of a vertical plane that is located approximately 2 feet in front of the vehicle.

(3) The manufacturer may use, for certification testing, alternative engine compartment cooling fans or systems, including those which provide a variable air flow, if the manufacturer has determined that comparable results are obtained.

(f) *Heater and defroster usage.* The vehicle interior climate control system shall be operated with the interior heating system on and the air flow directed to the mode that primarily defrosts the front window during the test. Air conditioning controls shall be set to the ''Off'' position. No supplemental auxiliary heat is permitted during the dynamometer procedure. The heater may be used at any temperature and fan settings during vehicle preconditioning. The manufacturer shall use the vehicle's controls to achieve the operation specified in this paragraph (f). The manufacturer shall use good engineering judgment and take into account engine control changes (e.g., engine-off logic, idle speed operation, spark advance changes) and engine control features that may be directly affected by the fan or temperature settings.

(1) Manually controlled systems. (i) Prior to the first acceleration of the test at T=20 seconds the climate control settings shall be set as follows (these settings may be initiated prior to starting the vehicle if allowed by the vehicle's climate control system):

(A) Temperature: Manually operated systems shall be set to maximum heat. Automatic systems optionally using the provisions of this paragraph (f)(1) shall be set to 72 degrees F or higher.

(B) Fan speed: Full off, or if a full off position is not available, to the lowest available speed.

(C) Airflow direction: Airflow directed to the front window (window defrost mode). Based on good engineering judgment, an alternative vent setting may be used if necessary to achieve the temperature and fan speed settings in this paragraph (f)(1).

(D) Air source: If independently controllable, the airflow source control shall be set to the position which draws outside air.

(ii) At the second idle of the test cycle, which occurs at the first deceleration to zero miles per hour at T=125 seconds, the fan speed shall be set to maximum, and, if not already set in this position, the airflow shall be directed fully to the front window in the window defrost mode. Temperature and air source settings shall remain as set in paragraph (f)(1) of this section. These settings shall be completed by T=130 seconds.

(iii) At the sixth idle of the test cycle, which occurs at the deceleration to zero miles per hour at T=505 seconds, the fan speed shall be set to the lowest setting that maintains air flow. This setting shall be completed by T=510 seconds. Based on good engineering judgment, the manufacturer may use alternative vent and/or higher fan speed settings for the remainder of the test. Temperature and air source settings shall remain as set in paragraph (f)(1)(i) of this section for the remainder of the test.

(2) Automatic systems. Automatic systems may use either the provisions in paragraph (f)(1) of this section or manufacturers may set the temperature at 72 degrees F and the air flow control to the front window defroster mode for the entire duration of the test.

(3) Multiple-zone systems. For vehicles with separate driver and passenger controls, or for vehicles with separate controls for the front seating region and for the passenger region behind the driver, all sets of temperature and fan controls shall be set according to paragraphs (f)(1) through (f)(3) of this section.

(4) Alternative test procedures. The Administrator may approve the use of other settings under § 86.1840–01 if, for example, a vehicle's climate control system is not compatible with the provisions of this section.

■ 13. A new section 86.237–08 is added to read as follows:

§ 86.237–08 Dynamometer test run, gaseous emissions.

(a) The complete dynamometer test consists of a cold start drive of approximately 7.5 miles (12.1 kilometers) and a hot start drive of approximately 3.6 miles (5.8 kilometers).

(b) If the preconditioned vehicle is not already on the dynamometer, it shall be pushed into position.

(c) The vehicle is allowed to stand on the dynamometer during the ten minute time period between the cold and hot start test. The cold start test is divided into two periods. The first period, representing the cold start ''transient'' phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the ''stabilized'' phase, consists of the remainder of the driving schedule, including engine shutdown. The hot start test is identical to the first part or transient phase of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(d) The dynamometer run consists of two tests, a cold start test, after a minimum 12-hour and a maximum 36-hour soak according to the provisions of § 86.132, and a hot start test following the cold start test by 10 minutes. The vehicle shall be stored prior to the emission test in such a manner that precipitation (e.g., rain or dew) does not occur on the vehicle. The complete dynamometer test consists of a cold start drive of 7.5 miles (12.1 km) and simulates a hot start drive of 7.5 miles (12.1 km). The vehicle is allowed to stand on the dynamometer during the 10 minute time period between the cold and hot start tests. The cold start test is divided into two periods. The first period, representing the cold start ''transient'' phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the ''stabilized'' phase, consists of the remainder of the driving schedule including engine shutdown. The hot start test, similarly, consists of two periods. The first period, representing the hot start ''transient'' phase, terminates at the same point in driving schedule as the first period of the cold start test. The second period of the hot start test, ''stabilized'' phase, is assumed to be identical to the second period of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run. Measurement of NO_X and particulate matter is not required.

(e) The following steps shall be taken for each test:

(1) Place drive wheels of vehicle on dynamometer without starting engine.

(2) Open the vehicle engine compartment cover and position the cooling fan.

(3) For all vehicles, with the sample selector valves in the ''standby'' position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(4) For methanol-fueled vehicles, with the sample selector valves in the ''standby'' position, insert fresh sample collection impingers into the methanol sample collection system, fresh impingers or a fresh cartridge into the formaldehyde sample collection system and fresh impingers (or a single cartridge for formaldehyde) into the dilution air sample collection systems for methanol and formaldehyde (background measurements of methanol and formaldehyde may be omitted and concentrations assumed to be zero for calculations in § 86.144).

(5) Start the CVS (if not already on), the sample pumps (except the particulate sample pump, if applicable), the temperature recorder, the vehicle cooling fan, and the heated THC analysis recorder (diesel-cycle only). (The heat exchanger of the constant volume sampler, if used, petroleum-fueled diesel-cycle THC analyzer continuous sample line and filter, methanol-fueled vehicle THC, methanol and formaldehyde sample lines, if applicable, should be preheated to their respective operating temperatures before the test begins).

(6) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

(i) For gaseous bag samples (except THC samples), the minimum flow rate is 0.17 cfm (0.08 1/sec).

(ii) For THC samples, the minimum FID (or HFID in the case of diesel-cycle and methanol-fueled Otto-cycle vehicles) flow rate is 0.066 cfm (0.031 1/sec).

(iii) For methanol samples, the flow rates shall be set such that the system meets the design criteria of § 86.109 and § 86.110. For samples in which the concentration in the primary impinger exceeds 0.5 mg/l, it is recommended that the mass of methanol collected in the secondary impinger not exceed ten percent of the total mass collected. For samples in which the concentration in the primary impinger does not exceed 0.5 mg/l, analysis of the secondary impingers is not necessary.

(iv) For formaldehyde samples, the flow rates shall be set such that the system meets the design criteria of § 86.109 and § 86.110. For impinger samples in which the concentration of formaldehyde in the primary impinger exceeds 0.1 mg/l, it is recommended

that the mass of formaldehyde collected in the secondary impinger not exceed ten percent of the total mass collected. For samples in which the concentration in the primary impinger does not exceed 0.1 mg/l, analysis of the secondary impingers is not necessary.

(7) Attach the exhaust tube to the vehicle tailpipe(s).

(8) Start the gas flow measuring device, position the sample selector valves to direct the sample flow into the ''transient'' exhaust sample bag, the ''transient'' methanol exhaust sample, the ''transient'' formaldehyde exhaust sample, the ''transient'' dilution air sample bag, the ''transient'' methanol dilution air sample and the ''transient'' formaldehyde dilution air sample (turn on the petroleum-fueled diesel-cycle THC analyzer system integrator, mark the recorder chart and record both gas meter or flow measurement instrument readings, if applicable), turn the key on, and start cranking the engine.

(9) Fifteen seconds after the engine starts, place the transmission in gear.

(10) Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule.

(11) Operate the vehicle according to the Urban Dynamometer Driving Schedule (§ 86.115).

Note: During particulate testing, if applicable, adjust the flow rate through the particulate sample probe to maintain a constant value within ±5 percent of the set flow rate. Record the average temperature and pressure at the gas meter or flow instrument inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate, or larger diameter filter, or both.

(12) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously switch the sample flows from the ''transient'' bags and samples to the ''stabilized'' bags and samples, switch off gas flow measuring device No. 1, switch off the No. 1 petroleum-fueled diesel hydrocarbon integrator, mark the petroleum-fueled diesel hydrocarbon recorder chart, start gas flow measuring device No. 2, and start the petroleum-fueled diesel hydrocarbon integrator No. 2. Before the acceleration which is scheduled to occur at 510 seconds, record the measured roll or shaft revolutions and reset the counter or switch to a second counter. As soon as possible transfer the ''transient'' exhaust and dilution air samples to the analytical system and process the samples according to § 86.140 obtaining a stabilized reading of the bag exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample collection phase of the test.

(13) Turn the engine off 2 seconds after the end of the last deceleration (at 1,369 seconds).

(14) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 and if applicable, turn off the hydrocarbon integrator No. 2, mark the hydrocarbon recorder chart and position the sample selector valves to the ''standby'' position (and open the valves isolating particulate filter No. 1, if applicable). Record the measured roll or shaft revolutions (both gas meter or flow measurement instrumentation readings), and reset the counter. As soon as possible, transfer the ''stabilized'' exhaust and dilution air samples to the analytical system and process the samples according to § 86.140, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. (If it is not possible to perform analysis on the methanol and formaldehyde samples within 24 hours, the samples should be stored in a dark cold (4–10 °C) environment until analysis. The samples should be analyzed within fourteen days.)

(15) Immediately after the end of the sample period, turn off the cooling fan and close the engine compartment cover.

(16) Turn off the CVS or disconnect the exhaust tube from the tailpipe(s) of the vehicle.

(17) Repeat the steps in paragraphs (b)(2) through (b)(2) of this section for the hot start test, except only two evacuated sample bags, two methanod sample impringers, and two formaldehyde sample impingers are required. The step in paragraph (b)(9) of this section shall begin between 9 and 11 minutes after the end of the sample period for the cold start test.

(18) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously turn off gas flow measuring device No. 1 (and the petroleum-fueled diesel hydrocarbon integrator No. 1, mark the petroleum-fueled diesel hydrocarbon recorder chart) and position the sample selector valve to the ''standby'' position. (Engine shutdown is not part of the hot start test sample period.) Record the measured roll or shaft revolutions (and the No. 1 gas meter reading or flow measurement instrument). (Carefully remove the third pair of particulate sample filters from its holder and place in a clean petri dish and cover, if applicable.)

(19) As soon as possible, transfer the hot start ''transient'' exhaust and dilution air samples to the analytical system and process the samples according to § 86.140, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. (If it is not possible to perform analysis on the methanol and formaldehyde samples, within 24 hours the samples should be stored in a dark cold (4–10 °C) environment until analysis. The samples should be analyzed within fourteen days.)

(20) Disconnect the exhaust tube from the vehicle tailpipe(s) and drive the vehicle from dynamometer.

(21) The CVS or CFV may be turned off, if desired.

(22) Vehicles to be tested for evaporative emissions will proceed according to § 86.138. For all others this completes the test sequence.

■ 14. Section 86.244–94 is revised to read as follows:

§ 86.244–94 Calculations; exhaust emissions.

The provisions of § 86.144–94 apply to this subpart, except that NO_X measurements are optional. Should NO_X measurements be calculated, note that the humidity correction factor is not valid at colder temperatures. Light-duty vehicles and light-duty trucks must calculate and report the weighted mass of each relevant pollutant, i.e., THC, CO, THCE, NMHC, NMHCE, CH4, NO_X, and CO_2 in grams per vehicle mile.

PART 600—FUEL ECONOMY OF VEHICLES

■ 15. The authority citation for part 600 is revised to read as follows:

Authority: 49 U.S.C. 32901—23919q, Pub. L. 109–58.

Subpart A—[Amended]

■ 16. A new § 600.001–08 is added to read as follows:

§ 600.001–08 General applicability.

(a) The provisions of this subpart are applicable to 2008 and later model year automobiles, except medium duty passenger vehicles, manufactured on or after January 26, 2007, and to 2011 and later model year medium-duty

passenger vehicles. All 2008 automobiles manufactured prior to January 26, 2007 may optionally comply with the provisions of this subpart.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirements of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

■ 17. A new § 600.002–08 is added to read as follows:

§ 600.002–08 Definitions.

3-bag FTP means the Federal Test Procedure specified in part 86 of this chapter, with three sampling portions consisting of the cold-start transient (''Bag 1''), stabilized (''Bag 2''), and hot-start transient phases (''Bag 3'').

4-bag FTP means the 3-bag FTP, with the addition of a sampling portion for the hot-start stabilized phase (''Bag 4'').

5-cycle means the FTP, HFET, US06, SC03 and cold temperature FTP tests as described in Subparts B and C of this part.

Administrator means the Administrator of the Environmental Protection Agency or his authorized representative.

Alcohol means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination.

Alcohol-fueled automobile means an automobile designed to operate exclusively on alcohol.

Alcohol dual fuel automobile means an automobile:

(1) Which is designed to operate on alcohol and on gasoline or diesel fuel; and

(2) Which provides equal or greater energy efficiency as calculated in accordance with § 600.510(g)(1) while operating on alcohol as it does while operating on gasoline or diesel fuel; and

(3) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR part 538.

Automobile has the meaning given by the Department of Transportation at 49 CFR 523.3.

Auxiliary emission control device (AECD) means an element of design as defined in part 86 of this chapter.

Average fuel economy means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

Axle ratio means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

Base level means a unique combination of basic engine, inertia weight class and transmission class.

Base vehicle means the lowest priced version of each body style that makes up a car line.

Basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (e.g., type of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

Battery configuration means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy device.

Body style means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e., front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations in 49 CFR part 571. Station wagons and light trucks are identified as car lines.

Calibration means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

Car line means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows, except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

Certification vehicle means a vehicle which is selected under § 86.1828–01 of this chapter and used to determine compliance under § 86.1848–01 of this chapter for issuance of an original certificate of conformity.

City fuel economy means the city fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure, or determined according to the vehicle-specific 5-cycle or derived 5-cycle procedures.

Cold temperature FTP means the test performed under the provisions of Subpart C of part 86 of this chapter.

Combined fuel economy means:

(1) The fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively.

(2) For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

Dealer means a person who resides or is located in the United States, any territory of the United States, or the District of Columbia and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

Derived 5-cycle fuel economy means the 5-cycle fuel economy derived from the FTP-based city and HFET-based highway fuel economy by means of the equation provided in § 600.210–08.

Drive system is determined by the number and location of drive axles (e.g., front wheel drive, rear wheel drive, four wheel drive) and any other feature of the drive system if the Administrator determines that such other features may result in a fuel economy difference.

Electrical charging system means a device to convert 60 Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

Electric traction motor means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

Energy storage device means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

Engine code means a unique combination, within an engine-system combination (as defined in part 86 of this chapter), of displacement, fuel injection (or carburetion or other fuel delivery system), calibration, distributor calibration, choke calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

Federal emission test procedure (FTP) refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in part 86 of this chapter for the respective model year, which are used to derive city fuel economy data.

FTP-based city fuel economy means the fuel economy determined in § 600.113–08 of this part, on the basis of FTP testing.

Fuel means:

(1) Gasoline and diesel fuel for gasoline- or diesel-powered automobiles; or

(2) Electrical energy for electrically powered automobiles; or

(3) Alcohol for alcohol-powered automobiles; or

(4) Natural gas for natural gas-powered automobiles.

Fuel economy means:

(1) The average number of miles traveled by an automobile or group of automobiles per volume of fuel consumed as calculated in this part; or

(2) The equivalent petroleum-based fuel economy for an electrically powered automobile as determined by the Secretary of Energy.

Fuel economy data vehicle means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

Gross vehicle weight rating means the manufacturer's gross weight rating for the individual vehicle.

Hatchback means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

Highway fuel economy means the highway fuel economy determined either by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure, or determined according to either the vehicle-specific 5-cycle equation or the derived 5-cycle equation for highway fuel economy.

Highway fuel economy test procedure (HFET) refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in subpart B of this part and which are used to derive highway fuel economy data.

HFET-based fuel economy means the highway fuel economy determined in § 600.113–08 of this part, on the basis of HFET testing.

Inertia weight class means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of part 86 of this chapter.

Label means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with subpart D of this part.

Light truck means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5. This term is interchangeable with ''non-passenger automobile''.

Medium-duty passenger vehicle means a vehicle which would satisfy the criteria for light trucks as defined by the Secretary of Transportation at 49 CFR 523.5 but for its gross vehicle weight rating or its curb weight, which is rated at more than 8,500 lbs GVWR or has a vehicle curb weight of more than 6,000 pounds or has a basic vehicle frontal area in excess of 45 square feet, and which is designed primarily to transport passengers, but does not include a vehicle that:

(1) Is an ''incomplete truck'' as defined in this subpart; or

(2) Has a seating capacity of more than 12 persons; or

(3) Is designed for more than 9 persons in seating rearward of the driver's seat; or

(4) Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

Minivan means a light truck which is designed primarily to carry no more than eight passengers having an integral enclosure fully enclosing the driver, passenger, and load-carrying compartments, with a total interior volume at or below 180 cubic feet, and rear seats readily removed or folded to floor level to facilitate cargo carrying. A minivan typically includes one or more sliding doors and a rear liftgate.

Model year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term ''model year'' means the calendar year.

Model type means a unique combination of car line, basic engine, and transmission class.

Motor controller means an electronic or electro-mechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

Natural gas-fueled automobile means an automobile designed to operate exclusively on natural gas.

Natural gas dual fuel automobile means an automobile:

(1) Which is designed to operate on natural gas and on gasoline or diesel fuel;

(2) Which provides equal or greater energy efficiency as calculated in § 600.510(g)(1) while operating on natural gas as it does while operating on gasoline or diesel fuel; and

(3) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR part 538.

Nonpassenger automobile means a light truck.

Passenger automobile means any automobile which the Secretary of Transportation determines is manufactured primarily for use in the transportation of no more than 10 individuals.

Pickup truck means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

Production volume means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

Rounded means a number shortened to the specific number of decimal places in accordance with the rounding method specified in ASTM E 29–67 (Reapproved 1973) ''Standard Recommended Practice for Indicating which Places of Figures are to be Considered Significant in Specified Limiting Values.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

SC03 means the test procedure specified in § 86.160–00 of this chapter.

Secretary of Transportation means the Secretary of Transportation or his authorized representative.

Secretary of Energy means the Secretary of Energy or his authorized representative.

Sport utility vehicle (SUV) means a light truck with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, and one or more rear seats readily removed or folded to facilitate cargo carrying.

Station wagon means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

Subconfiguration means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

Transmission class means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic); number of forward gears used in fuel economy testing (e.g., manual four-speed, three-speed automatic, two-speed semi-automatic); drive system (e.g., front wheel drive, rear wheel drive; four wheel drive), type of overdrive, if applicable (e.g., final gear ratio less than 1.00, separate overdrive unit); torque converter type, if applicable (e.g., non-lockup, lockup, variable ratio); and other transmission characteristics that may be determined to be significant by the Administrator.

Transmission configuration means the Administrator may further subdivide within a transmission class if the Administrator determines that sufficient fuel economy differences exist. Features such as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed may be used to further distinguish characteristics within a transmission class.

Test weight means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of part 86 of this chapter.

Ultimate consumer means the first person who purchases an automobile for purposes other than resale or leases an automobile.

US06 means the test procedure as described in § 86.159–08 of this chapter.

US06-City means the combined periods of the US06 test that occur before and after the US06-Highway period.

US06-Highway means the period of the US06 test that begins at the end of the deceleration which is scheduled to occur at 130 seconds of the driving schedule and terminates at the end of the deceleration which is scheduled to occur at 495 seconds of the driving schedule.

Van means any light truck having an integral enclosure fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

Vehicle configuration means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

Vehicle-specific 5-cycle fuel economy means the fuel economy calculated according to the procedures in § 600.114–08.

■ 18. A new § 600.006–08 is added to read as follows:

§ 600.006–08 Data and information requirements for fuel economy vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, adjusted exhaust emission levels, and test fuel property values as specified in § 600.113–08.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modification (if any) form the vehicle configuration in which the mileage was accumulated. (For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.) If the vehicle was previously used for testing for compliance with part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle for which data are submitted:

(A) Has been tested in accordance with applicable test procedures;

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed; and

(C) Is in compliance with applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make it available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, a description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances.

(iv) In the case of electric vehicles, a copy of calibrations for the electric motor, motor controller, battery configuration, or other components on the test vehicle as well as the design tolerances.

(v) If calibrations for components specified in paragraph (b)(2) (iii) or (iv) of this section were submitted previously as part of the description of another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of part 86 of this chapter (other than those chosen in accordance with §§ 86.1829–01(a) or 86.1845 of this chapter, the FTP, highway, US06, SC03 and cold temperature FTP fuel economy results, as applicable, from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and these test results adjusted in accordance with paragraph (g) of this section.

(3) For diesel vehicles tested to meet the requirements of part 86 of this chapter, data from a cold temperature FTP, performed in accordance with § 600.111–08(e), using the fuel specified in § 600.107–08(c).

(4) For all vehicles tested in paragraph (c)(1) through (3) of this section, the individual fuel economy results measured on a per-phase basis, that is, the individual phase results for all sample phases of the FTP, cold temperature FTP and US06 tests.

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may

provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in § 86.1844–01 of this chapter, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations in subpart D and average fuel economy calculations in subpart F for the classes of automobiles within the categories identified in paragraphs of § 600.510(a)(1) through (4). The test data shall be adjusted in accordance with paragraph (g)(3) or (4) of this section as applicable.

(2) [Reserved]

(3) The manufacturer shall adjust all test data generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000mi} = FE_T[0.979 + 5.25\times10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000mi}$ = Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T = Tested fuel economy value rounded to the nearest 0.1 mpg.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile.

(4) For vehicles with 6,200 miles or less accumulated, the manufacturer is not required to adjust the data.

■ 19. A new § 600.007–08 is added to read as follows:

§ 600.007–08 Vehicle acceptability.

(a) All certification vehicles and other vehicles tested to meet the requirements of part 86 of this chapter (other than those chosen per § 86.1829–01(a) of this chapter), are considered to have met the requirements of this section.

(b) Any vehicle not meeting the provisions of paragraph (a) of this section must be judged acceptable by the Administrator under this section in order for the test results to be reviewed for use in subpart C or F of this part. The Administrator will judge the acceptability of a fuel economy data vehicle on the basis of the information supplied by the manufacturer under § 600.006(b). The criteria to be met are:

(1) A fuel economy data vehicle may have accumulated not more than 10,000 miles. A vehicle will be considered to have met this requirement if the engine and drivetrain have accumulated 10,000 or fewer miles. The components installed for a fuel economy test are not required to be the ones with which the mileage was accumulated, e.g., axles, transmission types, and tire sizes may be changed. The Administrator will determine if vehicle/engine component changes are acceptable.

(2) A vehicle may be tested in different vehicle configurations by change of vehicle components, as specified in paragraph (b)(1) of this section, or by testing in different inertia weight classes. Also, a single vehicle may be tested under different test conditions, i.e., test weight and/or road load horsepower, to generate fuel economy data representing various situations within a vehicle configuration. For purposes of this part, data generated by a single vehicle tested in various test conditions will be treated as if the data were generated by the testing of multiple vehicles.

(3) The mileage on a fuel economy data vehicle must be, to the extent possible, accumulated according to § 86.1831 of this chapter.

(4) Each fuel economy data vehicle must meet the same exhaust emission standards as certification vehicles of the respective engine-system combination during the test in which the city fuel economy test results are generated. The deterioration factors established for the respective engine-system combination per § 86.1841–01 of this chapter as applicable will be used.

(5) The calibration information submitted under § 600.006(b) must be representative of the vehicle configuration for which the fuel economy data were submitted.

(6) Any vehicle tested for fuel economy purposes must be representative of a vehicle which the manufacturer intends to produce under the provisions of a certificate of conformity.

(7) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) of this chapter, or (e)(2) (when applicable) only the following requirements must be met:

(i) For vehicles imported under § 85.1509 of this chapter, a highway fuel economy value must be generated contemporaneously with the emission tests used for purposes of demonstrating compliance with § 85.1509 of this chapter. No modifications or adjustments should be made to the vehicles between the highway fuel economy, FTP, US06, SC03 and Cold temperature FTP tests.

(ii) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), or (c)(4) of this chapter (when applicable) with over 10,000 miles, the equation in § 600.006–08(g)(3) shall be used as though only 10,000 miles had been accumulated.

(iii) Any required fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), or (c)(4) of this chapter (when applicable) must be considered a separate type for the purposes of calculating a fuel economy label for a manufacturer's average fuel economy.

(c) If, based on review of the information submitted under § 600.006(b), the Administrator determines that a fuel economy data vehicle meets the requirements of this section, the fuel economy data vehicle will be judged to be acceptable and fuel economy data from that fuel economy data vehicle will be reviewed pursuant to § 600.008.

(d) If, based on the review of the information submitted under § 600.006(b), the Administrator determines that a fuel economy data vehicle does not meet the requirements of this section, the Administrator will reject that fuel economy data vehicle and inform the manufacturer of the rejection in writing.

(e) If, based on a review of the emission data for a fuel economy data vehicle, submitted under § 600.006(b), or emission data generated by a vehicle tested under § 600.008(e), the Administrator finds an indication of non-compliance with section 202 of the Clean Air Act, 42 U.S.C. 1857 et seq. of the regulation thereunder, he may take such investigative actions as are appropriate to determine to what extent emission non-compliance actually exists.

(1) The Administrator may, under the provisions of § 86.1830–01 of this chapter, request the manufacturer to submit production vehicles of the configuration(s) specified by the Administrator for testing to determine to what extent emission noncompliance of a production vehicle configuration or of a group of production vehicle configurations may actually exist.

(2) If the Administrator determines, as a result of his investigation, that substantial emission non-compliance is exhibited by a production vehicle configuration or group of production vehicle configurations, he may proceed with respect to the vehicle configuration(s) as provided under

§ 600.206(b)(2) or § 600.207(c)(1), as applicable of the Clean Air Act, 42 U.S.C. 1857 *et seq.*

(f) All vehicles used to generate fuel economy data, and for which emission standards apply, must be covered by a certificate of conformity under part 86 of this chapter before:

(1) The data may be used in the calculation of any approved general or specific label value, or

(2) The data will be used in any calculations under subpart F, except that vehicles imported under §§ 85.1509 and 85.1511 of this chapter need not be covered by a certificate of conformity.

■ 20. A new § 600.008–08 is added to read as follows:

§ 600.008–08 Review of fuel economy data, testing by the Administrator.

(a) *Testing by the Administrator.* (1) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate, for the purposes of conducting fuel economy tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. The tests to be performed may comprise the FTP, highway fuel economy test, US06, SC03, or Cold temperature FTP or any combination of those tests. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(2) Retesting and official data determination. For any vehicles selected for confirmatory testing under the provisions of paragraph (a)(1) of this section, the Administrator will follow this procedure:

(i) The manufacturer's data (or harmonically averaged data if more than one test was conducted) will be compared with the results of the Administrator's test.

(ii) If, in the Administrator's judgment, the comparison in paragraph (a)(2)(i) of this section indicates a disparity in the data, the Administrator will repeat the test or tests as applicable.

(A) The manufacturer's average test results and the results of the Administrator's first test will be compared with the results of the Administrator's second test as in paragraph (a)(2)(i) of this section.

(B) If, in the Administrator's judgment, both comparisons in paragraph (a)(2)(i)(A) of this section, indicate a disparity in the data, the Administrator will repeat the applicable test or tests until:

(*1*) In the Administrator's judgment no disparity in the data is indicated by comparison of two tests by the Administrator or by comparison of the manufacturer's average test results and a test by the Administrator; or

(*2*) Four tests of a single test type are conducted by the Administrator in which a disparity in the data is indicated when compared as in paragraph (a)(2)(ii) of this section.

(iii) If there is, in the Administrator's judgment, no disparity indicated by comparison of manufacturer's average test results with a test by the Administrator, the test values generated by the Administrator will be used to represent the vehicle.

(iv) If there is, in the Administrator's judgment, no disparity indicated by comparison of two tests by the Administrator, the harmonic averages of the fuel economy results from those tests will be used to represent the vehicle.

(v) If the situation in paragraph (a)(2)(ii)(B)(*2*) of this section occurs, the Administrator will notify the manufacturer, in writing, that the Administrator rejects that fuel economy data vehicle.

(b) *Manufacturer-conducted confirmatory testing.* (1) If the Administrator determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the following conditions exist:

(i) The vehicle configuration has previously failed an emission standard;

(ii) The test exhibits high emission levels determined by exceeding a percentage of the standards specified by the Administrator for that model year;

(iii) The fuel economy value of the FTP or HFET test is higher than expected based on procedures approved by the Administrator;

(iv) The fuel economy for the FTP or HFET test is close to a Gas Guzzler Tax threshold value based on tolerances established by the Administrator; or

(v) The fuel economy value for the FTP or highway is a potential fuel economy leader for a class of vehicles based on cut points provided by the Administrator.

(2) If the Administrator selects the vehicle for confirmatory testing based on the manufacturer's original test results, the testing shall be conducted as ordered by the Administrator. In this case, the manufacturer-conducted confirmatory testing specified under paragraph (b)(1) of this section would not be required.

(3) The manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer-conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

(i) The manufacturer may, in lieu of conducting a retest, accept the lower of the original and confirmatory test fuel economy results for use in subpart C or F of this part.

(ii) The manufacturer shall conduct a second retest of the FTP or highway test if the fuel economy difference between the second confirmatory test and the original manufacturer test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator) and the fuel economy difference between the second confirmatory test and the first confirmatory test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator). The manufacturer may, in lieu of conducting a second retest, accept the lowest of the original test, the first confirmatory test, and the second confirmatory test fuel economy results for use in subpart C or F of this part.

(4) The Administrator may request the manufacturer to conduct a retest of the US06, SC03 or Cold Temperature FTP on the basis of fuel economy that is higher than expected as specified in criteria provided by the Administrator. Such retests shall not be required before the 2011 model year.

(c) *Review of fuel economy data.* (1) Fuel economy data must be judged reasonable and representative by the Administrator in order for the test results to be used for the purposes of subpart C or F of this part. In making this determination, the Administrator will, when possible, compare the results of a test vehicle to those of other similar test vehicles.

(2) If testing was conducted by the Administrator under the provisions of paragraph (a) of this section, the data from this testing, together with all other fuel economy data submitted for that vehicle under § 600.006(c) or (e) will be evaluated by the Administrator for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c)(1) of this section will be

accepted for use in subpart C or F of this part.

(ii) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(3) If confirmatory testing was conducted by the manufacturer under the provisions of paragraph (b) of this section, the data from this testing will be evaluated by the Administrator for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c)(1) of this section will be accepted for use in subpart C or F of this part.

(ii) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(4) If no confirmatory testing was conducted by either the Administrator or the manufacturer under the provisions of paragraph (a) and (b) of this section, respectively, then the data submitted under the provisions of § 600.006(c) or (e) shall be accepted for use in subpart C or F of this part.

(i) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(ii) If more than one test was conducted, the harmonic average of the test results shall be accepted for use in subpart C or F of this part.

(d) If, based on a review of the fuel economy data generated by testing under paragraph (a) of this section, the Administrator determines that an unacceptable level of correlation exists between fuel economy data generated by a manufacturer and fuel economy data generated by the Administrator, he/she may reject all fuel economy data submitted by the manufacturer until the cause of the discrepancy is determined and the validity of the data is established by the manufacturer.

(e)(1) If, based on the results of an inspection conducted under § 600.005(b) or any other information, the Administrator has reason to believe that the manufacturer has not followed proper testing procedures or that the testing equipment is faulty or improperly calibrated, or if records do not exist that will enable him to make a finding of proper testing, the Administrator may notify the manufacturer in writing of his finding and require the manufacturer to:

(i) Submit the test vehicle(s) upon which the data are based or additional test vehicle(s) at a place he may designate for the purpose of fuel economy testing.

(ii) Conduct such additional fuel economy testing as may be required to demonstrate that prior fuel economy test data are reasonable and representative.

(2) Previous acceptance by the Administrator of any fuel economy test data submitted by the manufacturer shall not limit the Administrator's right to require additional testing under paragraph (e)(1) of this section.

(3) If, based on tests required under paragraph (e)(1) of this section, the Administrator determines that any fuel economy data submitted by the manufacturer and used to calculate the manufacturer's fuel economy average was unrepresentative, the Administrator may recalculate the manufacturer's fuel economy average based on fuel economy data that he/she deems representative.

(4) A manufacturer may request a hearing as provided in § 600.009 if the Administrator decides to recalculate the manufacturer's average pursuant to determinations made relative to this section.

■ 21. A new § 600.010–08 is added to read as follows:

§ 600.010–08 Vehicle test requirements and minimum data requirements.

(a) Unless otherwise exempted from specific emission compliance requirements, for each certification vehicle defined in this part, and for each vehicle tested according to the emission test procedures in part 86 of this chapter for addition of a model after certification or approval of a running change (§§ 86.079–32, 86.079–33 and 86.082–34 or 86.1842–01 of this chapter, as applicable):

(1) The manufacturer shall generate FTP fuel economy data by testing according to the applicable procedures.

(2) The manufacturer shall generate highway fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Using an analytical technique, as described in § 600.006(e).

(3) The manufacturer shall generate US06 fuel economy data by testing according to the applicable procedures. Alternate fueled vehicles or dual fueled vehicles operating on alternate fuel may optionally generate this data using the alternate fuel.

(4) The manufacturer shall generate SC03 fuel economy data by testing according to the applicable procedures. Alternate fueled vehicles or dual fueled vehicles operating on alternate fuel may optionally generate this data using the alternate fuel.

(5) The manufacturer shall generate cold temperature FTP fuel economy data by testing according to the applicable procedures. Alternate fueled vehicles or dual fueled vehicles operating on alternate fuel may optionally generate this data using the alternate fuel.

(6) The data generated in paragraphs (a)(1) through (5) of this section, shall be submitted to the Administrator in combination with other data for the vehicle required to be submitted in part 86 of this chapter.

(b) For each fuel economy data vehicle:

(1) The manufacturer shall generate FTP and HFET fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Use of an analytical technique as described in § 600.006(e), in addition to testing (e.g., city fuel economy data by testing, highway fuel economy data by analytical technique).

(2) The data generated shall be submitted to the Administrator according to the procedures in § 600.006.

(c) Minimum data requirements for labeling. (1) In order to establish fuel economy label values under § 600.306–08, the manufacturer shall use only test data accepted in accordance with § 600.008–08 meeting the minimum coverage of:

(i) Data required for emission certification under §§ 86.001–24, 86.079–32, 86.079–33, 86.082–34, 86.1828–01 and 86.1842–01 of this chapter, as applicable,

(ii) (A) FTP and HFET data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level, and

(B) If required under § 600.115–08, for 2011 and later model year vehicles, US06, SC03 and cold temperature FTP data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level. Manufacturers may optionally generate this data for any 2008 through 2010 model years, and, 2011 and later model year vehicles, if not otherwise required.

(iii) For additional model types established under § 600.208(a)(2) or § 600.209(a)(2), FTP and HFET data, and if required under § 600.115–08, US06, SC03 and Cold temperature FTP data

from each subconfiguration included within the model type.

(2) For the purpose of recalculating fuel economy label values as required under § 600.314(b), the manufacturer shall submit data required under § 600.507.

(d) Minimum data requirements for the manufacturer's average fuel economy. For the purpose of calculating the manufacturer's average fuel economy under § 600.510, the manufacturer shall submit data representing at least 90 percent of the manufacturer's actual model year production, by configuration, for each category identified for calculation under § 600.510(a).

■ 22. The table of references in § 600.011–93(b)(1) is revised to read as follows:

§ 600.011–93 Reference materials.

* * * * *

(b) * * *

Document number and name	40 CFR part 600 reference
ASTM E 29–67 (Reapproved 1973) Standard Recommended Practice for Indicating Which Places of Figures Are To Be Considered Significant in Specified Limiting Values.	600.002–93, 600.002–08.
ASTM D 1298–85 (Reapproved 1990) Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.	600.113–93, 600.510–93, 600.113–08, 600.510– 08.
ASTM D 3343–90 Standard Test Method for Estimation of Hydrogen Content of Aviation Fuels	600.113–93, 600.113–08.
ASTM D 3338–92 Standard Test Method for Estimation of Net Heat of Combustion of Aviation Fuels.	600.113–93, 600.113–08.
ASTM D 240–92 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.	600.113–93, 600.510–93, 600.113–08, 600.510–08.
ASTM D975–04c "Standard Specification for Diesel Fuel Oils"	600.107–08.
ASTM D 1945–91 Standard Test Method for Analysis of Natural Gas By Gas Chromatography.	600.113–93, 600.113–08.

Subpart B—[Amended]

■ 23. A new § 600.101–08 is added to read as follows:

§ 600.101–08 General applicability.

(a) The provisions of this subpart are applicable to 2008 and later model year automobiles, except medium duty passenger vehicles, manufactured on or after January 26, 2007, and to 2011 and later model year medium-duty passenger vehicles. All 2008 automobiles manufactured prior to January 26, 2007 may optionally comply with the provisions of this subpart.

■ 24. A new § 600.106–08 is added to read as follows:

§ 600.106–08 Equipment requirements.

The requirements for test equipment to be used for all fuel economy testing are given in Subparts B and C of part 86 of this chapter.

■ 25. A new § 600.107–08 is added to read as follows:

§ 600.107–08 Fuel specifications.

(a) The test fuel specifications for gasoline, diesel, methanol, and methanol-petroleum fuel mixtures are given in § 86.113 of this chapter, except for cold temperature FTP fuel requirements for diesel and alternative fuel vehicles, which are given in paragraph (b) of this section.

(b)(1) Diesel test fuel used for cold temperature FTP testing must comprise a winter-grade diesel fuel as specified in ASTM D975–04c "Standard Specification for Diesel Fuel Oils" and that complies with part 80 of this chapter. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Alternatively, EPA may approve the use of a different diesel fuel, provided that the level of kerosene added shall not exceed 20 percent.

(2) The manufacturer may request EPA approval of the use of an alternative fuel for cold temperature FTP testing.

■ 26. A new § 600.109–08 is added to read as follows:

§ 600.109–08 EPA driving cycles.

(a) The FTP driving cycle is prescribed in § 86.115 of this chapter.

(b) The highway fuel economy driving cycle is specified in this paragraph.

(1) The Highway Fuel Economy Driving Schedule is set forth in Appendix I of this part. The driving schedule is defined by a smooth trace drawn through the specified speed versus time relationships.

(2) The speed tolerance at any given time on the dynamometer driving schedule specified in Appendix I of this part, or as printed on a driver's aid chart approved by the Administrator, when conducted to meet the requirements of paragraph (b) of § 600.111 is defined by upper and lower limits. The upper limit is 2 mph higher than the highest point on trace within 1 second of the given time. The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time. Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for less than 2 seconds on any occasion. Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurrences.

(3) A graphic representation of the range of acceptable speed tolerances is found in § 86.115(c) of this chapter.

(c) The US06 driving cycle is set forth in Appendix I of part 86 of this chapter.

(d) The SC03 driving cycle is set forth in Appendix I of part 86 of this chapter.

■ 27. A new § 600.110–08 is added to read as follows:

§ 600.110–08 Equipment calibration.

The equipment used for fuel economy testing must be calibrated according to the provisions of §§ 86.116 and 86.216 of this chapter.

■ 28. A new § 600.111–08 is added to read as follows:

§ 600.111–08 Test procedures.

(a) *FTP testing procedures.* The test procedures to be followed for conducting the FTP test are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable, except as provided for in paragraph (b)(5) of this section. (The evaporative loss portion of the test procedure may be omitted

unless specifically required by the Administrator.)

(b) *Highway fuel economy testing procedures.* (1) The Highway Fuel Economy Dynamometer Procedure (HFET) consists of preconditioning highway driving sequence and a measured highway driving sequence.

(2) The HFET is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stop per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emission is collected continuously for subsequent analysis of hydrocarbons, carbon monoxide, carbon dioxide using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer. Methanol and formaldehyde samples are collected and individually analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(3) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart. The Administrator may authorize maintenance to correct component malfunction or failure.

(4) *Transmission.* The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(5) *Road load power and test weight determination.* § 86.129 of this chapter applies for determination of road load power and test weight for highway fuel economy testing. The test weight for the testing of a certification vehicle will be that test weight specified by the Administrator under the provisions of part 86 of this chapter. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration.

(6) *Vehicle preconditioning.* The HFET is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter. When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (b)(6) (i) or (ii) of this section, as applicable.

(i) If the vehicle has experienced more than three hours of soak (68 °F–86 °F) since the completion of the Federal Emission Test Procedure, or has experienced periods of storage outdoors, or in environments where soak temperature is not controlled to 68 °F–86 °F, the vehicle must be preconditioned by operation on a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(ii) In unusual circumstances where additional preconditioning is desired by the manufacturer, the provisions of § 86.132(a)(3) of this chapter apply.

(7) *Highway fuel economy dynamometer procedure.* (i) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109(b)) separated by 15 seconds of idle. The first cycle of the Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(ii) The provisions of § 86.135 (b), (c), (e), (f), (g), (h) and (i) Dynamometer procedure of this chapter, apply for highway fuel economy testing.

(iii) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide. Methanol and formaldehyde samples (exhaust and dilution air) are collected and analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(iv) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(8) Engine starting and restarting. (i) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures.

(ii) False starts and stalls during the preconditioning cycle must be treated as in § 86.136(d) and (e). If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.1834–01 as applicable, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(9) *Dynamometer test run.* The following steps must be taken for each test:

(i) Place the drive wheels of the vehicle on the dynamometer. The vehicle may be driven onto the dynamometer.

(ii) Open the vehicle engine compartment cover and position the cooling fan(s) required. Manufacturers may request the use of additional cooling fans for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation.

(iii) Preparation of the CVS must be performed before the measurement highway driving cycle.

(iv) Equipment preparation. The provisions of § 86.137(b)(3) through (6) of this chapter apply for highway fuel economy test except that only one exhaust sample collection bag and one dilution air sample collection bag need be connected to the sample collection systems.

(v) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109(b).

(vi) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test.

(vii) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109(b) while sampling the exhaust gas.

(viii) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

(10) For alcohol-based dual fuel automobiles, the procedures of § 600.111(a) and (b) shall be performed for each of the fuels on which the vehicle is designed to operate.

(c) *US06 Testing procedures*. The test procedures to be followed for conducting the US06 test are those prescribed in § 86.159 of this chapter, as applicable.

(d) *SC03 testing procedures*. The test procedures to be followed for conducting the SC03 test are prescribed in §§ 86.160 through 161 of this chapter, as applicable.

(e) *Cold temperature FTP procedures*. The test procedures to be followed for conducting the cold temperature FTP test are generally prescribed in subpart C of part 86 of this chapter, as applicable. For the purpose of fuel economy labeling, diesel vehicles are subject to cold temperature FTP testing, but are not required to measure particulate matter, as described in § 86.210–08 of this chapter.

■ 29. A new § 600.112–08 is added to read as follows:

§ 600.112–08 Exhaust sample analysis.

The exhaust sample analysis must be performed according to § 86.140, or § 86.240 of this chapter, as applicable.

■ 30. A new § 600.113–08 is added to read as follows:

§ 600.113–08 Fuel economy calculations for FTP, HFET, US06, SC03 and cold temperature FTP tests.

The Administrator will use the calculation procedure set forth in this paragraph for all official EPA testing of vehicles fueled with gasoline, diesel, alcohol-based or natural gas fuel. The calculations of the weighted fuel economy values require input of the weighted grams/mile values for total hydrocarbons (HC), carbon monoxide (CO), and carbon dioxide (CO_2); and, additionally for methanol-fueled automobiles, methanol (CH_3OH) and formaldehyde (HCHO); and additionally for natural gas-fueled vehicles non-methane hydrocarbons (NMHC) and methane (CH_4) for the FTP, HFET, US06, SC03 and cold temperature FTP tests. Additionally, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The FTP, HFET, US06, SC03 and cold temperature FTP fuel economy values shall be calculated as specified in this section. An example appears in Appendix II of this part.

(a) Calculate the FTP fuel economy.

(1) Calculate the weighted grams/mile values for the FTP test for HC, CO and CO_2; and, additionally for methanol-fueled automobiles, CH_3OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in § 86.144 of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(2) Calculate separately the grams/mile values for the cold transient phase, stabilized phase and hot transient phase of the FTP test. For vehicles with more than one source of propulsion energy, one of which is a rechargeable energy storage system, or vehicles with special features that the Administrator determines may have a rechargeable energy source, whose charge can vary during the test, calculate separately the grams/mile values for the cold transient phase, stabilized phase, hot transient phase and hot stabilized phase of the FTP test.

(b) Calculate the HFET fuel economy.

(1) Calculate the mass values for the highway fuel economy test for HC, CO and CO_2, and where applicable CH_3OH, HCHO, NMHC and CH_4 as specified in § 86.144(b) of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO and CO_2, and where applicable CH_3OH, HCHO, NMHC and CH_4 by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual distance traveled, measured in miles, as specified in § 86.135(h) of this chapter.

(c) Calculate the cold temperature FTP fuel economy.

(1) Calculate the weighted grams/mile values for the cold temperature FTP test for HC, CO and CO_2; and, additionally for methanol-fueled automobiles, CH_3OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in § 86.244 of this chapter. For 2008 through 2010 diesel-fueled vehicles, HC measurement is optional.

(2) Calculate separately the grams/mile values for the cold transient phase, stabilized phase and hot transient phase of the cold temperature FTP test in § 86.244 of this chapter.

(3) Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(d) Calculate the US06 fuel economy.

(1) Calculate the total grams/mile values for the US06 test for HC, CO and CO_2; and where applicable CH_3OH, HCHO, NMHC and CH_4, as specified in § 86.164 of this chapter.

(2) Calculate separately the grams/mile values for HC, CO and CO_2; and where applicable CH_3OH, HCHO, NMHC and CH_4, for both the US06 City phase and the US06 Highway phase of the US06 test as specified in § 86.164 of this chapter. In lieu of directly measuring the emissions of the separate city and highway phases of the US06 test according to the provisions of § 86.159 of this chapter, the manufacturer may, with the advance approval of the Administrator and using good engineering judgment, optionally analytically determine the grams/mile values for the city and highway phases of the US06 test. To analytically determine US06 City and US06 Highway phase emission results, the manufacturer shall multiply the US06 total grams/mile values determined in paragraph (d)(1) of this section by the estimated proportion of fuel use for the city and highway phases relative to the total US06 fuel use. The manufacturer may estimate the proportion of fuel use for the US06 City and US06 Highway phases by using modal HC, CO, and CO_2 emissions data, or by using appropriate OBD data (*e.g.*, fuel flow rate in grams of fuel per second), or another method approved by the Administrator.

(3) Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(e) Calculate the grams/mile values for the SC03 test for HC, CO and CO_2; and additionally for methanol-fueled automobiles, CH_3OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in § 86.144 of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(f)(1) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine the following fuel properties:

(i) Specific gravity per ASTM D 1298–85 (Reapproved 1990) ''Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method''. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West

Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) Carbon weight fraction per ASTM D 3343–90 ''Standard Test Method for Estimation of Hydrogen Content of Aviation Fuels.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(iii) Net heating value (Btu/lb) per ASTM D 3338–92 ''Standard Test Method for Estimation of Net Heat of Combustion of Aviation Fuels.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) Methanol test fuel shall be analyzed to determine the following fuel properties:

(i) Specific gravity using either:

(A) ASTM D 1298–85 (Reapproved 1990) ''Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method'' for the blend. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or:

(B) ASTM D 1298–85 (Reapproved 1990) ''Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method'' for the gasoline fuel component and also for the methanol fuel component and combining as follows. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

$SG = SG_g \times$ volume fraction gasoline $+ SG_m \times$ volume fraction methanol.

(ii)(A) Carbon weight fraction using the following equation:

$$CWF = CWF_g \times MF_g + 0.375 \times MF_m$$

Where:

CWF_g = Carbon weight fraction of gasoline portion of blend per ASTM D 3343–90 ''Standard Test Method for Estimation of Hydrogen Content of Aviation Fuels.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

MF_g=Mass fraction gasoline=$(G \times SG_g)/(G \times SG_g + M \times SG_m)$

MF_m=Mass fraction methanol=$(M \times SG_m)/(G \times SG_g + M \times SG_m)$

Where:

G=Volume fraction gasoline.

M=Volume fraction methanol.

SG_g=Specific gravity of gasoline as measured by ASTM D 1298–85 (Reapproved 1990) ''Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW, Room 3340, Washington DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

SG_m=Specific gravity of methanol as measured by ASTM D 1298–85 (Reapproved 1990) ''Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW, Room 3340, Washington DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(B) Upon the approval of the Administrator, other procedures to measure the carbon weight fraction of the fuel blend may be used if the manufacturer can show that the procedures are superior to or equally as accurate as those specified in this paragraph (f)(2)(ii).

(iii) Net heating value (BTU/lb) per ASTM D 240–92 ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW, Room 3340, Washington DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(3) Natural gas test fuel shall be analyzed to determine the following fuel properties:

(i) Fuel composition per ASTM D 1945–91 ''Standard Test Method for Analysis of Natural Gas By Gas Chromatography.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) Specific gravity (based on fuel composition per ASTM D 1945–91 ''Standard Test Method for Analysis of Natural Gas by Gas Chromatography.'') This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(iii) Carbon weight fraction based on the carbon contained only in the HC constituents of the fuel=weight of carbon in HC constituents divided by the total weight of fuel.

(iv) Carbon weight fraction of fuel=total weight of carbon in the fuel (*i.e.*, includes carbon contained in HC and in CO_2) divided by total weight of fuel.

(g) Calculate separate FTP, highway, US06, SC03 and Cold temperature FTP fuel economy from the grams/mile values for total HC, CO, CO_2 and, where applicable, CH_3OH, HCHO, NMHC and CH_4 and, the test fuel's specific gravity, carbon weight fraction, net heating value, and additionally for natural gas, the test fuel's composition. The emission values (obtained per paragraph (a) through (e) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with § 86.094–26(a)(6)(iii) or § 86.1837–01 of this chapter as applicable. The CO_2 values (obtained per this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (f) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (f) of this section) shall be recorded to the nearest whole Btu/lb.

(h)(1) For gasoline-fueled automobiles tested on test fuel specified in § 86.113–04(a), the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = (5174 \times 10^4 \times C \times CWF \times SG)/[((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)) \times ((0.6 \times SG \times NHV) + 5471)]$$

Where:

HC = Grams/mile HC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

CWF = Carbon weight fraction of test fuel as obtained in paragraph (g) of this section.

NHV = Net heating value by mass of test fuel as obtained in paragraph (g) of this section.

SG = Specific gravity of test fuel as obtained in paragraph (g) of this section.

(2) Round the calculated result to the nearest 0.1 miles per gallon.

(i)(1) For diesel-fueled automobiles, calculate the fuel economy in miles per gallon of diesel fuel by dividing 2778 by the sum of three terms:

(i) (A) 0.866 multiplied by HC (in grams/miles as obtained in paragraph (g) of this section) or

(B) zero, in the case of cold FTP diesel tests for which HC was not collected, as permitted in § 600.113–08(c);

(ii) 0.429 multiplied by CO (in grams/mile as obtained in paragraph (g) of this section); and

(iii) 0.273 multiplied by CO_2 (in grams/mile as obtained in paragraph (g) of this section).

(2) Round the quotient to the nearest 0.1 mile per gallon.

(j) For methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = (CWF \times SG \times 3781.8)/((CWF_{exHC} \times HC) + (0.429 \times CO) + (0.273 \times CO_2) + (0.375 \times CH_3OH) + (0.400 \times HCHO))$$

CWF = Carbon weight fraction of the fuel as determined in paragraph (f)(2)(ii) of this section.

SG = Specific gravity of the fuel as determined in paragraph (f)(2)(i) of this section.

CWF_{exHC} = Carbon weight fraction of exhaust hydrocarbons = CWF_g as determined in (f)(2)(ii) of this section (for M100 fuel, CWF_{exHC} = 0.866).

HC = Grams/mile HC as obtained in paragraph (g) of this section.

CO = Grams/mile CO as obtained in paragraph (g) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (g) of this section.

CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.

HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.

(k) For automobiles fueled with natural gas, the fuel economy in miles per gallon of natural gas is to be calculated using the following equation:

$$mpg_e = \frac{CWF_{HC/NG} D_{NG} 121.5}{(0.749)\ CH_4 + (CWF_{NMHC}) + (0.429)\ CO + (0.273)(CO_2 - CO_{2NG})}$$

Where:

mpg_e=miles per equivalent gallon of natural gas.

$CWF_{HC/NG}$=carbon weight fraction based on the hydrocarbon constituents in the natural gas fuel as obtained in paragraph (g) of this section.

D_{NG}=density of the natural gas fuel [grams/ft3 at 68 °F (20 °C) and 760 mm Hg (101.3 kPa)] pressure as obtained in paragraph (g) of this section.

CH_4, NMHC, CO, and CO_2=weighted mass exhaust emissions [grams/mile] for methane, non-methane HC, carbon monoxide, and carbon dioxide as calculated in § 600.113.

CWF_{NMHC}=carbon weight fraction of the non-methane HC constituents in the fuel as determined from the speciated fuel composition per paragraph (f)(3) of this section.

CO_{2NG}=grams of carbon dioxide in the natural gas fuel consumed per mile of travel.

$CO_{2NG}=FC_{NG}\ D_{NG}\ WF_{CO2}$

Where:

$$FC_{NG} = \text{cubic feet of natural gas fuel consumed per mile} = \frac{(0.749)\ CH_4 + (CWF_{NMHC})\,NMHC + (0.429)\,CO + (0.273)\,(CO_2)}{CWF_{NG}\ D_{NG}}$$

Where:

CWF_{NG} = the carbon weight fraction of the natural gas fuel as calculated in paragraph (f) of this section.

WF_{CO2} = weight fraction carbon dioxide of the natural gas fuel calculated using the mole fractions and molecular weights of the natural gas fuel constituents per ASTM D 1945–91 ''Standard Test Method for Analysis of Natural Gas by Gas Chromatography.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(l) Equations for fuels other than those specified in paragraphs (h) through (k) of this section may be used with advance EPA approval.

■ 31. A new § 600.114–08 is added to read as follows:

§ 600.114–08 Vehicle-specific 5-cycle fuel economy calculations.

This section applies to data used for fuel economy labeling under Subpart D of this part.

(a) *City fuel economy.* For each vehicle tested under § 600.010–08(c)(i) and (ii), determine the 5-cycle city fuel economy using the following equation:

$$(1)\ \text{City FE} = 0.905 \times \frac{1}{(\text{Start FC} + \text{Running FC})}$$

Where:

$$\text{(i) Start FC (gallons per mile)} = 0.33 \times \left(\frac{(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20})}{4.1} \right)$$

Where:

$$\text{Start Fuel}_x = 3.6 \times \left(\frac{1}{\text{Bag 1 FE}_x} - \frac{1}{\text{Bag 3 FE}_x} \right)$$

Where:

Bag Y FE_x = the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75 °F or 20 °F,

and,

$$\text{(ii) Running FC} = 0.82 \times \left[\frac{0.48}{\text{Bag } 2_{75}\ \text{FE}} + \frac{0.41}{\text{Bag } 3_{75}\ \text{FE}} + \frac{0.11}{\text{US06 City FE}} \right] + 0.18 \times \left[\frac{0.5}{\text{Bag } 2_{20}\ \text{FE}} + \frac{0.5}{\text{Bag } 3_{20}\ \text{FE}} \right] + 0.133 \times 1.083 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75}\ \text{FE}} + \frac{0.39}{\text{Bag } 2_{75}\ \text{FE}} \right) \right]$$

Where:

US06 City FE = fuel economy in miles per gallon over the ''city'' portion of the US06 test,

HFET FE = fuel economy in miles per gallon over the HFET test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

(b) *Highway fuel economy.* (1) For each vehicle tested under §§ 600.010–08(a) and (c)(1)(ii)(B), determine the 5-

cycle highway fuel economy using the following equation:

$$\text{Highway FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(i) Start FC} = 0.33 \times \left(\frac{(0.76 \times \text{Start Fuel}_{75}) + (0.24 \times \text{Start Fuel}_{20})}{60} \right)$$

Where:

$$\text{Start Fuel}_x = 3.6 \times \left(\frac{1}{\text{Bag 1 FE}_x} - \frac{1}{\text{Bag 3 FE}_x} \right)$$

and,

$$\text{(ii) Running FC} = 1.007 \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}} \right] + 0.133 \times 0.377 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag 3}_{75}\text{FE}} + \frac{0.39}{\text{Bag 2}_{75}\text{FE}} \right) \right]$$

Where:

US06 Highway FE = fuel economy in mile per gallon over the highway portion of the US06 test,

HFET FE = fuel economy in mile per gallon over the HFET test,

SC03 FE = fuel economy in mile per gallon over the SC03 test.

(2) If the condition specified in § 600.115–08(b)(2)(iii)(B) is met, in lieu of using the calculation in paragraph (b)(1) of this section, the manufacturer may optionally determine the highway fuel economy using the following modified 5-cycle equation which utilizes data from FTP, HFET, and US06 tests, and applies mathematic adjustments for Cold FTP and SC03 conditions:

(i) Perform a US06 test in addition to the FTP and HFET tests.

(ii) Determine the 5-cycle highway fuel economy according to the following formula:

$$\text{Highway FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) Start FC} = 0.33 \times \left(\frac{(0.0055155 + 1.13637 \times \text{Start Fuel}_{75})}{60.0} \right)$$

Where:

$$\text{Start Fuel}_{75} = 3.6 \times \left(\frac{1}{\text{Bag 1 FE}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}} \right)$$

Bag y FE_{75} = the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75 °F.

$$\text{(B) Running FC} = 1.007 \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}}\right] + \left[0.377 \times 0.133 \times \left(0.00540 + \frac{0.1357}{\text{US06 FE}}\right)\right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the highway portion of the US06 test.

HFET FE = fuel economy in miles per gallon over the HFET test.

US06 FE = fuel economy in miles per gallon over the entire US06 test.

(c) *Fuel economy calculations for hybrid electric vehicles.* Under the requirements of § 86.1811–04(n), hybrid electric vehicles are subject to California test methods which require FTP emission sampling for the 75 °F FTP test over four phases (bags) of the UDDS (cold-start, transient, warm-start, transient). Optionally, these four phases may be combined into two phases (phases 1 + 2 and phases 3 + 4). Calculations for these sampling methods follow.

(1) *Four-bag FTP equations.* If the 4-bag sampling method is used, manufacturers may use the equations in paragraphs (a) and (b) of this section to determine city and highway fuel economy estimates. If this method is chosen, it must be used to determine both city and highway fuel economy. Optionally, the following calculations may be used, provided that they are used to determine both city and highway fuel economy:

(i) *City fuel economy.*

$$\text{City FE} = 0.905 \times \frac{1}{(\text{Start FC} + \text{Running FC})}$$

Where:

$$\text{(A) Start FC (gallons per mile)} = 0.33 \times \left(\frac{(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20})}{4.1}\right)$$

Where:

$$(1)\ \text{Start Fuel}_{75} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}}\right] + 3.9 \times \left[\frac{1}{\text{Bag 2 FE}_{75}} - \frac{1}{\text{Bag 4 FE}_{75}}\right]$$

and

$$(2)\ \text{Start Fuel}_{20} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}}\right]$$

(B) Running FC (gallons per mile) =

$$0.82 \times \left[\frac{0.48}{\text{Bag 4}_{75}\ \text{FE}} + \frac{0.41}{\text{Bag 3}_{75}\ \text{FE}} + \frac{0.11}{\text{US06 City FE}}\right] + 0.18 \times \left[\frac{0.5}{\text{Bag 2}_{20}\ \text{FE}} + \frac{0.5}{\text{Bag 3}_{20}\ 3\ \text{FE}}\right]$$
$$+ 0.133 \times 1.083 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag 3}_{75}\ \text{FE}} + \frac{0.39}{\text{Bag 4}_{75}\ \text{FE}}\right)\right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the city portion of the US06 test.

US06 Highway FE = fuel economy in miles per gallon over the Highway portion of the US06 test.

HFET FE = fuel economy in miles per gallon over the HFET test.

SC03 FE = fuel economy in miles per gallon over the SC03 test.

(ii) *Highway fuel economy.*

$$\text{Highway FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) Start FC} = 0.33 \times \frac{\left(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20}\right)}{60}$$

Where:

$$\text{Start Fuel}_{75} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}}\right] + 3.9 \times \left[\frac{1}{\text{Bag 2 FE}_{75}} - \frac{1}{\text{Bag 4 FE}_{75}}\right]$$

$$\text{Start Fuel}_{20} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}}\right]$$

$$\text{(B) Running FC} = 1.007 \times \left[\frac{0.79}{\text{US06 Highway FE}} - \frac{0.21}{\text{HFET FE}}\right] + 0.133 \times 0.377 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag 3}_{75}\text{ FE}} + \frac{0.39}{\text{Bag 4}_{75}\text{ FE}}\right)\right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the Highway portion of the US06 test,

HFET FE = fuel economy in miles per gallon over the HFET test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

(2) *Two-bag FTP equations.* If the 2-bag sampling method is used for the 75 °F FTP test, it must be used to determine both city and highway fuel economy. The following calculations must be used to determine both city and highway fuel economy:

(i) *City fuel economy.*

$$\text{City FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) Start FC} = 0.33 \times \frac{\left(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20}\right)}{4.1}$$

Where:

$$\text{Start Fuel}_{75} = 7.5 \times \left[\frac{1}{\text{Bag 1/2 FE}_{75}} - \frac{1}{\text{Bag 3/4 FE}_{75}}\right]$$

$$\text{Start Fuel}_{20} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}}\right]$$

Where:

Bag y FE_{20} = the fuel economy in miles per gallon of fuel during Bag 1 or Bag 3 of the 20 °F FTP test.

Bag x/y FE_x = fuel economy in miles per gallon of fuel during combined phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

$$\text{(B) Running FC} = 0.82 \times \left[\frac{0.90}{\text{Bag } 3/4_{75} \text{ FE}} + \frac{0.10}{\text{US06 City FE}} \right] + 0.18 \times \left[\frac{0.5}{\text{Bag } 2_{20} \text{ FE}} + \frac{0.5}{\text{Bag } 3_{20} \text{ FE}} \right] + 0.133 \times 1.083 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{1.0}{\text{Bag } 3/4_{75} \text{ FE}} \right) \right]$$

Where:

US06 City FE = fuel economy in miles per gallon over the city portion of the US06 test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

Bag x/y FE_x = fuel economy in miles per gallon of fuel during combined phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75 °F.

(ii) *Highway fuel economy.*

$$\text{Highway FE} = 0.905 \times \frac{1}{\text{Start FC} + \text{Running FC}}$$

Where:

$$\text{(A) Start FC} = 0.33 \times \frac{(0.76 \times \text{Start Fuel}_{75} + 0.24 \times \text{Start Fuel}_{20})}{60}$$

Where:

$$\text{Start Fuel}_{75} = 7.5 \times \left[\frac{1}{\text{Bag 1/2 FE}_{75}} - \frac{1}{\text{Bag 3/4 FE}_{75}} \right]$$

and

$$\text{Start Fuel}_{20} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE}_{20}} - \frac{1}{\text{Bag 3 FE}_{20}} \right]$$

and

$$\text{(B) Running FC} = 1.007 \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}} \right] + 0.133 \times 0.377 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{1.0}{\text{Bag } 3/4_{75} \text{ FE}} \right) \right]$$

Where:

US06 Highway FE = fuel economy in miles per gallon over the city portion of the US06 test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

Bag y FE_{20} = the fuel economy in miles per gallon of fuel during Bag 1 or Bag 3 of the 20 °F FTP test.

Bag x/y FE_x = fuel economy in miles per gallon of fuel during phases 1 and 2 or phases 3 and 4 of the FTP test conducted at an ambient temperature of 75°F.

(3) For hybrid electric vehicles using the modified 5-cycle highway calculation in paragraph (b)(2) of this section, the equation in paragraph (b)(2)(ii)(A) of this section, applies except that the equation for Start $Fuel_{75}$ will be replaced with one of the following:

(i) The equation for Start $Fuel_{75}$ for hybrids tested according to the 4-bag FTP is:

$$\text{Start Fuel}_{75} = 3.6 \times \left[\frac{1}{\text{Bag 1 FE } 75_{75}} - \frac{1}{\text{Bag 3 FE}_{75}} \right] + 3.9 \times \left[\frac{1}{\text{Bag 2 FE}_{75}} - \frac{1}{\text{Bag 4 FE}_{75}} \right]$$

(ii) The equation for Start $Fuel_{75}$ for hybrids tested according to the 2-bag FTP is:

$$\text{Start Fuel}_{75} = 7.5 \left[\frac{1}{\text{Bag 1/2 FE}_{75}} - \frac{1}{\text{Bag 3/4 FE}_{75}} \right]$$

32. A new § 600.115–is added to read as follows:

§ 600.115–08 Criteria for determining the fuel economy label calculation method for 2011 and later model year vehicles.

This section provides the criteria to determine if the derived 5-cycle method for determining fuel economy label values, as specified in § 600.210–08 (a)(2) or (b)(2), as applicable, may be used to determine label values for 2011 and later model year vehicles. Separate criteria apply to city and highway fuel economy for each test group. The provisions of this section are optional. If this option is not chosen, or if the criteria provided in this section are not met, fuel economy label values for 2011 and later model year vehicles must be determined according to the vehicle-specific 5-cycle method specified in § 600.210–08(a)(1) or (b)(1), as applicable.

(a) *City fuel economy criterion.* (1) For each test group certified for emission compliance under § 86.1848–01 of this chapter, the FTP, HFET, US06, SC03 and Cold FTP tests determined to be official under § 86.1835–01 of this chapter are used to calculate the vehicle-specific 5-cycle city fuel economy which is then compared to the derived 5-cycle city fuel economy, as follows:

(i) The vehicle-specific 5-cycle city fuel economy from the official FTP, HFET, US06, SC03 and Cold FTP tests for the test group is determined according to the provisions of § 600.114–08(a) and rounded to the nearest one tenth of a mile per gallon.

(ii) Using the same FTP data as used in paragraph (a)(i) of this section, the corresponding derived 5-cycle city fuel economy is calculated according to the following equation:

$$\text{Derived 5-cycle city fuel economy} = \frac{1}{\left(\{\text{City Intercept}\} + \frac{\{\text{City Slope}\}}{\text{FTP FE}} \right)}$$

Where:

City Intercept = Intercept determined by the Administrator. See § 600.210–08(a)(2)(iii).

City Slope = Slope determined by the Administrator. See § 600.210–08(a)(2)(iii.)

FTP FE = the FTP-based city fuel economy from the official test used forcertification compliance, determined under § 600.113–08(a), rounded to the nearest tenth.

(2) The derived 5-cycle fuel economy value determined in paragraph (a)(1)(ii) of this section is multiplied by 0.96 and rounded to the nearest one tenth of a mile per gallon.

(3) If the vehicle-specific 5-cycle city fuel economy determined in paragraph (a)(1)(i) of this section is greater than or equal to the value determined in paragraph (a)(2) of this section, then the manufacturer may base the city fuel economy estimates for the model types covered by the test group on the derived 5-cycle method specified in § 600.210–08(a)(2) or (b)(2), as applicable.

(b) *Highway fuel economy criterion.* The determination for highway fuel economy depends upon the outcome of the determination for city fuel economy in paragraph (a)(3) of this section for each test group.

(1) If the city determination for a test group made in paragraph (a)(3) of this section does not allow the use of the derived 5-cycle method, then the highway fuel economy values for all model types represented by the test group are likewise not allowed to be determined using the derived 5-cycle method, and must be determined according to the vehicle-specific 5-cycle method specified in § 600.210–08(a)(1) or (b)(1), as applicable.

(2) If the city determination made in paragraph (a)(3) of this section allows the use of the derived 5-cycle method, a separate determination is made for the highway fuel economy labeling method as follows:

(i) For each test group certified for emission compliance under § 86.1848–01 of this chapter, the FTP, HFET, US06, SC03 and Cold FTP tests determined to be official under § 86.1835–01 of this chapter are used to calculate the vehicle-specific 5-cycle highway fuel economy, which is then compared to the derived 5-cycle highway fuel economy, as follows:

(A) The vehicle-specific 5-cycle highway fuel economy from the official FTP, HFET, US06, SC03 and Cold FTP tests for the test group is determined according to the provisions of § 600.114–08(b)(1) and rounded to the nearest one tenth of a mile per gallon.

(B) Using the same HFET data as used in paragraph (b)(2)(i)(A) of this section, the corresponding derived 5-cycle highway fuel economy is calculated using the following equation:

$$\text{Derived 5-cycle highway fuel economy} = \frac{1}{\left(\{\text{Highway Intercept}\} + \frac{\{\text{Highway Slope}\}}{\text{HFET FE}} \right)}$$

Where:

Highway Intercept = Intercept determined by the Administrator. See § 600.210–08(a)(2)(iii).

Highway Slope = Slope determined by the Administrator. See § 600.210–08(a)(2)(iii).

HFET FE = the HFET-based highway fuel economy determined under § 600.113–08(b), rounded to the nearest tenth.

(ii) The derived 5-cycle highway fuel economy calculated in paragraph (b)(2)(i)(B) of this section is multiplied by 0.95 and rounded to the nearest one tenth of a mile per gallon.

(iii) (A) If the vehicle-specific 5-cycle highway fuel economy of the vehicle tested in paragraph (b)(2)(i)(A) of this section is greater than or equal to the value determined in paragraph (b)(2)(ii) of this section, then the manufacturer may base the highway fuel economy estimates for the model types covered by the test group on the derived 5-cycle method specified in § 600.210–08(a)(2) or (b)(2), as applicable.

(B) If the vehicle-specific 5-cycle highway fuel economy determined in paragraph (b)(2)(i)(A) of this section is less than the value determined in paragraph (b)(2)(ii) of this section, the manufacturer may determine the highway fuel economy for the model types covered by the test group on the modified 5-cycle equation specified in § 600.114–08(b)(2).

(c) The manufacturer will apply the criteria in paragraph (a) and (b) of this section to every test group for each model year.

(d) The tests used to make the evaluations in paragraphs (a) and (b) of this section will be the official tests used to determine compliance with emission standards under § 86.1835–01(c). Adjustments and/or substitutions to the official test data may be made with advance approval of the Administrator.

Subpart C—[Amended]

■ 33. A new § 600.201–08 is added to read as follows:

§ 600.201–08 General applicability.

(a) The provisions of this subpart are applicable to 2008 and later model year automobiles, except medium duty passenger vehicles, manufactured on or after January 26, 2007, and to 2011 and later model year medium-duty passenger vehicles. All 2008 automobiles manufactured prior to January 26, 2007 may optionally comply with the provisions of this subpart.

■ 34. A new § 600.206–08 is added to read as follows:

§ 600.206–08 Calculation and use of FTP-based and HFET-based fuel economy values for vehicle configurations.

(a) Fuel economy values determined for each vehicle under § 600.113(a) and (b) and as approved in § 600.008–08 (c), are used to determine FTP-based city, HFET-based highway, and combined FTP/Highway-based fuel economy values for each vehicle configuration for which data are available.

(1) If only one set of FTP-based city and HFET-based highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one set of FTP-based city and HFET-based highway fuel economy values are accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.208(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine FTP-based city and HFET-based highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All FTP-based city fuel economy values and all HFET-based highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the FTP-based city and HFET-based highway fuel economy values for the vehicle configuration.

(3) For the purpose of determining average fuel economy under § 600.510–08, the combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the FTP-based city and HFET-based highway fuel economy values, as determined in § 600.206(a)(1) or (2) of this section, weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in Appendix II of this part.

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) or (2) of this section, as applicable, shall be used to calculate two separate sets of FTP-based city, HFET-based highway, and combined fuel economy values for each configuration.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will comprise the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

■ 35. A new § 600.207–08 is added to read as follows:

§ 600.207–08 Calculation and use of vehicle-specific 5-cycle-based fuel economy values for vehicle configurations.

(a) Fuel economy values determined for each vehicle under § 600.114–08 and as approved in § 600.008–08 (c), are used to determine vehicle-specific 5-cycle city and highway fuel economy values for each vehicle configuration for which data are available.

(1) If only one set of 5-cycle city and highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one set of 5-cycle city and highway fuel economy values are accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.209(a)(3).

(ii) Within each subconfiguration of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine 5-cycle city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All 5-cycle city fuel economy values and all 5-cycle highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the 5-cycle city and 5-cycle highway fuel economy values for the vehicle configuration.

(3) [Reserved]

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) and (2) of this section shall be used to calculate two separate sets of 5-cycle city, highway fuel economy values for each configuration.

(i) Calculate the 5-cycle city and highway fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii)(A) Calculate the 5-cycle city and highway fuel economy values from the tests performed using alcohol or natural gas test fuel, if 5-cycle testing has been performed. Otherwise, the procedure in § 600.210(a)(3) or (b)(3) applies.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will comprise the petroleum-based 5-cycle fuel economy for that configuration.

(c) If more than one equivalent petroleum-based 5-cycle fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

■ 36. A new § 600.208–08 is added to read as follows:

§ 600.208–08 Calculation of FTP-based and HFET-based fuel economy values for a model type.

(a) Fuel economy values for a base level are calculated from vehicle configuration fuel economy values as determined in § 600.206–08(a), (b), or (c) as applicable, for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label;

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the original base level fuel economy values); and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010–08(c)(1)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The provisions of paragraph (a)(3) of this section may be satisfied by providing an amended application for certification, as described in § 86.1844–01.

(4) Vehicle configuration fuel economy values, as determined in § 600.206–08 (a), (b) or (c), as applicable, are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in paragraph (a)(1) through (4) of this section will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the procedures of paragraphs (a)(1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each base level.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type. Separate model type calculations will be done based on the vehicle configuration fuel economy values as determined in § 600.206–08 (a), (b) or (c), as applicable.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3) The FTP-based city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sales fraction of a base level; by

(ii) The FTP-based city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the procedures of paragraphs (b)(1) through (4) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each model type.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

■ 37. A new § 600.209–08 is added to read as follows:

§ 600.209–08 Calculation of vehicle-specific 5-cycle fuel economy values for a model type.

(a) *Base level.* 5-cycle fuel economy values for a base level are calculated from vehicle configuration 5-cycle fuel economy values as determined in § 600.207–08 for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label;

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the original base level fuel economy values); and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010–08 (c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The provisions of this paragraph (a)(3) may be satisfied by providing an amended application for certification, as described in § 86.1844–01 of this chapter.

(4) 5-cycle vehicle configuration fuel economy values, as determined in § 600.207–08(a), (b), or (c), as applicable, are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.209–08 (a) will be repeated for each base level, thus establishing city and highway fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the procedures of paragraphs (a)(1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each base level.

(i) Calculate the city and highway fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) If 5-cycle testing was performed on the alcohol or natural gas test fuel, calculate the city and highway fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) *Model type.* For each model type, as determined by the Administrator, a city and highway fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type. Separate model type calculations will be done based on the vehicle configuration fuel economy values as determined in § 600.207–08, as applicable.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3) The 5-cycle city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sales fraction of a base level; by

(ii) The 5-cycle city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (b)(1) through (4) of this section shall be used to calculate two separate sets of city and highway fuel economy values for each model type.

(i) Calculate the city and highway fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel, if 5-cycle testing was performed on the alcohol or natural gas test fuel. Otherwise, the procedure in § 600.210(a)(3) or (b)(3) applies.

■ 38. A new § 600.210–08 is added to read as follows:

§ 600.210–08 Calculation of fuel economy values for labeling.

(a) *General labels.* Fuel economy for general labels can be determined by two methods. The first is based on vehicle-specific model-type 5-cycle data as determined in § 600.209–08(b). This method is optional beginning in the 2008 model year for all vehicles, including medium-duty passenger vehicles, and required beginning in the 2011 model year (except for medium-duty passenger vehicles) unless otherwise indicated according to the provisions in § 600.115–08. The second method is the derived 5-cycle method, and is based on fuel economy that is derived from vehicle-specific 5-cycle

model type data as determined in paragraph (a)(2) of this section. This method is required for 2008 through 2010 model years (except for medium-duty passenger vehicles, in which case it is optional), and is permitted beginning in 2011 model year under the provisions of § 600.115–08. If the manufacturer determines that the resulting label values from either of these methods are not representative of the fuel economy for that model type, they may voluntarily lower these values. All 2011 and later model year medium-duty passenger vehicles must be labeled for fuel economy, using the derived 5-cycle method or, at the manufacturer's option, the vehicle-specific 5-cycle method. Fuel economy label values for dual fuel vehicles operating on alcohol-based or natural gas fuel are calculated separately.

(1) *Vehicle-specific 5-cycle labels.* The city and highway model type fuel economy determined in § 600.209–08(b), rounded to the nearest mpg, comprise the fuel economy values for general fuel economy labels, or, alternatively;

(2) *Derived 5-cycle labels.* Derived 5-cycle city and highway label values are determined according to the following method:

(i) For each model type, determine the derived five-cycle city fuel economy using the following equation and coefficients determined by the Administrator:

$$\text{Derived 5-cycle City Fuel Economy} = \frac{1}{\left(\{\text{City Intercept}\} + \frac{\{\text{City Slope}\}}{\text{MTFTP FE}}\right)}$$

Where:

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

MT FTP FE = the model type FTP-based city fuel economy determined under § 600.208–08(a), rounded to the nearest tenth.

(ii) For each model type, determine the derived five-cycle highway fuel economy using the equation below and coefficients determined by the Administrator:

$$\text{Derived 5-cycle Highway Fuel Economy} = \frac{1}{\left(\{\text{Highway Intercept}\} + \frac{\{\text{Highway Slope}\}}{\text{MT HFET FE}}\right)}$$

Where:

Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

MT HFET FE = the model type highway fuel economy determined under § 600.208–08(b), rounded to the nearest tenth.

(iii) For 2008 and later model year vehicles, unless and until superseded by written guidance from the Administrator, the following intercepts and slopes shall be used in the equations in paragraphs (a)(2)(i) and (a)(2)(ii) of this section:

City Intercept = 0.003259.
City Slope = 1.1805.
Highway Intercept = 0.001376.
Highway Slope = 1.3466.

The Administrator will periodically update the slopes and intercepts via guidance and will determine the model year that the new coefficients must take effect. The Administrator will issue guidance no later than six months prior to the earliest starting date of the effective model year (e.g., for 2011 models, the earliest start of the model year is January 2, 2010, so guidance would be issued by July 1, 2009.) Until otherwise instructed by written guidance from the Administrator, manufacturers must use the coefficients that are in currently in effect.

(3) *General alternate fuel label values for dual-fueled vehicles.* (i) City and Highway label values for dual fuel alcohol-based and natural gas vehicles when using the alternate fuel are separately determined by the following calculation:

$$\text{Derived FE}_{\text{alt}} = \text{FE}_{\text{alt}} \times \frac{\text{5 cycle}_{\text{gas}}}{\text{FE}_{\text{gas}}}$$

Where:

FE_{alt} = The unrounded FTP-based model-type city or HFET-based model-type highway fuel economy from the alternate fuel, as determined in § 600.208(b)(5)(ii).

5cycle FE_{gas} = The unrounded vehicle-specific or derived 5-cycle model-type city or highway fuel economy as determined in paragraph (a)(1) or (b)(2) of this section.

FE_{gas} = The unrounded FTP-based city or HFET-based model type highway fuel economy from gasoline (or diesel), as determined in § 600.208(b)(5)(i).

The result, rounded to the nearest whole number, is the alternate fuel label value for dual fuel vehicles.

(ii) Optionally, if complete 5-cycle testing has been performed using the alternate fuel, the manufacturer may choose to use the alternate fuel label city or highway value result in § 600.209–08(b)(5)(ii), rounded to the nearest whole number.

(b) *Specific Labels.* The following two methods are used to determine specific labels. The first is based on vehicle-specific configuration 5-cycle data as determined in § 600.207–08. This method is optional beginning in the 2008 model year for all vehicles, including medium-duty passenger vehicles, and required beginning in the 2011 model year (except for medium-duty passenger vehicles) unless otherwise indicated according to the provisions in § 600.115–08. The second method is based on derived 5-cycle configuration data as determined in paragraph (a)(2) of this section. This method is required for 2008 through 2010 model years (except for medium-duty passenger vehicles, in which case it is optional), and is allowed beginning in 2011 model year if permitted under the provisions in § 600.115–08. If the manufacturer determines that the resulting label values from either of these methods are not representative of the fuel economy for that model type,

they may voluntarily lower these values. All 2011 and later model year medium-duty passenger vehicles must be labeled for fuel economy, using the derived 5-cycle method or, at the manufacturer's option, the vehicle-specific 5-cycle method. Fuel economy label values for dual fuel vehicles operating on alcohol-based or natural gas fuel are calculated separately.

(1) *Vehicle-specific 5-cycle labels.* The city and highway configuration fuel economy determined in § 600.207–08, rounded to the nearest mpg, comprise the fuel economy values for specific fuel economy labels, or, alternatively;

(2) *Derived 5-cycle labels.* Specific city and highway label values from derived 5-cycle are determined according to the following method:

(i) Determine the derived five-cycle city fuel economy of the configuration using the equation below and coefficients determined by the Administrator:

$$\text{Derived 5-cycle City Fuel Economy} = \frac{1}{\left(\{\text{City Intercept}\} + \frac{\{\text{City Slope}\}}{\text{Config FTP FE}}\right)}$$

Where:

City Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

City Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle city fuel economy data.

Config FTP FE = the configuration FTP-based city fuel economy determined under § 600.206–08, rounded to the nearest tenth.

(ii) Determine the derived five-cycle highway fuel economy of the configuration using the equation below and coefficients determined by the Administrator:

$$\text{Derived 5-cycle Highway Fuel Economy} = \frac{1}{\left(\{\text{Highway Intercept}\} + \frac{\{\text{Highway Slope}\}}{\text{Config HFET FE}}\right)}$$

Where:

Highway Intercept = Intercept determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Highway Slope = Slope determined by the Administrator based on historic vehicle-specific 5-cycle highway fuel economy data.

Config HFET FE = the configuration highway fuel economy determined under § 600.206–08, rounded to the nearest tenth.

(iii) The slopes and intercepts of paragraph (a)(2)(iii) of this section apply.

(3) Specific alternate fuel label values for dual-fueled vehicles. (i) Specific city and highway label values for dual fuel alcohol-based and natural gas vehicles when using the alternate fuel are separately determined by the following calculation:

$$\text{Derived FE}_{\text{alt}} = \text{FE}_{\text{alt}} \times \frac{\text{5 cycle}_{\text{gas}}}{\text{FE}_{\text{gas}}}$$

Where:

FE_{alt} = The unrounded FTP-based configuration city or HFET-based configuration highway fuel economy from the alternate fuel, as determined in § 600.206.

5cycle FE_{gas} = The unrounded vehicle-specific or derived 5-cycle configuration city or highway fuel economy as determined in paragraph (b)(1) or (b)(2) of this section.

FE_{gas} = The unrounded FTP-based city or HFET-based configuration highway fuel economy from gasoline, as determined in § 600.206–08.

The result, rounded to the nearest whole number, is the alternate fuel label value for dual fuel vehicles.

(ii) Optionally, if complete 5-cycle testing has been performed using the alternate fuel, the manufacturer may choose to use the alternate fuel label city or highway value result in § 600.207–08(a)(4)(ii), rounded to the nearest whole number.

(c) For the purposes of calculating the combined fuel economy for a model type, to be used in displaying on the label and for determining annual fuel costs under § 600.307–08, the manufacturer shall:

(1)(i) For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, and for dual fuel automobiles operated on gasoline or diesel fuel, harmonically average the unrounded city and highway values, determined in paragraphs (a)(1) or (2) of this section and (b)(1) or (2) of this section, weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg. (An example of this calculation procedure appears in Appendix II of this part); or

(ii) For alcohol dual fuel and natural gas dual fuel automobiles operated on the alternate fuel, harmonically average the unrounded city and highway values from the tests performed using the alternative fuel as determined in paragraphs (a)(3) and (b)(3) of this section, weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg.

(d)(1) Label values for 2008–2010 model year automobiles (except medium-duty passenger vehicles) the city and highway values for a model type must be determined by the same method. If the manufacturer optionally chooses to determine fuel economy for a model type using the vehicle-specific 5-cycle method, that method must be used to determine both the city and highway fuel economy.

(2) For 2011 and later model year automobiles, if the criteria in § 600.115–08(a) are met for a model type, both the city and highway fuel economy must be determined using the vehicle-specific 5-cycle method. If the criteria in § 600.115–08(b) are met for a model type, the city fuel economy may be determined using either method, but the highway fuel economy must be determined using the vehicle-specific 5-cycle method (or modified 5-cycle method as allowed under § 600.114–08(b)(2)).

(3) If the criteria in § 600.115–08 are not met for a model type, the city and highway label values must be determined by using the same method, either the derived 5-cycle or vehicle-specific 5-cycle.

■ 39. A new § 600.211–08 is added to read as follows:

§ 600.211–08 Sample Calculation of fuel economy values for labeling.

An example of the calculation required in this subpart appears in Appendix III of this part.

Subpart D—[Amended]

■ 40. A new § 600.301–08 is added to read as follows:

§ 600.301–08 General applicability.

(a) Unless otherwise specified, the provisions of this subpart are applicable to 2008 and later model year automobiles, except medium duty passenger vehicles, manufactured on or after January 26, 2007, and to 2011 and later model year medium-duty passenger vehicles. All 2008 automobiles manufactured prior to January 26, 2007 may optionally comply with the provisions of this subpart.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

■ 41. A new § 600.306–08 is added to read as follows:

§ 600.306–08 Labeling requirements.

(a) Prior to being offered for sale, each manufacturer shall affix or cause to be affixed and each dealer shall maintain or cause to be maintained on each automobile:

(1) A general fuel economy label (initial, or updated as required in § 600.314–08) as described in § 600.307–08 or:

(2) A specific label, for those automobiles manufactured or imported before the date that occurs 15 days after general labels have been determined by the manufacturer, as described in § 600.210–08(b).

(i) If the manufacturer elects to use a specific label within a model type (as defined in § 600.002–08, he shall also affix specific labels on all automobiles within this model type, except on those automobiles manufactured or imported before the date that labels are required to bear range values as required by paragraph (b) of this section, or determined by the Administrator, or as permitted under § 600.310–86.

(ii) If a manufacturer elects to change from general to specific labels or vice versa within a model type, the manufacturer shall, within five calendar days, initiate or discontinue as applicable, the use of specific labels on all vehicles within a model type at all facilities where labels are affixed.

(3) For any vehicle for which a specific label is requested which has a combined FTP/HFET-based fuel economy value, as determined in § 600.513–08, at or below the minimum tax-free value, the following statement must appear on the specific label:

''[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of the low fuel economy.''

(4)(i) At the time a general fuel economy value is determined for a model type, a manufacturer shall, except as provided in paragraph (a)(4)(ii) of this section, relabel, or cause to be relabeled, vehicles which:

(A) Have not been delivered to the ultimate purchaser, and

(B) Have a combined FTP/HFET-based model type fuel economy value (as determined in § 600.208–08(b) of 0.1 mpg or more below the lowest fuel economy value at which a Gas Guzzler Tax of $0 is to be assessed.

(ii) The manufacturer has the option of re-labeling vehicles during the first five working days after the general label value is known.

(iii) For those vehicle model types which have been issued a specific label and are subsequently found to have tax liability, the manufacturer is responsible for the tax liability regardless of whether the vehicle has been sold or not or whether the vehicle has been relabeled or not.

(b) *Fuel economy range of comparable vehicles.* The manufacturer shall include the current range of fuel economy of comparable automobiles (as described in §§ 600.311–08 and 600.314–08) in the label of each vehicle manufactured or imported more than 15 calendar days after the current range is made available by the Administrator.

(1) Automobiles manufactured or imported before a date 16 or more calendar days after the initial label range is made available under § 600.311–08(c) shall include the range from the previous model year.

(2) Automobiles manufactured or imported more than 15 calendar days after the label range is made available under § 600.311–08(c) or (d) shall be labeled with the current range of fuel economy of comparable automobiles as approved for that label.

(c) The fuel economy label must be readily visible from the exterior of the automobile and remain affixed until the time the automobile is delivered to the ultimate consumer.

(1) It is preferable that the fuel economy label information be incorporated into the Automobile Information Disclosure Act label, provided that the prominence and legibility of the fuel economy label is maintained. For this purpose, all fuel economy label information must be placed on a separate section in the Automobile Information Disclosure Act label and may not be intermixed with that label information, except for vehicle descriptions as noted in § 600.307–08(d)(1).

(2) The fuel economy label must be located on a side window. If the window is not large enough to contain both the Automobile Information Disclosure Act label and the fuel economy label, the manufacturer shall have the fuel economy label affixed on another window and as close as possible to the Automobile Information Disclosure Act label.

(3) The manufacturer shall have the fuel economy label affixed in such a manner that appearance and legibility are maintained until after the vehicle is delivered to the ultimate consumer.

■ 42. A new § 600.307–08 is added to read as follows:

§ 600.307–08 Fuel economy label format requirements.

Examples of fuel economy labels for gasoline and diesel vehicles, dual fuel vehicles and alternate fuel vehicles are provided in Appendix IV of this part. Detailed printing specifications are given in Appendix V of this part, and unless otherwise permitted, apply to the provisions in this section. The Administrator may approve modifications to the style guidelines in cases where there may be space limitations and/or legibility concerns.

(a) Fuel economy labels must be:

(1) Rectangular in shape with a minimum height of 4.5 inches (114 mm) and a minimum length of 7.0 inches (178 mm) as specified in Appendix V of this part.

(2) Printed in a color which contrasts with the background paper color.

(3) Have a contrasting border, with dimensions specified in Appendix V of this part.

(b) *Label information.* The information on the label shall contain:

(1) The titles ''CITY MPG'' and ''HIGHWAY MPG'', centered over the applicable fuel economy estimates.

(2) The numeric, whole-number city and highway estimates, as determined in § 600.210–08, as specified in Appendix V of this part. The font size

of the numbers may be larger than specified, provided: that the city and highway numbers are equal in size; that the titles ''CITY MPG'' and ''HIGHWAY MPG'' are increased in the same proportion; and that doing so does not obscure the other information on the label.

(i) For dedicated gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, the city and highway fuel economy estimates calculated in accordance with § 600.210–08.

(ii) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the city and highway fuel economy estimates for operation on gasoline or diesel fuel as calculated in § 600.210–08(a) and (b).

(3) The fuel pump logo.

(4) The following phrase: ''Your actual mileage will vary depending on how you drive and maintain your vehicle.'', located and formatted as shown in Appendix V of this part.

(5) The statement: ''Expected range for most drivers: ____ to ____ mpg'', placed underneath both the city and highway estimates, centered to the estimate numbers. The range values for this statement are to be calculated in accordance with the following:

(i) The lower range values shall be determined by multiplying the city and highway estimates by 0.83, then rounding to the next lower integer value.

(ii) The upper range values shall be determined by multiplying the city and highway estimates by 1.17 and rounding to the next higher integer value.

(6) The top border shall contain the centered title ''EPA Fuel Economy Estimates'' in a contrasting color.

(7) *Alternate fuel titles.* (i) For dedicated alcohol-fueled automobiles, the title ''[insert appropriate fuel (e.g., ''ETHANOL (E85))''] *''. The title shall be positioned and sized according to the style guidelines in Appendix V of this part.

(ii) For dedicated natural gas-fueled automobiles, the title ''NATURAL GAS *''. The title shall be positioned in the grey area above the window of the fuel pump logo, in a size and format specified in Appendix V of this part.

(iii) For alcohol-based dual fuel automobiles and natural gas dual fuel automobiles, the title ''Dual Fuel Vehicle*'', and directly below that, the title ''[insert appropriate conventional fuel (example Gasoline)]-[insert appropriate alternate fuel (example ''Ethanol (E85)'']''. Both of these titles are centered in the grey area above the window of the fuel pump logo, with a size and format specified in Appendix V of this part.

(8) *Alternate fuel information.* (i) For dedicated alcohol-fueled automobiles, the title ''[insert appropriate fuel (example ''E85'')]'' centered above the title ''CITY MPG'' and above the title ''HIGHWAY MPG'' with a size and format specified in Appendix V of this part.

(ii) For dedicated natural gas-fueled automobile, the title ''GASOLINE EQUIVALENT'' centered above the title ''CITY MPG'' and above the title ''HIGHWAY MPG'' with a size and format specified in Appendix V of this part.

(iii) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the title ''GASOLINE'' [or ''DIESEL'', as applicable] centered above the title ''CITY MPG'' and above the title ''HIGHWAY MPG'' with a size and format specified in Appendix V of this part.

(9) The bottom border of the label shall contain the following centered statement, formatted according to the style guidelines in Appendix V: ''See the FREE Fuel Economy Guide at dealers or *www.fueleconomy.gov*''.

(10) If the label is separate from the Automobile Information Disclosure Act label, the vehicle description, as described in paragraph (d) of this section, located on the label such that it does not interfere with the other required information. In cases where the vehicle description information may not easily fit on the label, the manufacturer may request Administrator approval of modifications to the label format to accommodate this information.

(11) *Comparison fuel economy.* A graphic depiction of comparison fuel economy information, in the style and format given in Appendix V of this part, containing the following elements:

(i) A bar that represents the total range of combined fuel economy for the applicable class of comparison fuel economy.

(ii) A downward pointing tail-less arrow, located at the top of the bar positioned on the bar where that vehicle's combined fuel economy falls relative to the range of comparable vehicles.

(iii) The combined fuel economy value for the vehicle as determined in § 600.210–08(c), located directly above the arrow.

(iv) The statement ''This Vehicle'' directly above the combined fuel economy number.

(vi)(A) For gasoline and diesel fuel vehicles, the statement ''Combined Fuel Economy'', located above the ''This Vehicle'' statement, and centered above the bar.

(B) For dual fuel vehicles, the statement ''Combined Gasoline [or ''Diesel'', as appropriate] Fuel Economy'', located above the ''This Vehicle'' statement, and centered above the bar, in two lines, if needed.

(C) For dedicated natural gas vehicles, the statement ''Combined Gasoline Equivalent Fuel Economy'', located above the ''This Vehicle'' statement, and centered above the bar, in two lines, if needed.

(v) The upper and lower MPG ranges for that class of vehicles, with the lower range shown directly to the left of the bar and the upper range directly to the right of the bar. The range values are those determined in accordance with § 600.311.

(vi) The statement ''All [name of the comparable vehicle class]s'', centered below the bar. The names of the comparable classes given in § 600.315–08 apply. For the purpose of presenting the name of the class on the label, the following class names may be shortened as indicated: minicompact cars may be ''Minicompacts'', subcompact cars may be ''Subcompacts'', compact cars may be ''Compacts'', small station wagons may be ''Small Wagons'', midsize station wagons may be ''Midsize Wagons'', large station wagons may be ''Large Wagons'', small pickup trucks may be ''Small Pickups'', standard pickup trucks may be ''Standard Pickups'', and sport utility vehicles may be ''SUVs''.

(12)(i) The statement: ''Estimated Annual Fuel Cost:'' followed by the appropriate value calculated in accordance with paragraph (f) or (g) of this section and the statement ''based on [EPA-provided number of miles per paragraph (f) of this section] miles at [the EPA-provided dollar cost per gallon of the required fuel for that vehicle] per gallon of gasoline.'' The estimated annual fuel cost value for alcohol dual fuel automobiles and natural gas dual fuel vehicles to appear on the fuel economy label shall be that calculated based on operating the vehicle on gasoline or diesel fuel as determined in paragraphs (f) and (g) of this section.

(ii) At the manufacturer's option, the label may also contain the estimated annual fuel cost value based on operating the vehicle on the alternative fuel.

(13) The Gas Guzzler statement, when applicable (see paragraph (e) of this section), must be located on the bottom half of the label, either in the space reserved for alternate fuel information, or, if the vehicle is an alternate fuel vehicle, directly beneath this space.

(14) *Alternate fuel statement.* (i) For dedicated alternate fuel automobiles, the statement: ''* This vehicle operates on NATURAL GAS FUEL [or other alternate fuel as appropriate] only. Fuel economy is expressed in gasoline equivalent values.'' This statement is located on the right-hand bottom portion of the label. See Appendix V of this part for details of location, size and format.

(ii) For dual fuel automobiles, the statement: ''*Fuel economy when operating on E85 [or other alternate fuel as appropriate] will yield different values than gasoline [or diesel as appropriate]. See Fuel Economy Guide for more information.'' Optionally, this statement may be replaced with the city, highway and combined fuel economy values using the alternate fuel, in a size and format specified in Appendix V of this part.

(c) The city mpg number shall be displayed on the upper half of the left side of the label and the highway mpg number displayed on the upper half of the right side of the label. If the manufacturer chooses to enlarge the label from that specified in paragraph (a)(1) of this section, the logo and the fuel economy label values, including the titles ''CITY MPG'' and ''HIGHWAY MPG'', must be increased in the same proportion.

(d) Vehicle description information for general and specific labels.

(1) Where the fuel economy label is physically incorporated with the Motor Vehicle Information and Cost Savings Act label, the applicable vehicle description, as set forth in this paragraph, does not have to be repeated if the information is readily found on this label.

(2) For fuel economy labels which are physically separate from the Motor Vehicle Information and Cost Savings Act label, the vehicle description on general labels will be as follows:

(i) Model year;

(ii) Vehicle car line;

(iii) Engine displacement, in cubic inches, cubic centimeters, or liters whichever is consistent with the customary description of that engine;

(iv) Transmission class.

(v) Other descriptive information, as necessary, such as number of engine cylinders, to distinguish otherwise identical model types or, in the case of specific labels, vehicle configurations, as approved by the Administrator.

(e)(1) For fuel economy labels of passenger automobile model types requiring a tax statement under § 600.513–08, the phrase ''Gas Guzzler Tax'' followed by the dollar amount, in a size and format specified in Appendix V of this part.

(2) The tax value required by this paragraph shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.513–08 and rounded to the nearest 0.1 mpg.

(f) *Estimated annual fuel cost—general labels.* The annual fuel cost estimate for operating an automobile included in a model type shall be computed by using values for the fuel cost per gallon of the recommended fuel as specified by the manufacturer in the owner's manual and average annual mileage, predetermined by the Administrator, and the combined fuel economy determined in § 600.210(c).

(1) The annual fuel cost estimate for a model type is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon, where 100 SCF = 0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar; by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The inverse of the combined fuel economy value determined in § 600.210–08(c) for a model type (as determined in § 600.210–08(a), rounded to the nearest 0.0001 gallons per mile (natural gas must be expressed in units of gallon equivalent per mile, where 100 SCF=0.823 equivalent gallons).

(2) The product computed in paragraph (f)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on general labels for the model type.

(g) *Estimated annual fuel cost—specific labels.* (1) The annual fuel cost estimate for operating an automobile included in a vehicle configuration will be computed by using the values for the fuel cost per volume (gallon for liquid fuels, cubic feet for gaseous fuels) and average mileage and the fuel economy determined by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon, where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar; by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The inverse, rounded to the nearest 0.0001 gallons per mile (natural gas must be expressed in units of gallon equivalent per mile, where 100 SCF=0.823 equivalent gallons) of the combined fuel economy value determined in § 600.210–08(c) for a vehicle configuration (as determined in § 600.210–08(b).

(2) The product computed in paragraph (g)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on specific labels for that vehicle configuration.

(h) For model year 2008 and 2009 automobiles only, the following statement, located directly above the fuel pump logo, centered in the label: ''These estimates reflect new EPA methods beginning with 2008 models.'' The size and format is specified in Appendix V to this part.

(i) For model year 2008 vehicles manufactured or imported prior to September 1, 2007, manufacturers may optionally use the label format provisions of § 600.307–95. In this case, the following information must be included on the label:

(1) The city and highway estimates, as determined according to the provisions in § 600.210–08.

(2) The statement ''These estimates reflect new EPA methods beginning with 2008 models.'', centered, and located in a prominent position on the label, preferably near the top of the label.

(j) For model year 2008 vehicles manufactured or imported prior to June 1, 2007, the manufacturer may optionally include the city and highway fuel economy determined under the provisions of § 600.209–95, presented in fine print underneath the city and highway mpg numbers from paragraph (c) of this section, in a statement as follows: ''[xx] MPG under old methods''.

(1) The font size may not exceed 8 points and may not be bold.

(2) If the optional provisions of paragraph (i) of this section are selected, the location of the fuel economy estimates allowed under this paragraph (j) may be either:

(i) underneath the large city and highway miles-per-gallon numbers, or

(ii) in a statement at the bottom of the label as follows: ''*Fuel economy under the old methods would be [xx] MPG city and [xx] MPG highway''. The statement required in paragraph (i)(2) must contain an asterisk (*) after the word ''models''.

■ 43. A new § 600.311–08 is added to read as follows:

§ 600.311–08 Range of fuel economy for comparable automobiles.

(a) The Administrator will determine the range of combined fuel economy values for each class of comparable automobiles comprising the maximum and minimum combined fuel economy

values for all general labels as determined in § 600.210–08(c).

(b)(1) The ranges for a model year will be made available on a date specified by the Administrator that closely coincides to the date of the general model introduction for the industry.

(2) If the Administrator has not made available the fuel economy ranges prior to the model introduction, the ranges from the previous model year must be used.

(3) For 2008 model year automobiles manufactured or imported prior to the date specified in § 600.306–08(b), the Administrator will provide initial fuel economy ranges based upon data from 2007 models that have been adjusted in accordance with the derived 5-cycle calculations in § 600.210–08.

(c) If the Administrator determines that automobiles intended for sale in California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he/she will compute separate ranges of fuel economy values for each class of automobiles for California and for the other states.

(d) For high altitude vehicles determined under § 600.310, both general and specific labels will contain the range of comparable fuel economy computed in this section.

(e) The manufacturer shall include the appropriate range of fuel economy determined by the Administrator in paragraph (b) of this section, on each label affixed to an automobile within the class, except as provided in § 600.306(b)(1).

■ 44. A new § 600.314–08 is added to read as follows:

§ 600.314–01 Updating label values, annual fuel cost, Gas Guzzler Tax, and range of fuel economy for comparable automobiles.

(a) The label values established in § 600.312 shall remain in effect for the model year unless updated in accordance with paragraph (b) of this section.

(b)(1) The manufacturer shall recalculate the model type fuel economy values for any model type containing base levels affected by running changes specified in § 600.507(a).

(2) For separate model types created in § 600.209–08(a)(2), the manufacturer shall recalculate the model type values for any additions or deletions of subconfigurations to the model type. Minimum data requirements specified in § 600.010(c) shall be met prior to recalculation.

(3) Label value recalculations shall be performed as follows:

(i) The manufacturer shall use updated total model year projected sales for label value recalculations.

(ii) All model year data approved by the Administrator at the time of the recalculation for that model type shall be included in the recalculation.

(iii) Using the additional data under paragraph (b) of this section, the manufacturer shall calculate new model type city and highway values in accordance with § 600.210–08 except that the values shall be rounded to the nearest 0.1 mpg.

(iv) The existing label values, calculated in accordance with § 600.210–08, shall be rounded to the nearest 0.1 mpg.

(4)(i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to the nearest whole mpg) to all new vehicles of that model type beginning on the day of implementation of the running change.

(ii) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is higher than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, then the manufacturer has the option to use the recalculated values for labeling the entire model type beginning on the day of implementation of the running change.

(c) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (b) of this section, the manufacturer shall concurrently update all other label information (*e.g.*, the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax as needed).

(d) The Administrator shall periodically update the range of fuel economies of comparable automobiles based upon all label data supplied to the Administrator.

(e) The manufacturer may request permission from the Administrator to calculate and use label values based on test data from vehicles which have not completed the Administrator-ordered confirmatory testing required under the provisions of § 600.008–08(b). If the Administrator approves such a calculation the following procedures shall be used to determine if relabeling is required after the confirmatory testing is completed.

(1) The Administrator-ordered confirmatory testing shall be completed as quickly as possible.

(2) Using the additional data under paragraph (e)(1) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207–08 and 600.210–08 except that the values shall be rounded to the nearest 0.1 mpg.

(3) The existing label values, calculated in accordance with § 600.210–08, shall be rounded to the nearest 0.1 mpg.

(4) *Relabeling.* (i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.5 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg') to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(ii) If both the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.1 mpg or more and the recalculated gas guzzler tax rate determined under the provisions of § 600.513–08 is larger, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg') and gas guzzler tax statement and rates to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(5) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (e)(4) of this section, the manufacturer shall concurrently update all other label information (*e.g.*, the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax if required by Department of Treasury regulations).

■ 45. A new § 600.315–08 is added to read as follows:

§ 600.315–08 Classes of comparable automobiles.

(a) The Secretary will classify automobiles as passenger automobiles or light trucks (nonpassenger automobiles) in accordance with 49 CFR part 523.

(1) The Administrator will classify passenger automobiles by car line into one of the following classes based on interior volume index or seating capacity except for those passenger automobiles which the Administrator determines are most appropriately placed in a different classification or classed as special purpose vehicles as provided in paragraph (a)(3) of this section.

(i) *Two seaters.* A car line shall be classed as ''Two Seater'' if the majority of the vehicles in that car line have no more than two designated seating positions as such term is defined in the regulations of the National Highway Traffic Safety Administration, Department of Transportation (DOT), 49 CFR 571.3.

(ii) *Minicompact cars.* Interior volume index less than 85 cubic feet.

(iii) *Subcompact cars.* Interior volume index greater than or equal to 85 cubic feet but less than 100 cubic feet.

(iv) *Compact cars.* Interior volume index greater than or equal to 100 cubic feet but less than 110 cubic feet.

(v) *Midsize cars.* Interior volume index greater than or equal to 110 cubic feet but less than 120 cubic feet.

(vi) *Large cars.* Interior volume index greater than or equal to 120 cubic feet.

(vii) *Small station wagons.* Station wagons with interior volume index less than 130 cubic feet.

(viii) *Midsize station wagons.* Station wagons with interior volume index greater than or equal to 130 cubic feet but less than 160 cubic feet.

(ix) *Large station wagons.* Station wagons with interior volume index greater than or equal to 160 cubic feet.

(2) The Administrator will classify light trucks (nonpassenger automobiles) into the following categories: small pickup trucks, standard pickup trucks, vans, minivans, SUVS and special purpose vehicles. Pickup trucks will be separated by car line on the basis of gross vehicle weight rating (GVWR). For pickup truck car lines with more than one GVWR, the GVWR of the pickup truck car line is the arithmetic average of all distinct GVWR's less than or equal to 8,500 pounds available for that car line.

(i) *Small pickup trucks.* Pickup trucks with a GVWR less than 6000 pounds.

(ii) *Standard pickup trucks.* Pickup trucks with a GVWR of 6000 pounds up to and including 8,500 pounds.

(iii) *Vans.*

(iv) *Minivans.*

(v) *Sport utility vehicles.*

(3) (i) *Special purpose vehicles.* All automobiles with GVWR less than or equal to 8,500 pounds and all medium-duty passenger vehicles which possess special features and which the Administrator determines are more appropriately classified separately from typical automobiles or which do not meet the requirements of paragraphs (a)(1) and (2) of this section will be classified as special purpose vehicles.

(ii) All automobiles which possess features that could apply to two classes will be classified by the Administrator based on the Administrator's judgment on which class of vehicles consumers are more likely to make comparisons.

(4) Once a certain car line is classified by the Administrator, the classification will remain in effect for the model year.

(b) *Interior volume index—passenger automobiles.* (1) The interior volume index shall be calculated for each car line which is not a ''Atwo seater'' car line, in cubic feet rounded to the nearest 0.1 cubic foot. For car lines with more than one body style, the interior volume index for the car line is the arithmetic average of the interior volume indexes of each body style in the car line.

(2) For all body styles except station wagons, minivans and hatchbacks with more than one seat (*e.g.*, with a second or third seat) equipped with seatbelts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume, if applicable, and the luggage capacity.

(3) For all station wagons, minivans and hatchbacks with more than one seat (*e.g.*, with a second or third seat) equipped with seatbelts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume, and the cargo volume index.

(c) All interior and cargo dimensions are measured in inches to the nearest 0.1 inch. All dimensions and volumes shall be determined from the base vehicles of each body style in each car line, and do not include optional equipment. The dimensions H61, W3, W5, L34, H63, W4, W6, L51, H201, L205, L210, L211, H198, and volume V1 are to be determined in accordance with the procedures outlined in Motor Vehicle Dimensions SAE J1100a (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised September 1975) except as noted herein:

(1) *SAE J1100a(2.3)—Cargo dimensions.* All dimensions measured with the front seat positioned the same as for the interior dimensions and the second seat, for the station wagons, minivans and hatchbacks, in the upright position. All head restraints shall be in the stowed position and considered part of the seat.

(2) *SAE J1100a(8)—Luggage capacity.* Total of columns of individual pieces of standard luggage set plus H boxes stowed in the luggage compartment in accordance with the procedure described in 8.2. For passenger automobiles with no rear seat or with two rear seats with no rear seatbelts, the luggage compartment shall include the area to the rear of the front seat, with the rear seat (if applicable) folded, to the height of a horizontal plane tangent to the top of the front seatback.

(3) *SAE J1100a(7)—Cargo dimensions.* (i) L210-Cargo length at second seatback height-hatchback. The minimum horizontal dimension from the ''X'' plane tangent to the rearmost surface of the second seatback to the inside limiting interference of the hatchback door on the zero ''Y'' plane.

(ii) *L211—Cargo length at floor-second-hatchback.* The minimum horizontal dimensions at floor level from the rear of the second seatback to the normal limiting interference of the hatchback door on the vehicle zero ''Y'' plane.

(iii) *H198—Second seatback to load floor height.* The dimension measured vertically from the horizontal tangent to the top of the second seatback to the undepressed floor covering.

(d) The front seat volume is calculated in cubic feet by dividing 1,728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) *H61—Effective head room-front.* (In inches, obtained according to paragraph (c) of this section),

(2)(i) (W3+W5+5)/2-Average of shoulder and hip room-front, if hip room is more than 5 inches less than shoulder room. (In inches, W3 and W5 are obtained according to paragraph (c) of this section), or

(ii) W3-Shoulder room-front, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) *L34—Maximum effective leg room-accelerator.* (In inches, obtained according to paragraph (c) of this section.) Round the quotient to the nearest 0.001 cubic feet.

(e) The rear seat volume is calculated in cubic feet, for vehicles within a rear seat equipped with rear seat belts (as required by DOT), by dividing 1,728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) *H63—Effective head room-second.* (Inches obtained according to paragraph (c) of this section),

(2)(i) (W4+W6+5)/2-Average of shoulder and hip room-second, if hip room is more than 5 inches less than shoulder room. (In inches, W4 and W6 are obtained according to paragraph (c) of this section), or

(ii) W4—Shoulder room-second, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) *L51—Minimum effective leg room-second.* (In inches obtained according to paragraph (c) of this section.)

(f) The luggage capacity is V1, the usable luggage capacity obtained according to paragraph (c) of this section. For passenger automobiles with no rear seat or with a rear seat but no rear seat belts, the area to the rear of the front seat shall be included in the determination of V1, usable luggage capacity, as outlined in paragraph (c) of this section.

(g) *Cargo volume index.* (1) For station wagons and minivans the cargo volume index V2 is calculated, in cubic feet, by dividing 1,728 into the product of three terms and rounding the quotient to the nearest 0.001 cubic feet:

(i) *W4–;Shoulder room-second.* (In inches obtained according to paragraph (c) of this section.)

(ii) *H201–;Cargo height.* (In inches obtained according to paragraph (c) of this section.)

(iii) *L205–;Cargo length at belt-second.* (In inches obtained according to paragraph (c) of this section.)

(2) For hatchbacks, the cargo volume index V3 is calculated, in cubic feet, by dividing 1,728 into the product of three terms:

(i) Average cargo length, which is the arithmetic average of:

(A) L210–Cargo length at second seatback height-hatchback. (In inches obtained according to paragraph (c) of this section);

(B) L211–;Cargo length at floor-second-hatchback. (In inches obtained according to paragraph (c) of this section);

(ii) W4–;Shoulder room-second. (In inches obtained according to paragraph (c) of this section);

(iii) H198–;Second seatback to load floor height. (In inches obtained according to paragraph (c) of this section.) Round the quotient to the nearest 0.001 cubic foot.

(h) The following data must be submitted to the Administrator no later than the time of a general label request. Data shall be included for each body style in the car line covered by that general label.

(1) For all passenger automobiles:

(i) Dimensions H61, W3, L34 determined in accordance with paragraph (c) of this section.

(ii) Front seat volume determined in accordance with paragraph (d) of this section.

(iii) Dimensions H63, W4, L51 (if applicable) determined in accordance with paragraph (c) of this section.

(iv) Rear seat volume (if applicable) determined in accordance with paragraph (e) of this section.

(v) The interior volume index determined in accordance with paragraph (b) of this section for:

(A) Each body style, and

(B) The car line.

(vi) The class of the car line as determined in paragraph (a) of this section.

(2) For all passenger automobiles except station wagons, minivans and hatchbacks with more than one seat (*e.g.*, with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The quantity and letter designation of the pieces of the standard luggage set installed in the vehicle in the determination of usable luggage capacity V1, and

(ii) The usable luggage capacity V1, determined in accordance with paragraph (f) of this section.

(3) For station wagons and minivans with more than one seat (*e.g.*, with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions H201 and L205 determined in accordance with paragraph (c) of this section, and

(ii) The cargo volume index V2 determined in accordance with paragraph (g)(1) of this section.

(4) For hatchbacks with more than one seat (*e.g.*, with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions L210, L211, and H198 determined in accordance with paragraph (c) of this section.

(ii) The cargo volume index V3 determined in accordance with paragraph (g)(2) of this section.

(5) For pickup trucks:

(i) All GVWR's of less than or equal to 8,500 pounds available in the car line.

(ii) The arithmetic average GVWR for the car line.

Subpart E—[Amended]

■ 46. A new § 600.405–08 is added to read as follows:

§ 600.405–08 Dealer requirements.

(a) Each dealer shall prominently display at each location where new automobiles are offered for sale a copy of the annual Fuel Economy Guide containing the information specified in § 600.407. The Fuel Economy Guide may be made available either in hard copy or electronically via an on-site computer available for prospective purchasers to view and print as desired. The dealer shall provide this information without charge. The dealer will be expected to make this information available as soon as it is received by the dealer, but in no case later than 15 working days after notification is given of its availability. The Department of Energy will annually notify dealers of the availability of the information with instructions on how to obtain it either electronically or in hard copy.

(b) The dealer shall display the Fuel Economy Guide, or a notice of where the customer can electronically access the Fuel Economy Guide, in the same manner and in each location used to display brochures describing the automobiles offered for sale by the dealer. The notice shall include a link to the official Web site where this information is contained (*http://www.fueleconomy.gov.*)

(c) The dealer shall display the booklet applicable to each model year automobile offered for sale at the location.

■ 47. A new § 600.407–08 is added to read as follows:

§ 600.407–08 Booklets displayed by dealers.

(a) Booklets displayed by dealers in order to fulfill the obligations of § 600.405 may be either

(1) The printed copy of the annual Fuel Economy Guide published by the Department of Energy, or;

(2) Optionally, dealers may display the Fuel Economy Guide on a computer that is linked to the electronic version of the Fuel Economy Guide (available at *http://www.fueleconomy.gov*), or;

(3) A booklet approved by the Administrator of EPA containing the same information, format, and order as the Fuel Economy Guide published by the Department of Energy. Such a booklet may highlight the dealer's product line by contrasting color of ink or boldface type and may include other supplemental information regarding the dealer's product line subject to approval by the Administrator.

(b) A manufacturer's name and logo or a dealer's name and address or both may appear on the back cover of the hard copies of the Fuel Economy Guide.

Subpart F—[Amended]

48. A new § 600.507–08 is added to read as follows:

§ 600.507–08 Running change data requirements.

(a) Except as specified in paragraph (d) of this section, the manufacturer shall submit additional running change fuel economy data as specified in paragraph (b) of this section for any running change approved or implemented under §§ 86.079–32,

86.079–33, or 86.082–34 or 86.1842–01 as applicable, which:

(1) Creates a new base level or,

(2) Affects an existing base level by:

(i) Adding an axle ratio which is at least 10 percent larger (or, optionally, 10 percent smaller) than the largest axle ratio tested.

(ii) Increasing (or, optionally, decreasing) the road-load horsepower for a subconfiguration by 10 percent or more for the individual running change or, when considered cumulatively, since original certification (for each cumulative 10 percent increase using the originally certified road-load horsepower as a base).

(iii) Adding a new subconfiguration by increasing (or, optionally, decreasing) the equivalent test weight for any previously tested subconfiguration in the base level.

(b)(1) The additional running change fuel economy data requirement in paragraph (a) of this section will be determined based on the sales of the vehicle configurations in the created or affected base level(s) as updated at the time of running change approval.

(2) Within each newly created base level as specified in paragraph (a)(1) of this section, the manufacturer shall submit data from the highest projected total model year sales subconfiguration within the highest projected total model year sales configuration in the base level.

(3) Within each base level affected by a running change as specified in paragraph (a)(2) of this section, fuel economy data shall be submitted for the vehicle configuration created or affected by the running change which has the highest total model year sales. The test vehicle shall be of the subconfiguration created by the running change which has the highest projected total model year sales within the applicable vehicle configuration.

(c) The manufacturer shall submit the fuel economy data required by this section to the Administrator in accordance with § 600.314(b).

(d) For those model types created under § 600.208–08(a)(2), the manufacturer shall submit data for each subconfiguration added by a running change.

■ 49. A new § 600.510–08 is added to read as follows:

§ 600.510–08 Calculation of average fuel economy.

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified in this section, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that is domestically manufactured as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that is not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made for the category of light trucks that is domestically manufactured as defined in § 600.511(e)(1).

(4) An average fuel economy calculation will be made for the category of light trucks that is not domestically manufactured as defined in § 600.511(e)(2).

(b) For the purpose of calculating average fuel economy under paragraph (c), of this section:

(1) All fuel economy data submitted in accordance with § 600.006(e) or § 600.512(c) shall be used.

(2) The combined city/highway fuel economy will be calculated for each model type in accordance with § 600.208–08 of this section except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced; and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg; and

(v) At the manufacturer's option, those vehicle configurations that are self-compensating to altitude changes may be separated by sales into high-altitude sales categories and low-altitude sales categories. These separate sales categories may then be treated (only for the purpose of this section) as separate configurations in accordance with the procedure of § 600.208–08(a)(4)(ii).

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206–08(a)(3) except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced; and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(c) Except as permitted in paragraph (d) of this section, the average fuel economy will be calculated individually for each category identified in paragraph (a) of this section as follows:

(1) Divide the total production volume of that category of automobiles; by

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a fraction determined by dividing:

(i) The number of automobiles of that model type produced by the manufacturer in the model year; by

(ii) For gasoline-fueled and diesel-fueled model types, the fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section; or

(iii) For alcohol-fueled model types, the fuel economy value calculated for that model type in accordance with paragraph (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg; or

(iv) For natural gas-fueled model types, the fuel economy value calculated for that model type in accordance with paragraph (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg; or

(v) For alcohol dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel fuel as determined in § 600.208(b)(5)(i); and

(B) The combined model type fuel economy value for operation on alcohol fuel as determined in § 600.208(b)(5)(ii) divided by 0.15 provided the requirements of § 600.510(g) are met; or

(vi) For natural gas dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel as determined in § 600.208(b)(5)(i); and

(B) The combined model type fuel economy value for operation on natural gas as determined in § 600.208(b)(5)(ii) divided by 0.15 provided the requirements of paragraph (g) of this section are met.

(d) The Administrator may approve alternative calculation methods if they are part of an approved credit plan under the provisions of 15 U.S.C. 2003.

(e) For passenger categories identified in paragraphs (a)(1) and (2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$$AFE_{adj} = AFE[((0.55 \text{ x } a \text{ x } c) + (0.45 \times c) + (0.5556 \text{ x } a) + 0.4487) / ((0.55 \text{ x } a) + 0.45)] + IW$$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weight average (rounded to the nearest 0.0001 mpg) of all model type highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model type city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

c = 0.0022 for the 1986 model year.

c = A constant value, fixed by model year. For 1987, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available. For 1988 and later model years, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available.

$$IW = (9.2917 \times 10^{-3} \times SF_{3IWC} \times FE_{3IWC}) - (3.5123 \times 10^{-3} \text{ x} \times SF_{4ETW} \times FE_{4IWC}).$$

Note: Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWC} = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETW} = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

FE_{4IWC} = The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

FE_{4IWC} = The sales-weighted average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administrator shall calculate and apply additional average fuel economy adjustments if, after notice and opportunity for comment, the Administrator determines that, as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determinations, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibility within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles;

(4) The impact of a change on average fuel economy is not solely due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effects on in-use fuel economy;

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

(g)(1) Alcohol dual fuel automobiles and natural gas dual fuel automobiles must provide equal or greater energy efficiency while operating on alcohol or natural gas as while operating on gasoline or diesel fuel to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section. The following equation must hold true:

$$E_{alt}/E_{pet} > \text{or} = 1$$

Where:

$E_{alt} = [FE_{alt}/(NHV_{alt} \times D_{alt})] \times 10^6$ = energy efficiency while operating on alternative fuel rounded to the nearest 0.01 miles/million BTU.

$E_{pet} = [FE_{pet}/(NHV_{pet} \times D_{pet})] \times 10^6$ = energy efficiency while operating on gasoline or diesel (petroleum) fuel rounded to the nearest 0.01 miles/million BTU.

FE_{alt} is the fuel economy [miles/gallon for liquid fuels or miles/100 standard cubic feet for gaseous fuels] while operated on the alternative fuel as determined in § 600.113–08(a) and (b);

FE_{pet} is the fuel economy [miles/gallon] while operated on petroleum fuel (gasoline or diesel) as determined in § 600.113(a) and (b);

NHV_{alt} is the net (lower) heating value [BTU/lb] of the alternative fuel;

NHV_{pet} is the net (lower) heating value [BTU/lb] of the petroleum fuel;

D_{alt} is the density [lb/gallon for liquid fuels or lb/100 standard cubic feet for gaseous fuels] of the alternative fuel;

D_{pet} is the density [lb/gallon] of the petroleum fuel.

(i) The equation must hold true for both the FTP city and HFET highway fuel economy values for each test of each test vehicle.

(ii)(A) The net heating value for alcohol fuels shall be determined per ASTM D 240–92 ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(B) The density for alcohol fuels shall be determined per ASTM D 1298–85 (Reapproved 1990) ''Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113(f).

(2) [Reserved]

(3) Alcohol dual fuel passenger automobiles and natural gas dual fuel passenger automobiles manufactured during model years 1993 through 2004 must meet the minimum driving range

requirements established by the Secretary of Transportation (49 CFR part 538) to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section.

(h) For each of the model years 1993 through 2004, and for each category of automobile identified in paragraph (a) of this section, the maximum increase in average fuel economy determined in paragraph (c) of this section attributable to alcohol dual fuel automobiles and natural gas dual fuel automobiles shall be 1.2 miles per gallon or as provided for in paragraph (i) of this section.

(1) The Administrator shall calculate the increase in average fuel economy to determine if the maximum increase provided in paragraph (h) of this section has been reached. The Administrator shall calculate the average fuel economy for each category of automobiles specified in paragraph (a) of this section by subtracting the average fuel economy values calculated in accordance with this section by assuming all alcohol dual fuel and natural gas dual fuel automobiles are operated exclusively on gasoline (or diesel) fuel from the average fuel economy values determined in paragraphs (b)(2)(vi), (b)(2)(vii), and (c) of this section. The difference is limited to the maximum increase specified in paragraph (h) of this section.

(2) [Reserved]

(i) In the event that the Secretary of Transportation lowers the corporate average fuel economy standard applicable to passenger automobiles below 27.5 miles per gallon for any model year during 1993 through 2004, the maximum increase of 1.2 mpg per year specified in paragraph (h) of this section shall be reduced by the amount the standard was lowered, but not reduced below 0.7 mpg per year.

■ 50. A new § 600.512–08 is added to read as follows:

§ 600.512–01 Model year report.

(a) For each model year, the manufacturer shall submit to the Administrator a report, known as the model year report, containing all information necessary for the calculation of the manufacturer's average fuel economy. The results of the manufacturer calculations and summary information of model type fuel economy values which are contained in the average calculation shall be submitted to the Secretary of the Department of Transportation, National Highway and Traffic Safety Administration.

(b)(1) The model year report shall be in writing, signed by the authorized representative of the manufacturer and shall be submitted no later than 90 days after the end of the model year.

(2) The Administrator may waive the requirement that the model year report be submitted no later than 90 days after the end of the model year. Based upon a request by the manufacturer, if the Administrator determines that 90 days is insufficient time for the manufacturer to provide all additional data required as determined in § 600.507, the Administrator shall establish a date by which the model year report must be submitted.

(3) Separate reports shall be submitted for passenger automobiles and light trucks (as identified in § 600.510).

(c) The model year report must include the following information:

(1) All fuel economy data used in the FTP/HFET-based model type calculations under § 600.208–08, and subsequently required by the Administrator in accordance with § 600.507;

(2) All fuel economy data for certification vehicles and for vehicles tested for running changes approved under § 86.1842–01 of this chapter;

(3) Any additional fuel economy data submitted by the manufacturer under § 600.509;

(4) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510(b)(2);

(5) The manufacturer's average fuel economy value calculated according to § 600.510(c);

(6) A listing of both domestically and nondomestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made; and

(7) The authenticity and accuracy of production data must be attested to by the corporation, and shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the required attestation.

■ 51. A new § 600.513–08 is added to read as follows:

§ 600.513–08 Gas Guzzler Tax.

(a) This section applies only to passenger automobiles sold after December 27, 1991, regardless of the model year of those vehicles. For alcohol dual fuel and natural gas dual fuel automobiles, the fuel economy while such automobiles are operated on gasoline will be used for Gas Guzzler Tax assessments.

(1) The provisions of this section do not apply to passenger automobiles exempted for Gas Guzzler Tax assessments by applicable federal law and regulations. However, the manufacturer of an exempted passenger automobile may, in its discretion, label such vehicles in accordance with the provisions of this section.

(2) For 1991 and later model year passenger automobiles, the combined FTP/HFET-based model type fuel economy value determined in § 600.208–08 used for Gas Guzzler Tax assessments shall be calculated in accordance with the following equation, rounded to the nearest 0.1 mpg:

$$FE_{adj} = FE[((0.55 \times a_g \times c) + (0.45 \times c) + (0.5556 \times a_g) + 0.4487) / ((0.55 \times a_g) + 0.45)] + IW_g$$

Where:

FE_{adj} = Fuel economy value to be used for determination of gas guzzler tax assessment rounded to the nearest 0.1 mpg.

FE = Combined model type fuel economy calculated in accordance with § 600.208–08, rounded to the nearest 0.0001 mpg.

a_g = Model type highway fuel economy, calculated in accordance with § 600.208–08, rounded to the nearest 0.0001 mpg divided by the model type city fuel economy calculated in accordance with § 600.208–08, rounded to the nearest 0.0001 mpg. The quotient shall be rounded to 4 decimal places.

c = gas guzzler adjustment factor = 1.300×10^{-3} for the 1986 and later model years.

$IW_g = (9.2917 \times 10^{-3} \times SF_{3IWCG}\ FE_{3IWCG}) - (3.5123 \times 10^{-3} \times SF_{4ETWG} \times FE_{4IWCG})$.

Note: Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWCG} = The 3000 lb. inertia weight class sales in the model type divided by the total model type sales; the quotient shall be rounded to 4 decimal places.

SF_{4ETWG} = The 4000 lb. equivalent test weight sales in the model type divided by the total model type sales, the quotient shall be rounded to 4 decimal places.

FE_{3IWCG} = The 3000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

FE_{4IWCG} = The 4000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.001 mpg.

(b)(1) For passenger automobiles sold after December 31, 1990, with a combined FTP/HFET-based model type fuel economy value of less than 22.5 mpg (as determined in § 600.208–08), calculated in accordance with paragraph (a)(2) of this section and rounded to the

nearest 0.1 mpg, each vehicle fuel economy label shall include a Gas Guzzler Tax statement pursuant to 49 U.S.C. 32908(b)(1)(E). The tax amount stated shall be as specified in paragraph (b)(2) of this section.

(2) For passenger automobiles with a combined general label model type fuel economy value of:

(i) At least 22.5 mpg, no Gas Guzzler Tax statement is required.

(ii) At least 21.5 mpg, but less than 22.5 mpg, the Gas Guzzler Tax statement shall show a tax of $1,000.

(iii) At least 20.5 mpg, but less than 21.5 mpg, the Gas Guzzler Tax statement shall show a tax of $1,300.

(iv) At least 19.5 mpg, but less than 20.5 mpg, the Gas Guzzler Tax statement shall show a tax of $1,700.

(v) At least 18.5 mpg; but less than 19.5 mpg, the Gas Guzzler Tax statement shall show a tax of $2,100.

(vi) At least 17.5 mpg, but less than 18.5 mpg, the Gas Guzzler Tax statement shall show a tax of $2,600.

(vii) At least 16.5 mpg, but less than 17.5 mpg, the Gas Guzzler Tax statement shall show a tax of $3,000.

(viii) At least 15.5 mpg, but less than 16.5 mpg, the Gas Guzzler Tax statement shall show a tax of $3,700.

(ix) At least 14.5 mpg, but less than 15.5 mpg, the Gas Guzzler Tax statement shall show a tax of $4,500.

(x) At least 13.5 mpg, but less than 14.5 mpg, the Gas Guzzler Tax statement shall show a tax of $5,400.

(xi) At least 12.5 mpg, but less than 13.5 mpg, the Gas Guzzler Tax statement shall show a tax of $6,400.

(xii) Less than 12.5 mpg, the Gas Guzzler Tax statement shall show a tax of $7,700.

■ 52. Appendix II to Part 600 is amended by revising paragraph (b) as follows:

Appendix II to Part 600—Sample Fuel Economy Calculations

* * * * *

(b) This sample fuel economy calculation is applicable to 1988 and later model year automobiles.

(1) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = .139 grams/mile.
CO = 1.59 grams/mile.
CO_2 = 317 grams/mile.

(2) Assume that the test fuel used for this test had the following properties:

SG = 0.745.
CWF = 0.868.
NHV = 18,478 Btu/lb.

(3) According to the procedure in § 600.113–08, the city fuel economy or MPG_c, for the vehicle may be calculated by substituting the HC, CO, and CO_2 gram/mile values and the SG, CWF, and NHV values into the following equation:

$$MPG_c = (5174 \times 10^4 \times CWF \times SG) / [((CWF \times HC) + (0.429 \times CO + (0.273 \times CO_2)) ((0.6 \times SG \times NHV) + 5471)]$$

Example:

$$MPG_c = (5174 \times 10^4 \times 0.868 \times 0.745) / [(0.868 \times .139 + 0.429 \times 1.59 + 0.273 \times 317)(0.6 \times 0.745 \times 18478 + 5471)]$$

$$MPG_c = 27.9$$

(4) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and a calculation similar to that shown in (b)(3) of this section resulted in a highway fuel economy of MPG_h of 36.9. According to the procedure in § 600.210(c), the combined fuel economy (called MPG_{comb}) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{comb} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{comb} = \frac{1}{\frac{0.55}{27.9} + \frac{0.45}{36.9}}$$

$$MPG_{comb} = 31.3$$

■ 53. Appendix III to Part 600 is revised to read as follows:

Appendix III to Part 600—Sample Fuel Economy Label Calculation

Suppose that a manufacturer called Mizer Motors has a product line composed of eight car lines. Of these eight, four are available with the 3.0 liter, 6 cylinder, sequential multi-point fuel injection, 4-valve per cylinder, and 3-way catalyst engine. These four car lines are:

Ajax
Boredom III
Dodo
Castor (Station Wagon)

A. A car line is defined in subpart A (with additional guidance provided in EPA Advisory Circular 89) as a group of vehicles within a make or division which has a degree of commonality in construction. Car line does not consider any level of decor or opulence and is not generally distinguished by such characteristics as roofline, number of doors, seats, or windows. Station wagons and light duty trucks are, however, identified separately from the remainder of each car line. In other words, a Castor station wagon would be considered a different car line than the normal Castor car line made up of sedans, coupes, etc.

B. The engine considered here is defined as a basic engine in subpart A of this part (with additional guidance provided in EPA Advisory Circular 83A). A basic engine is a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage and other engine and emission control system characteristics specified by the Administrator. A model type is a unique combination of car line, basic engine, and transmission class. Thus Ajax is a car line but Ajax 3.0 liter, 6 cylinder manual four-speed transmission is a model type whereas Ajax 3.0 liter, 6 cylinder automatic three-speed transmission is a different model type.

C. The following calculations provide an example of the procedures described in subpart C of this part for the calculation of vehicle configuration and model type fuel economy values. In order to simplify the presentation, only city fuel economy values are included (as determined by either the derived 5-cycle method or vehicle-specific 5-cycle based method). The procedure is identical for highway and combined fuel economy values.

Step I. Input data as supplied by the manufacturer or as determined from testing conducted by the Administrator.

Manufacturer—Mizer Motors

Basic Engine: (3.0 liter, 6 cylinder, sequential multi-point fuel injection, 4-valve per cylinder, 3-way catalyst).

Test vehicle carline	Engine code	Trans	Inertia weight	Axle ratio	Harmonically averaged. city MPG	Specific label MPG [1]	Vehicle config. sales
Ajax	1	M–4	3500	2.73	16.1001	16	15,000
Ajax	2	A–3	3500	2.56	15.9020	16	35,000
Boredom III	4	M–4	4000	3.08	14.2343	14	10,000
Ajax	3	M–4	4000	3.36	15.0000	15	15,000
Boredom III	8	A–3	4000	2.56	13.8138	14	25,000
Boredom III	5	A–3	4500	3.08	13.2203	13	20,000
Castor	5	A–3	5000	3.08	10.6006	11	40,000

[1] The vehicle configuration fuel economy values, rounded to the nearest mile per gallon, are the fuel economy values that would be used on specific labels for that vehicle configuration.

Step II. Group vehicle fuel economy and sales data according to base level combinations within this basic engine.

Base level	Transmission class	Inertia weight	Miles per gallon	Projected vehicle configuration sales
A	Manual-4	3,500	16.1001	15,000
B	Automatic-3	3,500	15.9020	35,000
C	Manual-4	4,000	14.2343	10,000
C	Manual-4	4,000	15.0000	15,000
D	Automatic-3	4,000	13.8138	25,000
E	Automatic-3	4,500	13.2203	20,000
F	Automatic-3	5,000	10.6006	40,000

Step III. Determine base level fuel economy values.

A. For all the base levels except the base level which includes 4,000 pound, manual four-speed transmission data, the base level fuel economy is as noted in Step II since only one vehicle configuration was tested within each of these base levels.

3,500 lb/M4 transmission.	16.1001 mpg.
3,500 lb/A3 transmission.	15.9020 mpg.
4,000 lb/A3 transmission.	13.8138 mpg.
4,500 lb/A3 transmission.	13.2203 mpg.
5,000 lb/A3 transmission.	10.6006 mpg.

B. Since data from more than one vehicle configuration are included in the 4,000-pound, manual four-speed transmission base level, this fuel economy is harmonically averaged in proportion to the percentage of total sales of all vehicle configurations tested within that base level represented by each vehicle configuration tested within that base level.

$$\text{Base level fuel economy} = \frac{1}{\left[\begin{array}{l}\text{Fraction of total sales of configurations}\\ \text{tested represented by}\\ \text{configuration No. 1 sales}\end{array}\right]\left[\dfrac{1}{\begin{array}{l}\text{Configuration}\\ \text{No. 1 fuel economy}\end{array}}\right] + \left[\begin{array}{l}\text{Fraction of total sales}\\ \text{of configurations tested}\\ \text{represented by configuration}\\ \text{No. 2 sales}\end{array}\right]\left[\dfrac{1}{\begin{array}{l}\text{Configuration}\\ \text{No. 2 1 fuel economy}\end{array}}\right]}$$

Base level: M4 transmission, 4000 pounds:

$$\frac{1}{\left[\dfrac{10000}{25000}\right]\dfrac{1}{14.2343} + \left[\dfrac{15000}{25000}\right]\dfrac{1}{15.0000}} = 14.6840 \text{ miles per gallon}$$

Therefore, the 4000 pound, M4 transmission fuel economy is 14.6840 miles per gallon.

Note that the car line of the test vehicle using a given engine makes no difference—only the weight and transmission do.

Step IV. For each model type offered by the manufacturer with that basic engine, determine the sales fraction represented by each inertia weight/transmission class combination and the corresponding fuel economy.

Ajax	M4	0.4000 at 3,500 lb	16.1001
		0.6000 at 4,000 lb	14.6840
	A3	0.3000 at 3,500 lb	15.9020
		0.7000 at 4,000 lb	13.8138
Dodo	M4	0.4000 at 3,500 lb	16.1001
		0.6000 at 4,000 lb	14.6840
	A3	0.3000 at 3,500 lb	15.9020
		0.7000 at 4,000 lb	13.8138
Boredom III	M4	1.0000 at 4,000 lb	14.6840
	A3	0.2500 at 4,000 lb	13.8138
		0.7500 at 4,500 lb	13.2203
Castor	A3	0.2000 at 4,500 lb	13.2203
		0.8000 at 5,000 lb	10.6006

Step V. Determine fuel economy for each model type (that is, car line/basic engine/transmission class combination).

Ajax, 3.0 liter, 6 cylinder, A3 transmission, model type MPG is calculated as follows:

$$\frac{1}{\left[\frac{\text{The fraction of Ajax vehicles using the 3.0 liter, 6 cylinder engine which fall in the 3500 lb inertia weight class with an A3 transmission}}{\text{Fuel economy for 3.0 liter, 6 cylinder 3500 lb A3 transmission base level}}\right] + \left[\frac{\text{The fraction of Ajax vehicles using the 3.0 liter, 6 cylinder engine which fall in the 4000 lb inertia weight class with an A3 transmission}}{\text{Fuel economy for 3.0 liter 6 cylinder 4000 lb A3 transmission base level}}\right]}$$

$$= \frac{1}{\left[\frac{0.3000}{15.9020}\right] + \left[\frac{0.7000}{13.8138}\right]} = 14.3803 \text{ mpg, which rounds to 14 MPG}^{1}$$

Similarly, Ajax and Dodo 3.0 liter, 6 cylinder, M4 model type MPG is calculated as follows:

$$\frac{1}{\left[\frac{0.4000}{16.1001}\right] + \left[\frac{0.6000}{14.6840}\right]} = 15.2185, \text{ which rounds to 15 MPG}^{1}$$

Dodo 3.0 liter, 6 cylinder, A3 model type MPG is calculated as follows:

$$= \frac{1}{\left[\frac{0.3000}{15.9020}\right] + \left[\frac{0.7000}{13.8138}\right]} = 14.3803 \text{ mpg, which rounds to 14 MPG}^{1}$$

Boredom III 3.0 liter 6 cylinder M4 model type MPG = 14.6840 mpg, which rounds to 15 mi./gal[1]

Boredom III 3.0 liter, 6 cylinder, A3 model type MPG is calculated as follows:

$$\frac{1}{\left[\frac{0.2500}{13.8138}\right] + \left[\frac{0.7500}{13.2203}\right]} = 13.3638, \text{ which rounds to 13 MPG}^{1}$$

Castor 3.0 liter, 6 cylinder, A3 model type MPG is calculated as follows:

$$\frac{1}{\left[\frac{0.2000}{13.2203}\right] + \left[\frac{0.8000}{10.6006}\right]} = 11.0381, \text{ which rounds to 11 MPG}^{1}$$

[1] The model type fuel economy values rounded to the nearest mile per gallon, are the fuel economy values listed in the EPA Fuel Economy Guide and used on the general labels (window stickers) for production vehicles for that model year.

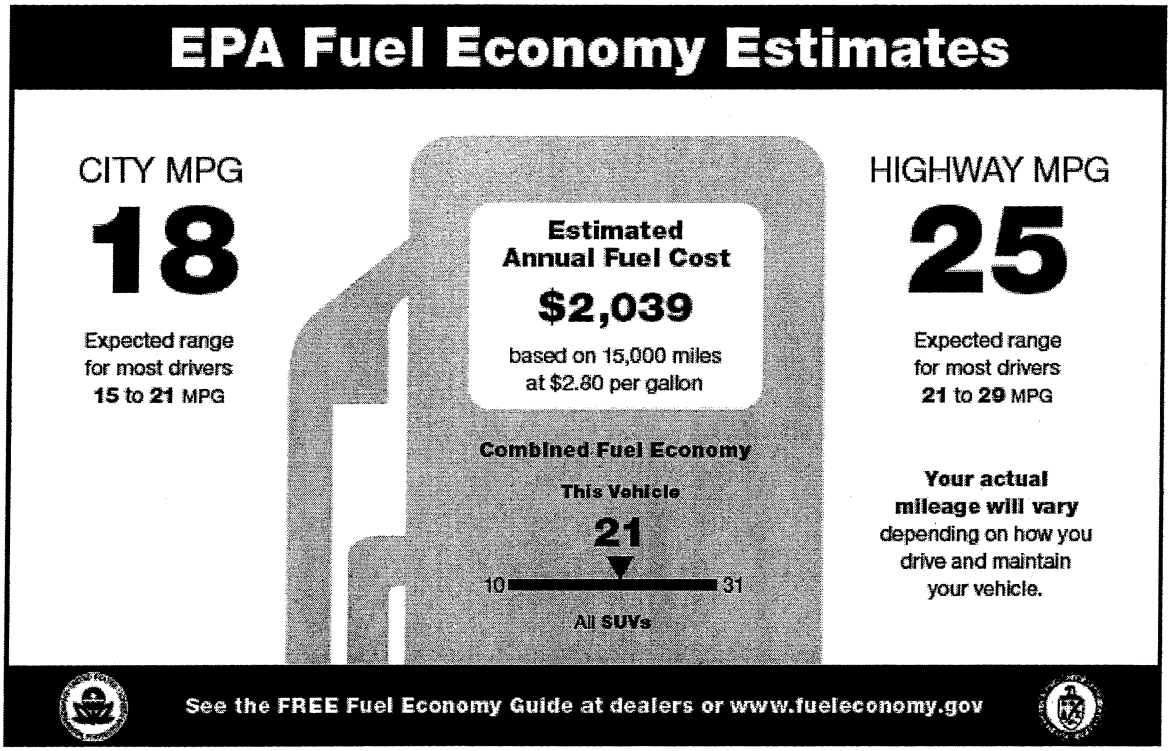
Note that even though no Dodo was actually tested, this approach permits its fuel economy figure to be estimated, based on the inertia weight distribution of projected Dodo sales within a specific engine and transmission grouping.

■ 54. A new Appendix IV is added to read as follows:

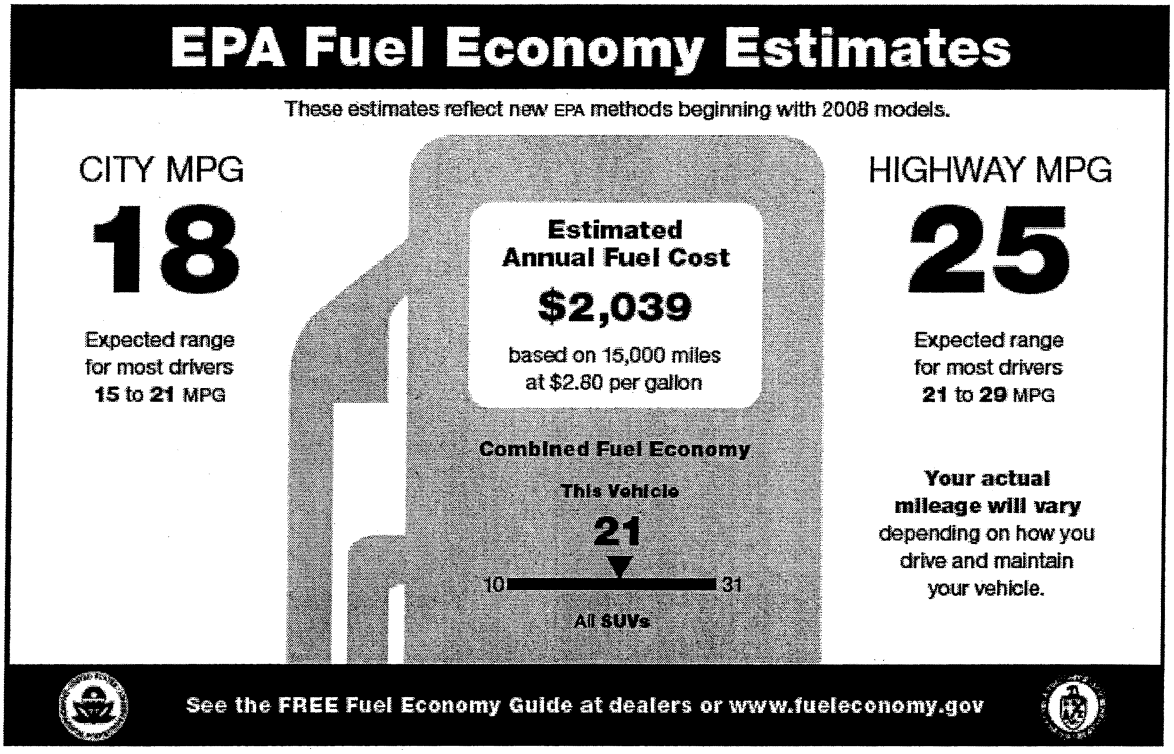
Appendix IV to Part 600—Sample Fuel Economy Labels for 2008 and Later Model Year Vehicles

BILLING CODE 6560–50–P

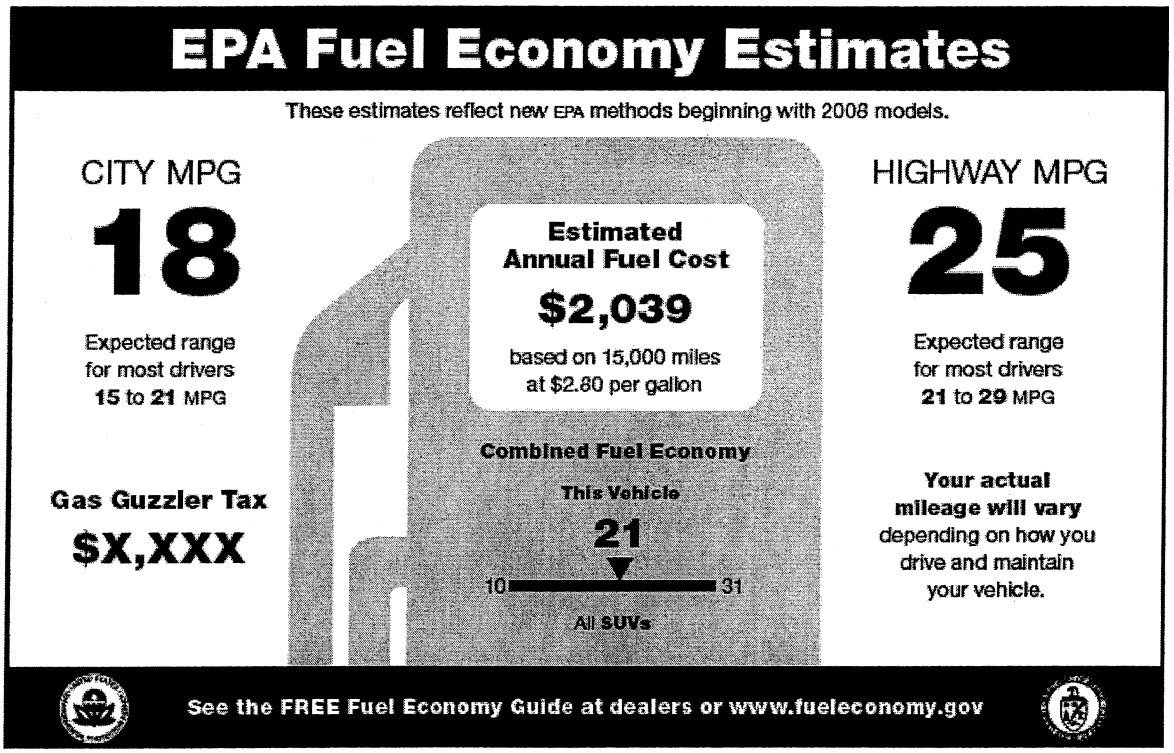
A. Gasoline (or diesel)-fueled vehicle label



B. Gasoline (or diesel)-fueled vehicle label (with transitional text statement for MY 2008 and 2009 vehicles only)

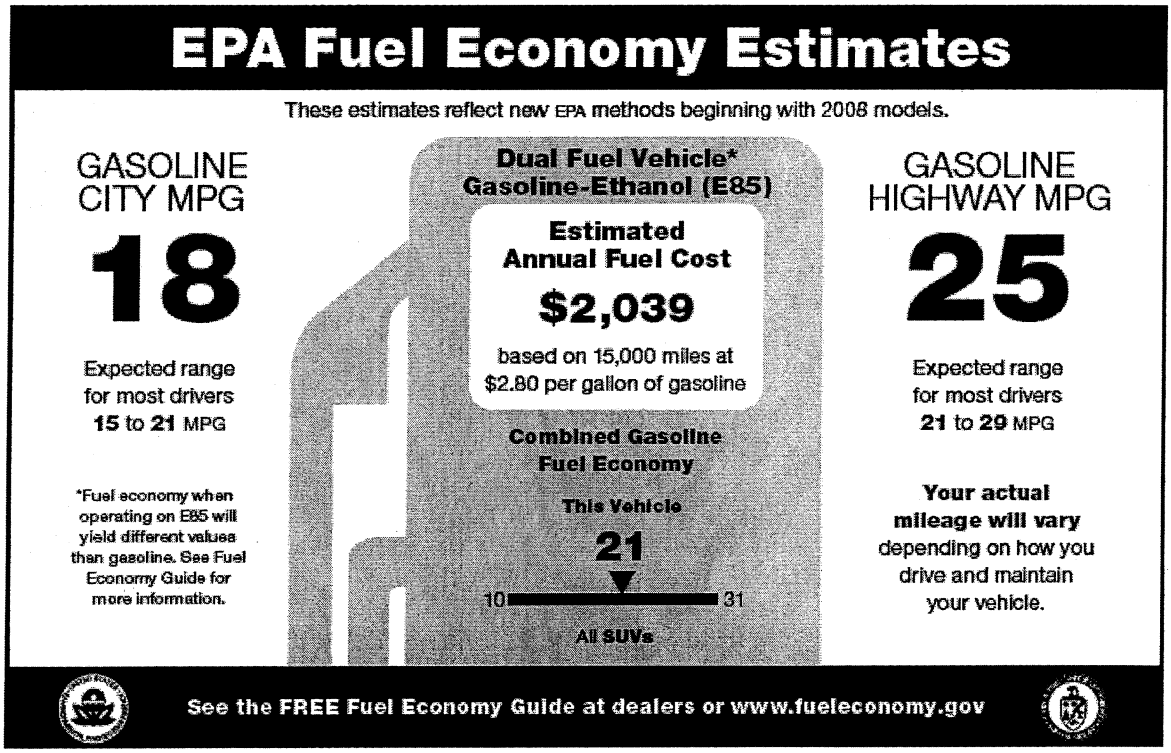


C. Gasoline-fueled Gas Guzzler vehicle label

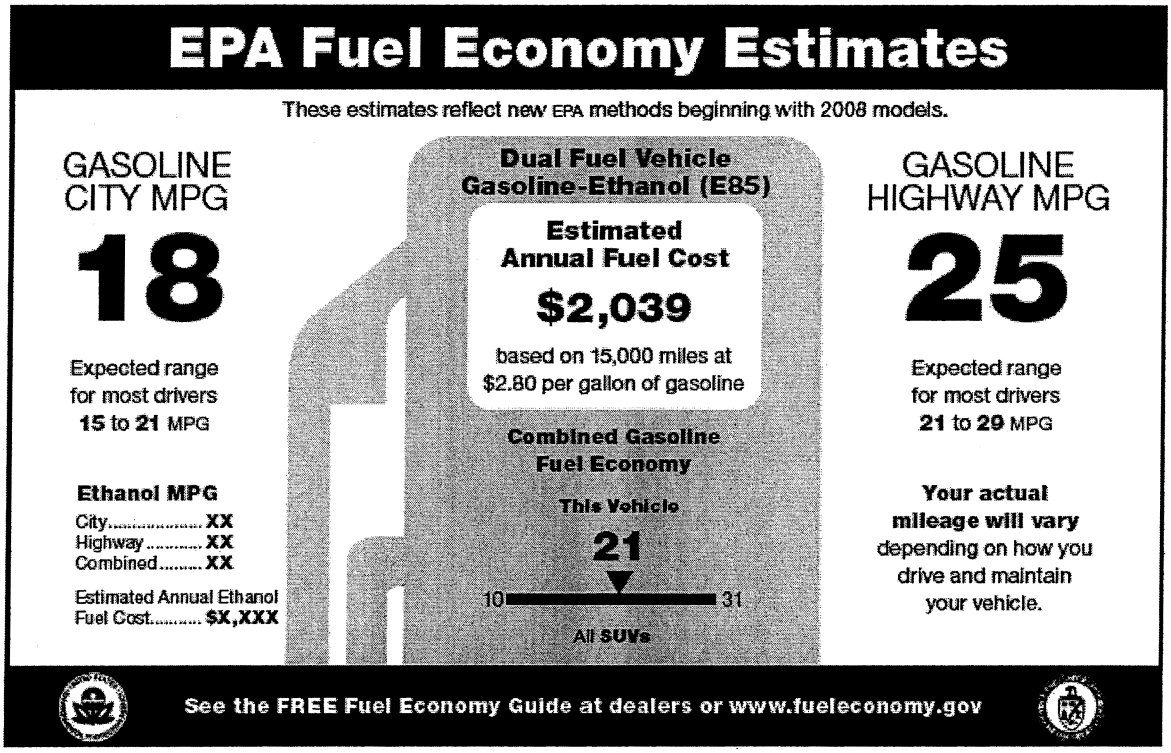


D. Dual Fuel Vehicle Label (Ethanol/Gasoline)

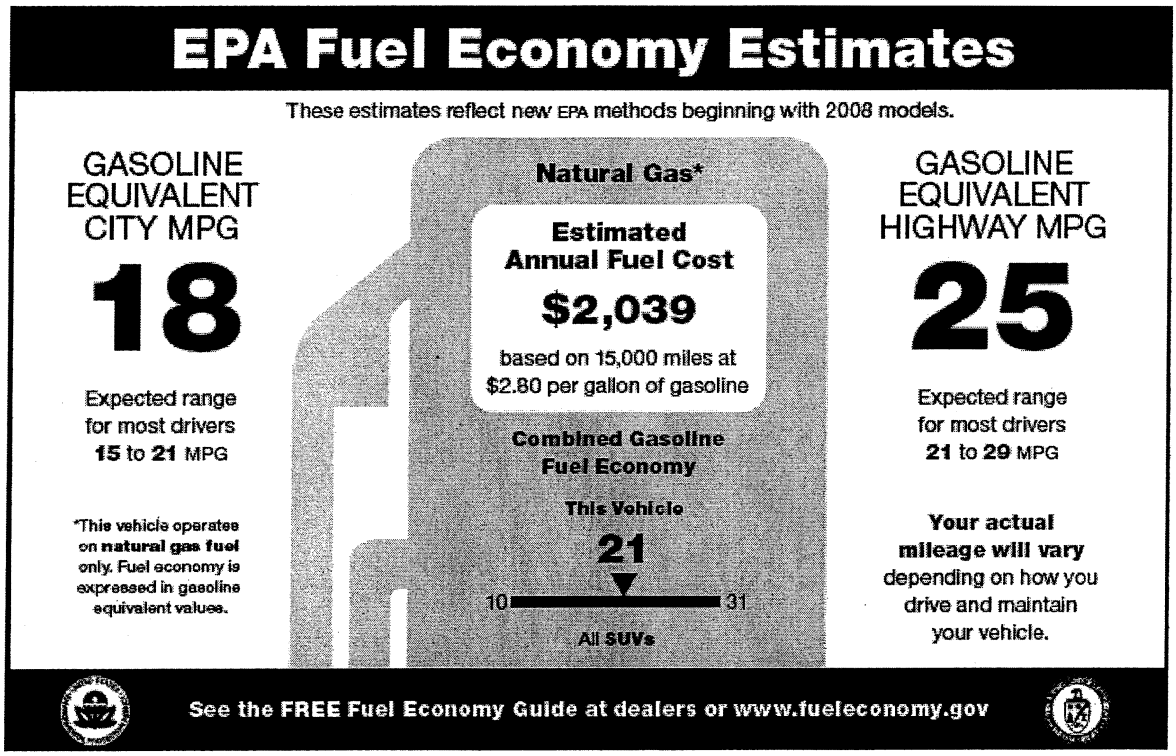
Option 1—without alternate fuel economy)



Option 2—with alternate fuel economy

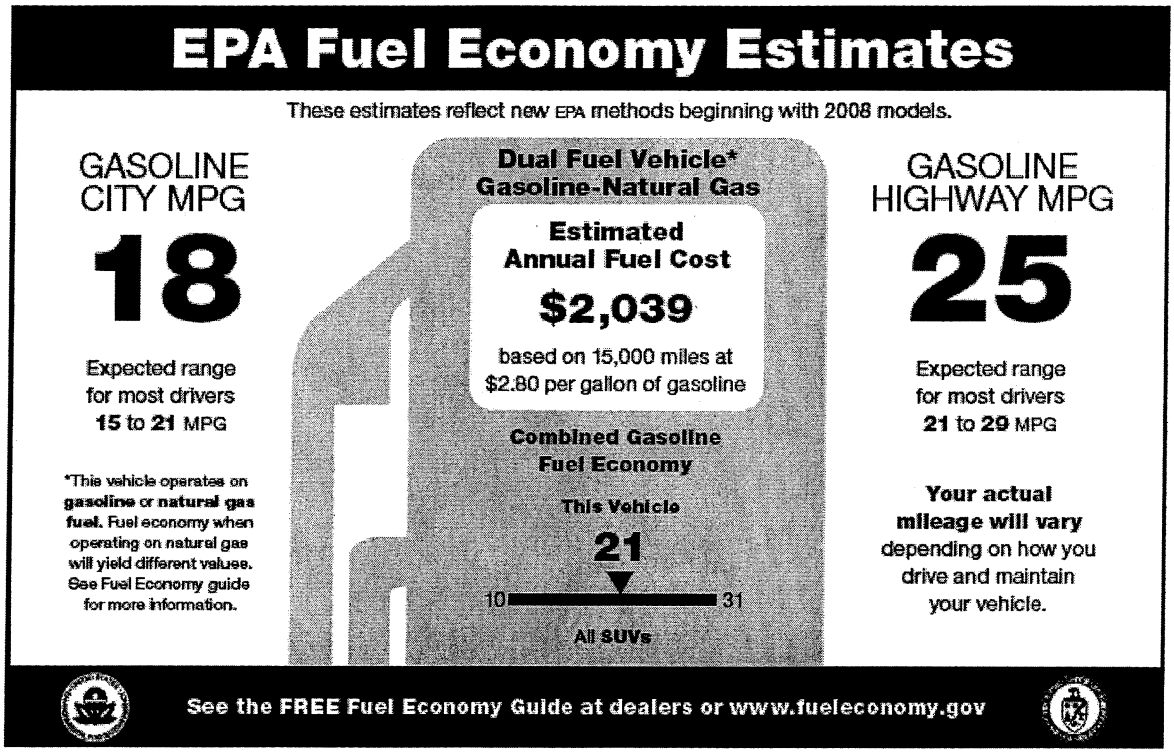


E. Natural Gas Vehicle Label

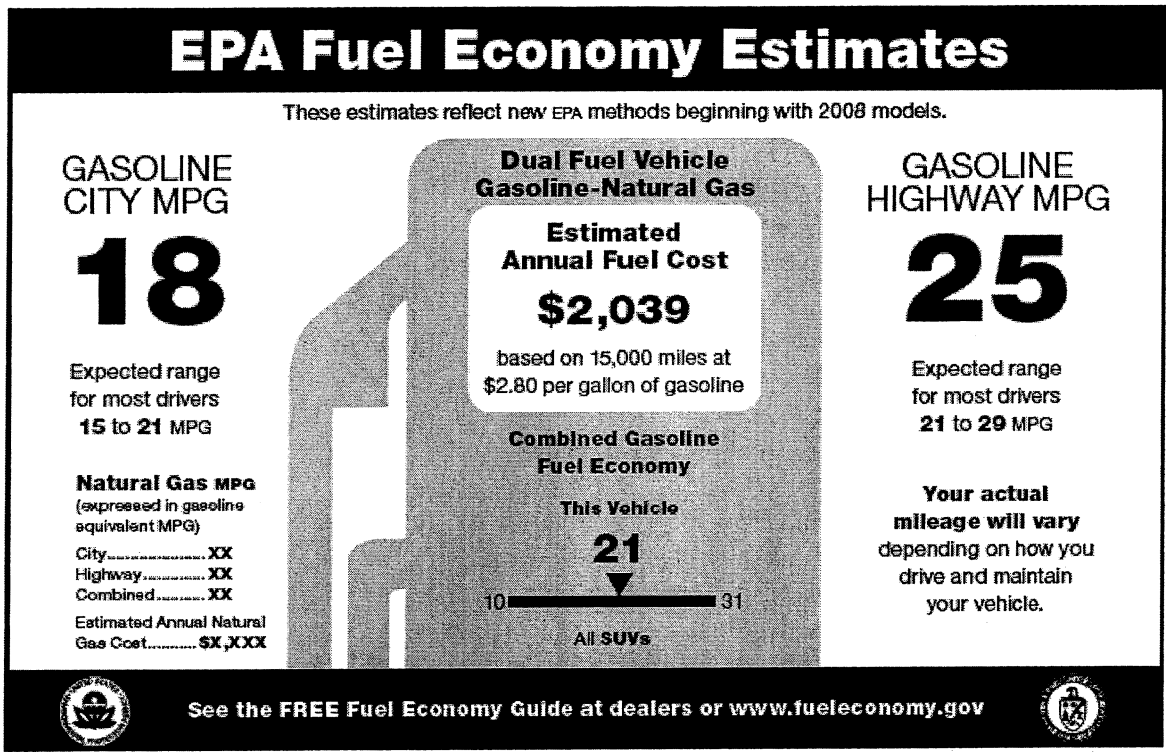


F. Dual Fuel Natural Gas Label

Option 1—without alternate fuel economy



Option 2—With alternate fuel economy



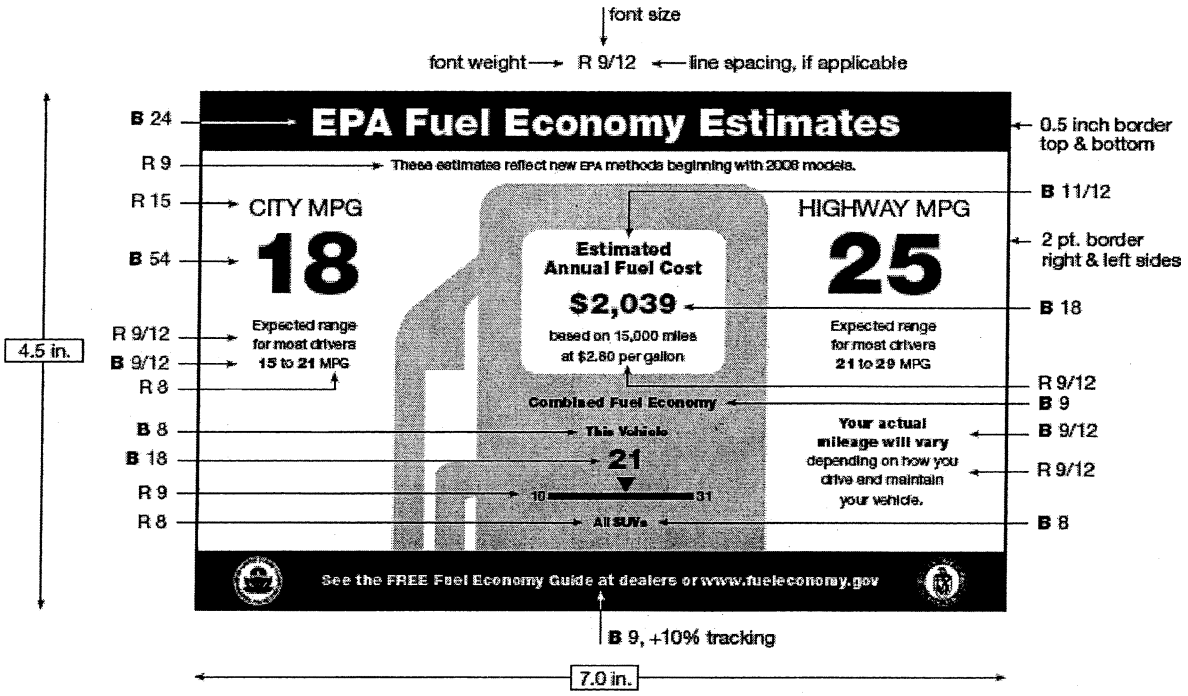
■ 55. A new Appendix V is added to read as follows:

Appendix V to Part 600—Fuel Economy Label Style Guidelines for 2008 and Later Model Year Vehicles

A. Format Guidelines for Gasoline (or Diesel) Vehicles

Gasoline Fuel Economy Label

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (B) — not bold, thin, italic or other font styles.



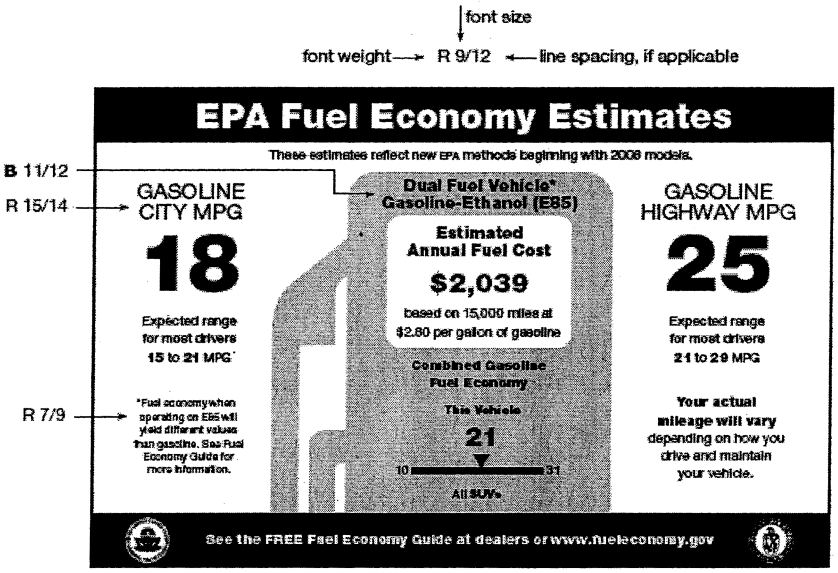
Combined fuel economy bar is a 4 pt. (0.056 in.) rule that is 90 pt. (1.25 in.) long.
Indicator triangle above bar is from Windings 3 at 14 pt. size. If drawn, 12 pt. (0.167 in.) each side.

B. Format Guidelines for Ethanol and Natural Gas Dual Fuel Vehicles. Unless otherwise indicated, the format specifications in Appendix V. A. apply.

Dual Fuel Vehicle: Gasoline-Ethanol

BASIC FUEL ECONOMY LABEL

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (B) — not bold, thin, italic or other font styles.



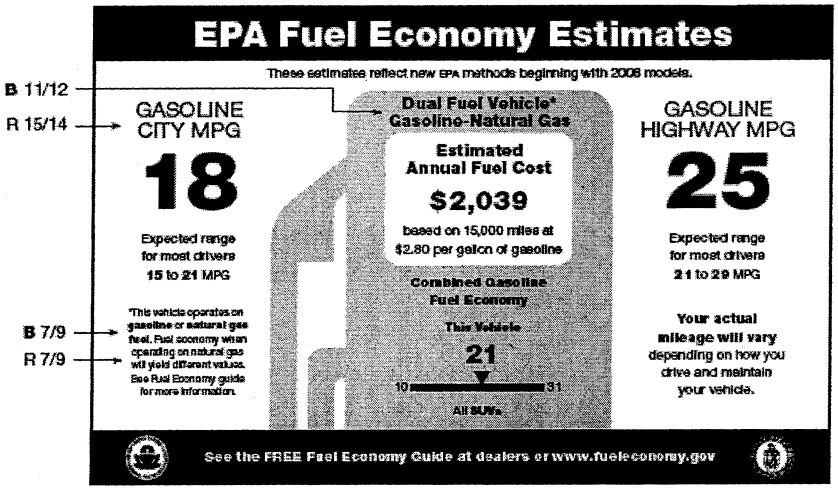
Dual Fuel Vehicle: Gasoline-Natural Gas

BASIC FUEL ECONOMY LABEL

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (**B**) — not bold, thin, italic or other font styles.

font size

font weight → R 9/12 ← line spacing, if applicable



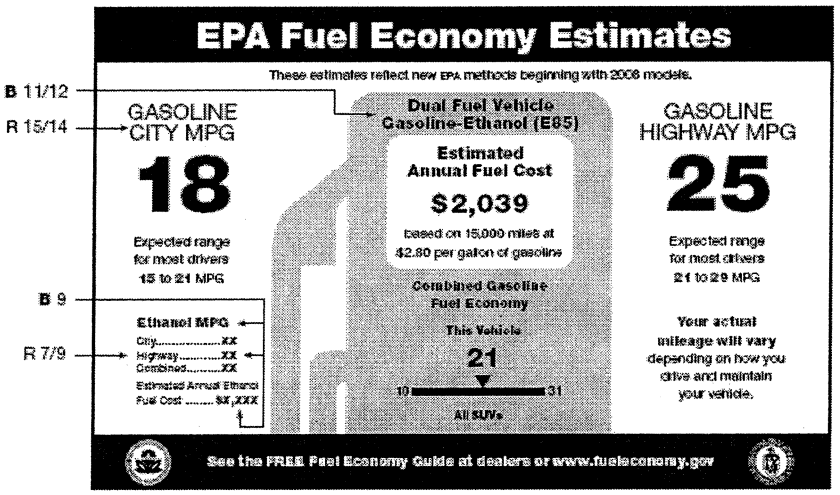
Dual Fuel Vehicle: Gasoline-Ethanol

WITH ETHANOL MILEAGE INFORMATION

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (**B**) — not bold, thin, italic or other font styles.

font size

font weight → R 9/12 ← line spacing, if applicable

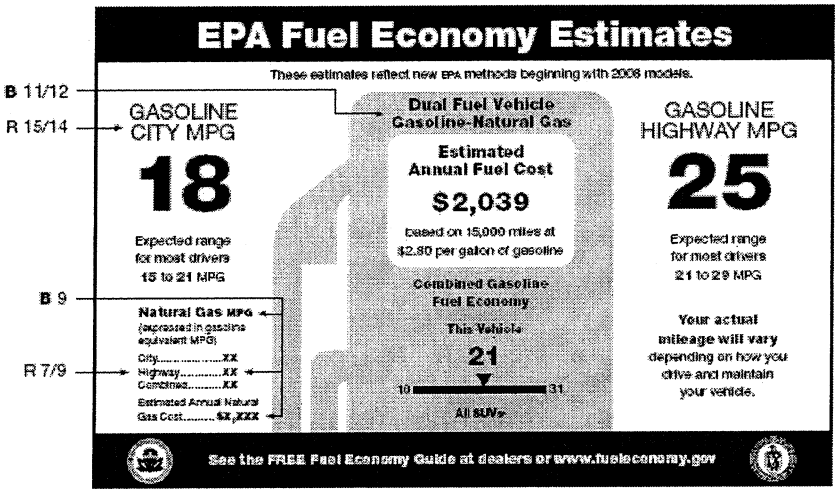


Dual Fuel Vehicle: Gasoline-Natural Gas

WITH NATURAL GAS MILEAGE INFORMATION

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (**B**) — not bold, thin, italic or other font styles.

font size
font weight → R 9/12 ← line spacing, if applicable



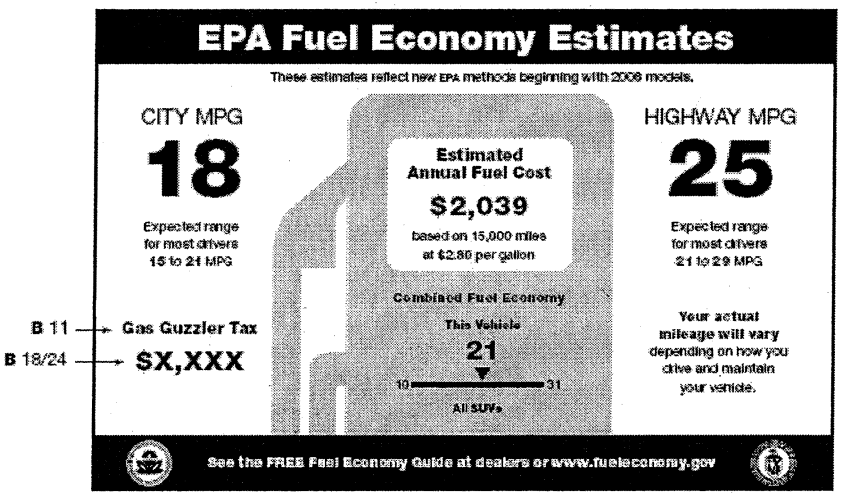
C. Format Guidelines showing Gas Guzzler. Unless otherwise indicated, the format specifications in Appendix V. A. apply.

Gasoline Fuel Economy Label

WITH GAS GUZZLER TAX

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (**B**) — not bold, thin, italic or other font styles.

font size
font weight → R 9/12 ← line spacing, if applicable



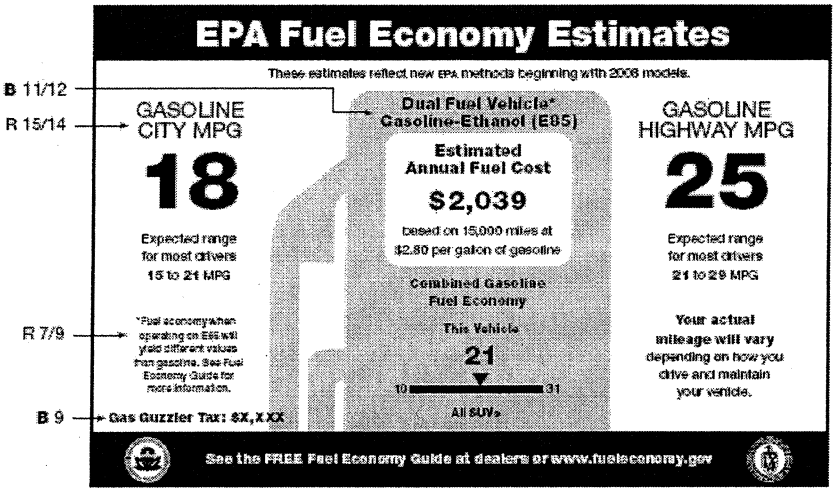
Dual Fuel Vehicle: Gasoline-Ethanol

WITH GAS GUZZLER TAX

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (**B**) — not bold, thin, italic or other font styles.

font size

font weight → R 9/12 ← line spacing, if applicable



D. Format Guidelines for Natural Vehicles. Unless otherwise indicated, the format specifications in Appendix V. A. apply.

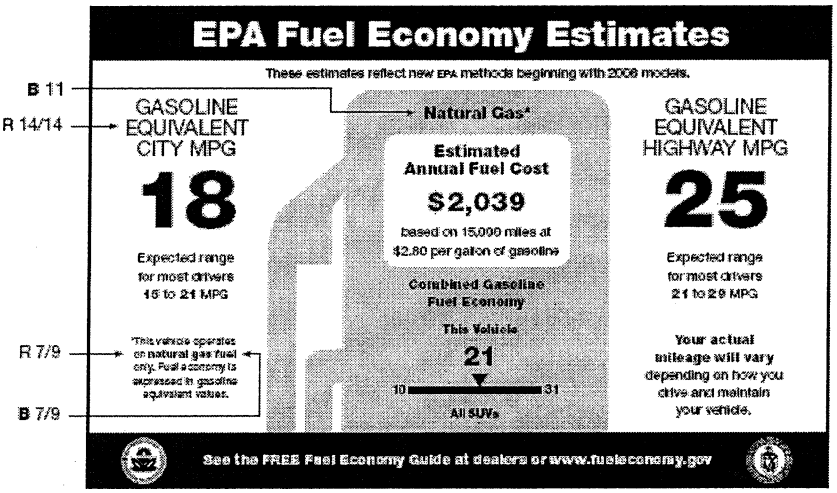
Alternative Fuel Vehicle: Natural Gas

BASIC FUEL ECONOMY LABEL

Set all copy in either the Helvetica or Arial font family — do not mix.
Use only Regular/Roman (R) and **Black** weights (**B**) — not bold, thin, italic or other font styles.

font size

font weight → R 9/12 ← line spacing, if applicable



[FR Doc. 06–9749 Filed 12–26–06; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Wednesday,
December 27, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus ampullarioides* (Shivwits milk-vetch) and *Astragalus holmgreniorum* (Holmgren milk-vetch); Final 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: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for two endangered plants, *Astragalus ampullarioides* (Shivwits milk-vetch) and *Astragalus holmgreniorum* (Holmgren milk-vetch) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 6,289 acres (ac) (2,545 hectares (ha)) fall within the boundaries of the critical habitat designation for *A. holmgreniorum* in Mohave County, Arizona, and Washington County, Utah, and approximately 2,181 ac (883 ha) fall within the boundaries of the critical habitat designation for *A. ampullarioides* in Washington County, Utah.

DATES: This rule becomes effective on January 26, 2007.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Utah Fish and Wildlife Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119 (801–975–3330). The final rule, economic analysis, and map are also available via the Internet at *http://mountain-prairie.fws.gov/species/plants/milkvetche/index.htm*.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, Utah Fish and Wildlife Office (see **ADDRESSES**), telephone 801–975–3330.

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Endangered Species Act (16 U.S.C. 1531 et seq.)

Attention to and protection of habitat is paramount to successful conservation actions. However, the role that designation of critical habitat plays in protecting habitat of listed species is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of critical habitat designation under section 7(a)(2) of the Act. In brief, (1) Designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent 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 475 species, or 36 percent of the 1,310 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 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 originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *U.S. 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 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 designating 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 timeframe 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 to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide

relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

Our intent is to discuss only topics directly relevant to the designation of critical habitat in this final rule. For more information on *Astragalus holmgreniorum* and *A. ampullarioides*, refer to the final listing rule published in the **Federal Register** (66 FR 49560, September 28, 2001) and the proposed critical habitat rule published in the **Federal Register** (71 FR 15966, March 29, 2006).

Previous Federal Actions

On March 29, 2006, we published a proposed rule to designate critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* (71 FR 15966). The public comment period was open for 60 days until May 30, 2006. On September 26, 2006, we published a revised proposed rule in the **Federal Register**, and issued a press release that announced the reopening of the public comment period on the proposed rule, and the availability of the draft economic analysis, draft environmental assessment, and revisions to proposed critical habitat boundaries for *A. holmgreniorum* and *A. ampullarioides* (71 FR 56085). The comment period was open for an additional 30 days until October 26, 2006.

Concurrently, we have been working on the recovery plan for these two plant species. We published a notice of availability, and request for comments, for the draft recovery plan for *Astragalus holmgreniorum* and *A. ampullarioides* on August 1, 2006 (71 FR 57557). On September 29, 2006, we announced the availability of the final recovery plan (71 FR 57557).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* in the proposed rule published on March 29, 2006 (71 FR 15966). We also contacted appropriate Federal, State, and local agencies; tribes; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

We received 17 written comments on the proposal published on March 29, 2006 (71 FR 15966). These included responses from five peer reviewers, three Federal agencies, and nine organizations or individuals. During the comment period on the revised proposed rule (71 FR 56085) that opened on September 26, 2006, and closed on October 26, 2006, we received two comments pertaining to the revised proposed rule, draft economic analysis, draft environmental assessment, and revisions to proposed critical habitat boundaries. Including all comments received during both comment periods, 10 commenters supported the designation of critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides*, and 1 opposed the designation. However, some of the supporting commenters disagreed with specific portions of the proposed designation, such as the acreage or delineation of individual critical habitat units. Eight letters included comments or information, but did not express support or opposition to the proposed critical habitat designation. Comments received were grouped into several general issues specifically relating to the proposed critical habitat designation for *A. holmgreniorum* and *A. ampullarioides* and are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions on the proposed critical habitat designation for *Astragalus holmgreniorum* and *A. ampullarioides* from eight knowledgeable individuals who have expertise with the species, the geographic region where the species occurs, and conservation biology principles. We received comments from five of the peer reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final critical habitat designation.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat, and associated draft economic analysis, for *Astragalus holmgreniorum* and *A. ampullarioides*. Substantive comments received have been addressed below, or incorporated into this final rule as appropriate.

Peer Review Comments

Comment 1: One peer reviewer noted that the level of detail included in the rule for the two species was inconsistent, and that exotic species were not addressed for *Astragalus holmgreniorum*.

Response: We examined the Background section of the proposed rule to designate critical habitat (71 FR 15966) and found that information was presented in equivalent amounts for both species, which included population size, structure, and habitat characteristics. However, information on exotic species associated with *Astragalus holmgreniorum* was inadvertently left out. Exotic species associated with Holmgren milk-vetch are *Bromus rubens* (red brome), *Erodium cicutarium* (storksbill), *Malcomia africana* (African mustard), and *Bromus tectorum* (cheatgrass) (Van Buren and Harper 2003a, p. 240). The threat of invasive weeds is addressed in the Special Management Considerations or Protections section of this rule.

Comment 2: One peer reviewer (and several public commenters) questioned why we did not include the known occurrence of *Astragalus holmgreniorum* found north of Atkinville Wash and west of I–15, near the I–15 interchange with the proposed southern corridor, and presented information on the size and characteristics of the population that the peer reviewer thought supported its inclusion in critical habitat.

Response: We did not include this area (which is north of the State Line Subunit 1a) because a natural wash separates it from other populations and much of the surrounding area, it lacks the Primary Constituent Elements (PCEs) due to differing soil type, and because of high human impacts due to concentrated off-road vehicle (ORV) use. Adjacent housing development to the west and south, and I–15 to the east, further compromise its ability to be self-sustaining. Critical habitat contributes to the overall conservation of listed species, but it is not the intent of the Act to designate critical habitat for every population or occurrence of a listed species. Critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery.

Comment 3: One peer reviewer expressed concern that the proposed critical habitat did not adequately address ground-nesting pollinators and expressed an opinion that preserving

pollinator nesting sites, or areas where bees are known to nest, was important in the designation of critical habitat.

Response: Our designation of critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* is based solely on their conservation needs. This rule does not designate critical habitat for pollinator species. However, pollinators are one of the PCEs necessary for the conservation of the two plant species, and the critical habitat unit boundaries were drawn to include sufficient acreage to accommodate habitat for pollinators. Thus, we expect the designation to afford protection to ground-nesting pollinators in proximity to the *A. holmgreniorum* and *A. ampullarioides* populations included in this final designation. We include additional information on pollinators in the Special Management Considerations and Protections (Special Management) section of this rule.

Comment 4: One peer reviewer inquired about the impact of cattle on ground-nesting bees.

Response: We have no information in our files quantifying or qualifying the impact of cattle to ground-nesting bees. However, some aspects of livestock grazing, such as soil compaction and reduction of flowering vegetation, could be a concern for ground-nesting bees. These activities similarly may limit the full and natural development of *Astragalus holmgreniorum* and *A. ampullarioides* and were considered under the Special Management section of the proposed rule (71 FR 15974–15976, March 29, 2006).

Comment 5: One peer reviewer stated that the use of the National Vegetation Classification System (NVCS) does not sufficiently identify habitat types for *Astragalus holmgreniorum.*

Response: The NVCS is a systematic approach to classifying a continuum of natural vegetation nationwide. We included this information in the proposed designation because it allows land managers to assess the appropriate vegetation layer for *Astragalus holmgreniorum* on a Geological Information System and eliminate areas where the species is unlikely to reside. However, we did not rely on this information to define PCEs.

Comment 6: One peer reviewer stated that Subunit 1a includes lands that are not occupied or are of marginal quality for *Astragalus holmgreniorum*.

Response: All lands proposed for critical habitat are occupied, including Subunit 1a. Lands within Subunit 1a contain the PCEs for *Astragalus holmgreniorum*, and the plants occur in a patchy distribution throughout the unit. Therefore, we are including the entire subunit in this final critical habitat designation, as directed under 50 CFR 424.12(d).

Comment 7: One peer reviewer disagreed with the statement pertaining to Unit 1a that the I–15 right-of-way may allow pollinator flow between sites situated west and east of the highway, and pointed out that, although pollinators may travel between sites west and east of I–15, it seems likely that collisions with vehicles may be a serious drain on pollinator resources. The peer reviewer asked us to contact Dr. Tepedino, a bee biologist, about the ability of pollinators to successfully navigate I–15.

Response: Although pollinators are likely to be killed by vehicles, neither we nor bee biologist Dr. Tepedino are aware of any information or ability to quantify pollinator mortality from vehicle collisions, except that mortality is likely to increase with the velocity of the vehicles.

Comment 8: One peer reviewer recommended that we reduce the size of the Zion National Park Unit (Unit 5 for *Astragalus ampullarioides*) to only include the immediate area bordering the Chinle Trail at the south end of the occurrence where horses and hikers may trample plants and create erosion, because other areas within the unit were not subject to threats.

Response: When determining which areas to include as critical habitat, we consider habitats that include the physical and biological features essential to the conservation of the species and that require special management considerations or protection. We have determined that the north end of the Zion Unit requires protection from many of the types of impacts that are affecting the south end of the unit, such as invasive nonnative weeds (71 FR 15980–15981, March 29, 2006).

Comment 9: One peer reviewer responded to our request for comments concerning the inclusion of occupied habitat for the milk-vetches 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). The peer reviewer stated that the inclusion of occupied sites for *Astragalus ampullarioides* within the I–15 median is valuable because they are a significant part of the population, they are healthy, and management would not interfere with established protocols for highway management.

Response: We included the I–15 site identified by the peer reviewer in this final designation. Also, in the Criteria to Identify Critical Habitat section, we provide additional information on the areas included in the designation to guide highway management.

Comment 10: One peer reviewer stated that protecting and preserving habitat on private and State lands enhances property values.

Response: We are unable to confirm that critical habitat designation enhances property values on private and State land, but we do know that property values have been enhanced adjacent to other open space in the county, *e.g.*, Red Cliffs Desert Reserve. Our critical habitat designation is based solely on the provisions of section 4 of the Act; neither enhancing property values nor protecting open space is a basis for designating critical habitat.

Comment 11: One peer reviewer suggested that we increase the size of our critical habitat units to create a buffer from the effects of development on adjacent lands and recreational use of these areas.

Response: We share the concern about the effects of development and unregulated recreational use on critical habitat and addressed both impacts in the Special Management section of the proposed rule (71 FR 15974–15976, March 24, 2006). We are designating the critical habitat units at a scale to maintain the populations and primary constituent elements essential to the conservation of the species per section 3(5)(A) of the Act and regulations at 50 CFR 424.12.

Comment 12: One peer reviewer stated that future management of the habitat currently administered by Arizona and Utah State Lands Departments will be critical for the survival of *Astragalus holmgreniorum*.

Response: All lands included in the critical habitat designation are important to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides.*

Comment 13: One peer reviewer questioned how Subunit 2b for *Astragalus holmgreniorum* will be conserved under section 7 of the Act given the statement in the proposed rule that the Bureau of Land Management (BLM) is currently working with Santa Clara City to sell this land for development purposes.

Response: Under section 7(a)(2) of the Act, all Federal agencies are required to ensure that any action they fund, authorize, or carry out is not likely to destroy or adversely modify critical habitat. Thus, BLM must ensure that its actions do not adversely modify or destroy critical habitat contained in Subunit 2b. The key factor related to the adverse modification determination is whether, with implementation of the

proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to function) to serve the intended conservation role for the species (Jones 2004). We understand that BLM is working on alternatives for retaining ownership of the South Hills population of *Astragalus holmgreniorum* (Douglas 2006).

Comment 14: In response to our statement, on pages 15968 and 15970 of the proposed rule, that ''species may move from one area to another over time,'' one peer reviewer noted that known populations of *Astragalus holmgreniorum* occur in the same locations observed decades ago. Movements are more accurately described as a shift in population density in areas where suitable habitat occurs. In regard to *A. holmgreniorum*, if there are no major changes in hydrological patterns, one would not expect much movement of the population.

Response: Populations of *Astragalus holmgreniorum* are being monitored in the same areas where they were observed decades ago, and this information is considered in this final rule. Although the establishment of new occupied areas may be rare, and the migration of seeds is likely to be localized, a new and independent establishment could result from arrival of a single seed (Epling and Lewis 1952, p. 264).

Public Comments

We received 12 public comments in response to our request for additional information in the proposed designation of critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* (71 FR 15966, March 29, 2006). Responses that contained new, updated, or additional information were considered in this final rule. We consolidated the comments into several categories. Some public comments were addressed in the previous section's peer reviewer comments.

Comments Related to Adequacy of Units Proposed

Comment 15: One commenter stated that the critical habitat designation is inadequate because it is only established where the plants currently exist. Suitable habitat encompasses the larger landscape. The critical habitat designation fails in its purpose of facilitating recovery because it does not protect this larger area or provide connectivity between populations.

Response: Critical habitat contributes to the overall conservation of listed species, but it is not the intent of the Act to designate critical habitat for every population or occurrence of a listed species. In the Criteria Used to Identify Critical Habitat section of the proposed and final critical habitat rules, we describe the parameters used for delineating areas that contain the physical and biological features essential to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides*, as required by the definition of critical habitat when considering areas occupied at the time of listing. We recognize that surveys to confirm the presence of *A. holmgreniorum* and *A. ampullarioides* populations have not occurred everywhere throughout the species' range. However, we determined that occupied areas containing the features essential to the conservation of these species support the majority of known locations (see the Criteria Used to Identify Critical Habitat section below). As a result of our methods, we found that the additional areas suggested by commenters were not essential to the conservation of *A. holmgreniorum* and *A. ampullarioides*.

We also considered landscape issues when designing units to provide continuous habitat for reproduction, germination, seed dispersal, and pollination. Many units or subunits were designated by combining known occurrences and providing connectivity.

Comment 16: One commenter noted that designating critical habitat that is separate, isolated, and fragmented will foment the eventual extinction of these populations.

Response: The best available scientific information (71 FR 15966, March 29, 2006) does not support this concern. We have designated critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* in accordance with the Act. We have determined that the areas included in the designation are essential to the conservation of the two species. Many natural features separating the units, such as watersheds, land formations, and soil types, are unable to support the species.

Comments on Size and Areas To Be Included or Excluded

Comment 17: Several commenters recommended that units that were close to each other be combined to provide connectivity for gene flow. Others provided reasons for designating larger areas, such as edge effects, current fragmentation, anticipated future fragmentation, chemical herbicide use, range of pollinator flights, invasive species, ORV trails, and recreational use. One commenter suggested that additional critical habitat for *Astragalus holmgreniorum* should be provided in Arizona to help offset all of the impacts that are occurring in Utah.

Response: In delineating critical habitat, we considered hydrology for seed dispersal, soils for suitable habitat, elevation changes, and relief to determine range and amount of suitable habitat. We also considered existing natural and human-caused barriers to dispersal. As indicated in the process described in the proposal (also see Criteria Used to Identify Critical Habitat below), we have defined milk-vetch recovery populations in a manner that is consistent with the Act and our regulations at 50 CFR 424.12. The milk-vetch populations may appear close together on the maps, but in most cases known sites are separated by 1 mile (mi) (1.6 kilometers (km)) or more, which greatly decreases the expectation of frequent inter-site pollination. Critical habitat is designated in both Arizona and Utah due to occupied habitat containing the appropriate PCEs.

Comment 18: Several commenters supported intervening lands of I–15 being designated for *Astragalus holmgreniorum* and *A. ampullarioides*.

Response: Intervening lands of I–15 are designated in this final rule. Additional information was incorporated into the Criteria to Identify Critical Habitat section below.

Comment 19: One commenter recommended that we adjust the western boundary of Unit 1 for *Astragalus ampullarioides* to eliminate the inclusion of an existing mining operation.

Response: The mining operation is outside both the proposed and final critical habitat boundaries.

Comment 20: One commenter recommended that we adjust the southeast corner of Unit 4a for *Astragalus ampullarioides* to include only the west side of Harrisburg Ridge, because the east side is not part of the watershed.

Response: We did not exclude the east side of Harrisburg Ridge. The critical habitat designation includes areas outside the watershed that are necessary (*e.g.*, they provide adequate supply of pollinators) to support the reproductive success of *Astragalus ampullarioides*.

Comment 21: BLM recommended an adjustment of *Astragalus holmgreniorum* Units 2a (Stucki Springs), and 2b (South Hills) to better reflect occurrence and habitat based on 2006 surveys.

Response: We announced these proposed changes in our revised proposed rule and requested public comment on them (71 FR 56085,

September 26, 2006). The changes are incorporated into this final rule.

Comment 22: One commenter recommended that we remove private lands or isolated Federal lands from *Astragalus holmgreniorum* Subunit 2b and Unit 3, and *A. ampullarioides* Unit 3, in order to designate only areas of private and State lands that have some potential to transfer to BLM ownership, or some other means of preservation. Another commenter expressed that land ownership should not be a consideration of determining critical habitat, and included a rationale based on lack of economic impacts on private lands.

Response: All the lands proposed for critical habitat contain the features essential for the conservation of *Astragalus holmgreniorum* and *A. ampullarioides* regardless of ownership. In our final designation, we considered economic factors for both public and private lands. We determined that economic costs did not outweigh the benefits of designation for any of the proposed lands. However, we did exclude lands of the Shivwits Band of Paiute Indians (Tribe) based on a conservation agreement with the Tribe (see the Relationship of Critical Habitat to Tribal Lands section below).

Comments Providing Recommendations on Pollinators

Comment 23: One commenter recommended larger unit sizes to conserve the most effective pollinators, which the commenter stated are the medium- to large-sized pollinators.

Response: Our goal for the critical habitat designation is to include sufficient pollinator habitat and sufficient pollinator populations for the reproduction of *Astragalus holmgreniorum* and *A. ampullarioides*. We based our minimum unit size on the typical homing distance of the smallest pollinators 1,312 feet (ft) (400 meters (m)). A radius of 1,312 ft (400 m) encompasses 124 ac (50 ha), and ensures that pollinators have sufficient land to establish nesting sites, access floral resources, and provide pollinating services. We expect that the designated critical habitat units will provide a species-rich bee community for small, medium, and large pollinators. We find no supporting information indicating that a larger area is likely to improve pollinator services, because smaller pollinators are unlikely to travel much farther, and many medium and large pollinators can easily cover this distance.

Comment 24: In the judgment of one commenter, adequate pollinator habitat exists adjacent to Unit 3 for *Astragalus ampullarioides* because areas of native vegetation remain within the Coral Canyon Development.

Response: A golf course containing approximately 80 ac (32 ha) of grass turf interspersed with natural rock outcroppings exists to the west of Unit 3. This area is not sufficient to provide pollinator resources for the unit because the habitat does not contain a diverse natural flora capable of supporting an abundant pollinator population.

Comments Related to Tribal Issues

Comment 25: One commenter stated that *Astragalus ampullarioides* occurrences found on land under the sovereignty of the Tribe should be protected and managed by the Tribe without Federal designation of critical habitat.

Response: We agree that the Tribe is most able to manage and protect *Astragalus ampullarioides* on their lands that are held in trust by the United States. Fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. We worked with Tribal leadership to create a sound management plan. On September 18, 2006, Tribal Chairman Glenn Rogers signed the Shivwits Band of Paiutes Management Plan for *Astragalus ampullarioides*. This management plan provides greater protection than critical habitat designation could provide. Therefore, this unit was excluded from final critical habitat (see the Government-to-Government Relationship with Tribes and 4(b)(2) Exclusions sections below).

Comment 26: One commenter indicated that we should provide an environmental assessment and economic impact analysis on the proposed designation of critical habitat on Tribal lands.

Response: We announced the availability of the draft economic analysis and draft environmental assessment for the proposed designation of critical habitat in the **Federal Register** (71 FR 56085, September 26, 2006) that included a description of the environmental and economic impacts of the designation on Tribal lands.

Comment 27: One commenter indicated that Units 1 and 2, containing lands managed by BLM and the Tribe, should be combined into one larger unit because they are reasonably close.

Response: Unit 2 is on Tribal land managed by the Tribe, who now have a management plan to ensure that the conservation of *Astragalus ampullarioides* can be achieved without the designation of critical habitat on Tribal lands. We are excluding Unit 2 from the final critical habitat designation (see the 4(b)(2) Exclusions section below).

Comments Providing Additional Scientific Information

Comment 28: The U.S. Geological Survey (USGS) indicated that their recent research on *Astragalus ampullarioides* occupancy determined that the species also is affiliated with the Dinosaur Canyon Member of the Moenave, but could not confirm an affiliation with the Shinarump Member of the Chinle. All locations contain clay-rich soil.

Response: We have included this information into this final rule.

Comment 29: One commenter stated that new information concerning the preferred soils of *Astragalus ampullarioides* (described in comment 29 above) expands the concept of potential habitat. The commenter suggested that new surveys beyond the geographic scope of currently known habitat are necessary and may have implications for the specific PCEs for *A. ampullarioides*.

Response: We agree that the additional information on soils conducive to *Astragalus ampullarioides* survival will be useful for recognizing potential habitat and conducting surveys. However, we must base our critical habitat designation on the best available scientific data at the time of designation. Our final critical habitat designation is based on the protection of the features essential to the conservation of the known, existing populations of *A. holmgreniorum* and *A. ampullarioides*. We have incorporated this new information into the description of the PCEs (see Primary Constituent Elements section below).

Comment 30: One commenter noted that herbivory is not mentioned in the discussion of PCEs for *Astragalus ampullarioides* despite its potential effects on reproductive output and long-term viability of the species, and the commenter provided information on reduction in fruit production by small mammals at one site.

Response: Herbivory can impact *Astragalus ampullarioides* reproduction. The specific information provided by the commenter is considered in the Special Management section of this rule. However, we did not include a discussion on herbivory in our determination of the PCEs because herbivory is not relevant to our determination of the physical and biological features essential to the conservation of this species.

Comment 31: One commenter noted that the proposed rule refers to ''USGS soil descriptions,'' but that these descriptions were more likely produced by U.S. Department of Agriculture (USDA) Soil Conservation Service or USDA Natural Resources Conservation Service (NRCS).

Response: In Washington County, Utah, the soil descriptions used originated in the Soil Survey of Washington County Utah (USDA Soil Conservation Service *et al.* 1977, pp. 7–10, 12–13, 20–22, 30–31, 34, 44, 48, 124–129). In Mohave County, Arizona, information originated from Soil Survey of Shivwits Area, Arizona, Part of Mohave County (USDA NRCS *et al.* 2000, pp. 1–15, 65–68, 73–74, 113–114). This information is corrected in this final rule.

Comment 32: One commenter indicated that the proposed rule discussed livestock grazing within Subunit 4b for *Astragalus ampullarioides.* However, livestock have been removed from this area.

Response: We have updated our information.

Comment 33: One commenter indicated that a population of *Astragalus ampullarioides* may exist to the south of Subunit 4b and should be surveyed to determine if it should be included in the critical habitat designation.

Response: We have no further information regarding an area outside of Subunit 4b with existing *Astragalus ampullarioides*, and have made no boundary changes.

Comment 34: One commenter noted that the proposed rule did not discuss that Unit 3 for *Astragalus holmgreniorum* is within a regional shooting range.

Response: We have added this information to the final rule (see Critical Habitat Designation section).

Comments on Development, Recovery, and Other Issues

Comment 35: One commenter thought that it may be too late to adequately protect the species because extensive development has occurred since listing.

Response: We agree that the species is threatened by development. In addition to this critical habitat designation, the Act provides conservation mechanisms including the section 4 recovery planning process, section 6 funding to the States, section 7 consultations, and the section 9 protective prohibitions of unauthorized take and cooperative programs with private and public landholders and Tribes. A recovery plan was completed for these species on September 29, 2006 (71 FR 57557).

Comment 36: One commenter stated that various Federal, State, and local agencies and government representatives with roles in Washington County have been complicit in the demise of these plants. Priority is given to the desert tortoise and the protection of these lands at the expense of the plants.

Response: We have no evidence supporting this comment. In many cases, such as within the recovery planning process for *Astragalus holmgreniorum* and *A. ampullarioides*, various Federal, State, and local agencies and government representatives with roles in Washington County are working together to protect lands containing rare plants, as well as other listed species, such as desert tortoise.

Comment 37: One commenter stated that no viable plan exists to protect these species outside of the designated habitat.

Response: We announced a final recovery plan for *Astragalus holmgreniorum* and *A. ampullarioides* (71 FR 57557, September 29, 2006). The recovery plan should result in protecting and enhancing current habitat; ensuring the habitat base for each recovery population is large enough to allow for natural population dynamics, population expansion where needed, the continued presence of pollinators, and sufficient connectivity to allow for gene flow within and among populations; achieving permanent land protection for at least four recovery populations of both *A. holmgreniorum* and *A. ampullarioides;* developing site-specific conservation agreements for all recovery populations and their habitat to protect the milk-vetches within existing State laws; prohibiting the use of pesticides or herbicides detrimental to either of the milk-vetches or their pollinators within the vicinity of all recovery populations; and collecting and storing seeds for all extant populations.

Comment 38: One commenter stated that, although considerable study of the populations has taken place, no significant recovery actions have followed, and the recovery plans have not been implemented.

Response: Both of these species were listed on September 28, 2001 (71 FR 15966), and are in the early phases of the recovery process. On September 29, 2006, we announced a final recovery plan for *Astragalus holmgreniorum* and *A. ampullarioides* (71 FR 57557). Significant conservation efforts that are underway for *A. holmgreniorum* and *A. ampullarioides* are discussed on pages 37–40 of the recovery plan (Service 2006).

Comment 39: One commenter stated that responsible Federal agencies and elected officials have failed to protect these species as required by the Act.

Response: We are unaware of any failure under the Act to protect these species. No detailed information was provided by the commenter to support this claim.

Comment 40: One commenter suggested that the critical habitat designation process could be improved by soliciting suggestions prior to publishing a proposal.

Response: We have responsibility under the Act for designating critical habitat. An important facet of this responsibility is to provide opportunity for exchange of knowledge and participation. Two public comment periods were provided to facilitate communication, collect best available information, and address concerns of other agencies and stakeholders.

Comment 41: One commenter suggested that the critical habitat designation process should be fully integrated with recovery plan preparation.

Response: Our recovery plan for the milk-vetches (Service 2006) targets the same areas for recovery that we proposed for critical habitat. Special Management Considerations or Protections that are discussed within the proposed critical habitat rule (71 FR 15966, March 29, 2006) address the same threats discussed in the recovery plan (Service 2006). We are working with other partners to address threats and population needs to reach recovery.

Comment 42: The Washington County Growth and Conservation Act, as currently proposed by Senator Robert Bennett, may have serious implications for the future of the *Astragalus holmgreniorum* and *A. ampullarioides.*

Response: Congressional activities are not evaluated in the designation of critical habitat, and, therefore, this comment is outside the scope of this designation.

Comment 43: Many commented that our discussion of the value of designating critical habitat, and the procedural and resource difficulties involved, was inappropriate and should be addressed in a different forum, not in the news release for a critical habitat rule.

Response: As discussed in the Designation of Critical Habitat Provides Little Additional Protection to Species, Role of Critical Habitat in Actual Practice of Administering and Implementing the Act, and Procedural and Resource Difficulties in Designating

Critical Habitat sections of this and other critical habitat designations, we believe that, in most cases, other conservation mechanisms provide greater incentives and conservation benefits than the designation of critical habitat. Other mechanisms include the section 4 recovery planning process, section 6 funding to the States, section 7 consultations, the section 9 protective prohibitions of unauthorized take, the section 10 incidental take permit process, and cooperative programs with private and public landholders and Tribal nations.

Comment 44: No action has ever been taken to list the native bee, *Peridita meconis,* or determine its status.

Response: This action is to designate critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides.* The status of *Peridita meconis* is outside the scope of this action.

Comments Related to the Draft Economic Analysis

Comment 45: Two commenters stated that the St. George area is one of the fastest growing metropolitan areas in the United States, and that its growth rate may increase. The commenters felt that, considering the rapid population growth, the critical habitat determination would provide open space relief and an economic amenity value. The commenters believe that the critical habitat determination may provide a future eco-tourism industry, and a ''population safety buffer'' benefit for the airport.

Response: Section 4.1 of the Draft Economic Analysis acknowledged that Washington County is one of the fastest growing counties in the United States. However, section 4.1 also highlights that the County believes the population increase will not cause overcrowding because more than 75 percent of the land in the County is managed by the Federal government (*i.e.*, BLM, U.S. Forest Service, and National Park Service) and is not expected to be developed. The Draft Economic Analysis does not forecast precluding development within the boundaries of the proposed critical habitat determination. Residential, commercial, and industrial development is expected to occur; thus the proposed critical habitat determination that occurs on non-Federal land is not expected to provide a ''population safety buffer'' benefit for the new regional airport located approximately 3 mi (4.8 km) east of Subunit 1c. No data are available to describe or forecast how many people currently visit the area to allow for the measurement of the impact of critical habitat determination on the future eco-tourism industry.

Comment 46: One commenter thought that the draft economic analysis did not consider the effect of the new regional airport.

Response: The proposed location of the new regional airport is approximately 3 mi (4.8 km) east of Subunit 1c for *Astragalus holmgreniorum.* While airport-related species conservation activities are not expected during construction and operation of the airport, the Draft Economic Analysis included consideration of the County growth forecast and general plan, which reflect the effects of a new regional airport; therefore, the economic analysis captures any economic impacts related to population growth resulting from the new regional airport.

Comments From States

Comments were received from the Arizona State Land Department (ASLD), Arizona Department of Transportation, and Arizona Game and Fish regarding the proposal to designate critical habitat for the *Astragalus holmgreniorum*, and are addressed below.

Comments on Areas in the Median of Interstate-15

Comment 47: One commenter pointed out that the proposed rule indicated that critical habitat would not include existing manmade structures (such as roads) that lack PCEs, or the land on which such structures are located. The commenter thought that manmade structures, such as cut slopes and fill slopes, as well as regularly graded areas along the I–15 right-of-way, should be excluded, or that areas of inclusion along I–15 should be better defined.

Response: Where we have specific information on areas within the designation that do not contain the PCEs, we have not included them in the final rule (see Summary of Changes). The existence of manmade structures are excluded by text in the rule clarifying that these areas do not contain the PCEs and are not included as critical habitat (see Criteria to Identify Critical Habitat).

Comment 48: The proposed rule states that the long-term conservation of *Astragalus holmgreniorum* and *A. ampullarioides* is, in part, dependent on the ability to keep critical habitat free from major ground-disturbing activities. While best management practices can and likely will be developed in coordination with the Service, it is unlikely that the I–15 right-of-way can be kept free from ground-disturbing activities, such as road maintenance, vehicle collisions, or motorists pulling off the roadway.

Response: The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of *Astragalus holmgreniorum* and *A. ampullarioides.* Best management practices are likely to reduce ground-disturbing activities, and are evaluated during section 7 consultations on projects with a Federal nexus, *e.g.*, actions related to the Federal Highway Administration.

Comment 49: One commenter stated that designation of critical habitat within the I–15 right-of-way would not provide any additional benefits because projects typically receive funding from the Federal Highway Administration and are already subject to section 7 consultation.

Response: Jeopardy and adverse modification analyses differ under section 7 of the Act and may result in differing determinations depending on the specific action at issue. The jeopardy analysis usually addresses the survival and recovery needs of a species in a qualitative fashion. Generally, if a proposed Federal action is incompatible with the viability of a population(s) essential to recovery, a jeopardy finding is considered to be warranted because of the relationship of essential populations to the survival and recovery of the species as a whole. Adverse modification analyses are conducted using an analytical framework described in the Director's December 9, 2004, memorandum. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) in serving the intended conservation role for the species. Activities that may destroy or adversely modify critical habitat also may jeopardize the continued existence of the species. Additionally, not all actions that occur in critical habitat will be subject to section 7 of the Act, because they may not be Federal actions.

Comment 50: The ASLD commented that Subunits 1a and 1b for *Astragalus holmgreniorum*, which are under its management, are slated for commercial and mixed residential uses. While they are not opposed to the designation, they have concerns regarding the development potential of the lands due to the designation.

Our Response: All the lands proposed for critical habitat contain the features essential for the conservation of *Astragalus holmgreniorum* and *A.*

ampullarioides regardless of ownership. In our final designation, we considered economic factors for both public and private lands. We determined that economic costs did not outweigh the benefits of designation for any of the proposed lands. However, we did exclude Tribal lands based on a conservation agreement with the Tribe. Further, critical habitat designation for plants does not necessarily affect state or private lands, unless there is a Federal nexus, such as when Federal funds are involved.

Summary of Changes From Proposed Rule

In developing the final critical habitat designation for *Astragalus holmgreniorum* and *A. ampullarioides*, we reviewed the comments received on our proposed rule, draft economic analysis, and draft environmental assessment, and conducted further evaluation of lands included in the proposal. Based on our review, we changed our proposed designation as follows:

(1) We adjusted the critical habitat boundaries of *Astragalus holmgreniorum* Subunits 2a and 2b to better capture existing occupied habitat that contains the PCEs, based on biological information received during the public comment period. This resulted in the addition of 26 ac (9 ha) in Subunit 2a, and the loss of 18 ac (6 ha) in Subunit 2b (see the revised proposed rule published on September 26, 2006, at 71 FR 56085).

(2) We adjusted the boundaries of Subunits 1a and 1c for *Astragalus holmgreniorum* so that they do not contain areas without the PCEs or areas that do not meet the designation criteria (are essential to the continued conservation of the species and require special management consideration or protection). This resulted in the removal of 191 ac (78 ha) and 2 ac (1 ha) respectively.

(3) Under section 4(b)(2) of the Act, we excluded Unit 2 for Astragalus ampullarioides. On September 18, 2006, Glenn Rogers, Band Chairman, signed the Shivwits Band of Paiutes Management Plan for *A. ampullarioides*. This management plan provides greater protection than critical habitat designation could provide. Because the management plan ensures that the conservation of *A. ampullarioides* can be achieved without the designation of critical habitat on Tribal lands, we are excluding Unit 2 from the final critical habitat designation (see 4(b)(2) Exclusions section below). This exclusion amounts to a reduction of 240 ac (97 ha) in the total critical habitat designation for *A. ampullarioides*.

(4) We modified the descriptions of the PCEs for clarity; however, the substance of the PCEs has not changed.

Critical Habitat

Critical habitat is defined in section 3 of the Act as (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) Essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, 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 Act 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 Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. 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 PCEs, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas also may 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 require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, 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 Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing 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 Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move

from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider physical and biological features (PCEs) that are essential to the conservation of the species, that are within areas occupied by the species at the time of listing, and that may require special management considerations and protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for *Astragalus holmgreniorum* and *A. ampullarioides* are derived from the biological needs of these milk-vetches as described in the proposed critical habitat designation (71 FR 15966; March 29, 2006).

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 *Astragalus 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; Hughes 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 to 35 percent slopes; Gypill very cobbly sandy loam, 15 to 40 percent slopes; and Hobog-Grapevine complex, 2 to 35 percent slopes. These soils are generally found at elevations from 2,430 to 3,000 ft (756 to 914 m), support associated native plant species, and have a 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, 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) on which *Astragalus holmgreniorum* depends.

(3) The presence of insect visitors or pollinators, such as *Anthophora captognatha, A. damnersi, A. porterae, Anthophora* spp., *Eucera quadricincta, Omia titus*, and two types of *Dialictus* sp.

Primary Constituent Elements for *Astragalus ampullarioides*

Based on our current knowledge of the life history, biology, and ecology of the species, the primary constituent elements for *Astragalus ampullarioides* are:

(1) Outcroppings of soft clay soil, often purple-hued, within the Chinle Formation and the Dinosaur Canyon Member of the Moenave Formation, at elevations from 3,018 to 4,367 ft (920 to 1,330 m).

Plant species that are characteristically found on these clay soils within the Chinle Formation and can indicate the presence of this PCE were included in the Background section of the proposed critical habitat designation (71 FR 15966; March 29, 2006).

(2) Topographic features/relief, including alluvial fans and fan terraces, and gently rolling to steep swales, with little to moderate slope (3 to 24 percent), that are often markedly dissected by water flow pathways from seasonal precipitation.

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 provides minimally altered or unaltered hydrological conditions (*e.g.*, seasonally available moisture from surface or subsurface runoff) on which *Astragalus ampullarioides* depends.

(3) The presence of insect visitors or pollinators, such as *Anthophora captognatha, A. damnersi, A. porterae, Anthophora* spp., *Eucera quadricincta, Bombus morrissonis, Hoplitis grinnelli, Osmia clarescens, O. marginata, O. titus, O. clavescens*, and two types of *Dialictus* sp.

This designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the proposal. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs. For more information regarding the PCEs essential to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides*, see the proposal to designate critical habitat (71 FR 15966; March 29, 2006).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data in determining areas that contain the features essential to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides.* We reviewed available information that pertains to habitat requirements of these species. We reviewed the overall approach to conservation of both milk-vetches undertaken by local, State, and Federal agencies since their listing, and the recovery plan for the *A. holmgreniorum* and *A. ampullarioides* (2006).

We reviewed the available information pertaining to the historic and current distributions, life histories, habitats, and threats to these milk-

vetches. We obtained records of distribution for the milk-vetches from BLM Arizona Strip Field Office (BLM AZ); BLM St. George Field Office (BLM UT); Shivwits Band of Paiutes, Utah School and Institutional Trust Lands Administration (SITLA); Zion National Park; and Utah Valley State College (VanBuren, unpublished GIS data). We also reviewed data included in reports submitted during the section 7 consultation process; and published and unpublished documentation from our files. This information included BLM hand-mapped polygons that outlined occupied or potentially occupied habitats in Arizona and Utah, 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 known plant locations (provided by Zion National Park, 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). We designated no areas outside the geographical area presently occupied by the species.

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. Datapoints were used to determine the elevation ranges for both species. We found no correlation between aspect and occurrence location for either species. Some affiliation with slope for both species was evident; however, statistical correlation was not conclusive.

To better understand the landscape, we also examined soil series layers, aerial photography, and hardcopy geologic maps. We specifically focused our analysis on soil types and topographic features necessary to maintain slope and natural drainage for *Astragalus holmgreniorum* and *A. ampullariodes* populations. 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 of insufficient resolution to further evaluate the purplish red clay soil found in small outcroppings within the Chinle and Moenave Formation, aerial photography was employed at times to further our understanding of these areas. We verified that *A. ampullarioides* is associated with the Petrified Forest member of the Chinle, and Dinosaur Canyon member of the Moenave Formation. We verified that *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 also may be affiliated with the middle red member of the Moenkopi Formation (Hughes 2006).

For both *Astragalus holmgreniorum* and *A. ampullarioides*, we reviewed soil survey layers. No two sites of *A. ampullarioides* contained the same type of soil description (USDA *et al.* 1979). From this, we determined that the clay outcroppings, associated with the Petrified Forest member of the Chinle and Dinosaur Canyon member of the Moenave Formation on which *A. ampullarioides* is found, may not be large enough to be labeled under the USDA soil series. In Utah, *A. holmgreniorum* individuals are associated with Badland; Badland, very steep (84 percent); Hobog-Rock land association (9 percent); and Isom cobbly sand loam, 3–30 percent slope (5 percent) (USDA *et al.* 1977, pp. 7–10, 12–13, 20–22, 30–31, 34, 44, 48, 124–129). 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, pp. 1–15, 65–68, 73–74, 113–114).

(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 drew critical habitat boundaries that captured the locations, soils, and slopes elucidated under (1) above while considering the boundaries identified in (2) above. We described and mapped critical habitat designations using Universal Transverse Mercator (UTM) North American Datum 83 (NAD 83) coordinates.

(4) When the resulting units were smaller than 124 ac (50 ha), we increased the unit size to 124 ac (50 ha) by using the average travel distance for 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 *Astragalus holmgreniorum* and *A. ampullarioides*. Specifically, where necessary, units or subunits were enlarged to 124 ac (50 ha) by including habitat within a 1,312 ft (400 m) radius of the known plant locations within the unit. This step applied to Subunits 2b and 3 for *A. holmgreniorum*, and Units 1, 2, 3, and Subunit 4a for *A. ampullarioides*. Unit 3 for *A. ampullarioides* is bordered by development on its western edge; therefore, we did not incorporate 1,312 ft (400 m) on its western edge.

This 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 contains 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 designation is based represent 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* (Van Buren 2005; Tepedino 2005). These seeds represent genetic information of past parents and their retention 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 (Van Buren 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 designation supports the PCEs for the species that are necessary for the growth, reproduction, and establishment of *A. holmgreniorum* and *A. ampullarioides*.

When determining critical habitat boundaries, we made an effort to avoid 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 PCEs for *A. holmgreniorum* and *A. ampullarioides*. The road prism for I–15, which includes the asphalt road, designated emergency pull-outs or safety turn-a-rounds, and surfaces that do not contain natural soils (such as gravel edges) or native vegetation are not included within critical habitat. However, the scale of maps prepared 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 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 or PCEs in adjacent critical habitat.

We are designating critical habitat on lands that we have determined are occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species.

Three units for *Astragalus holmgreniorum*, including five subunits, are designated based on PCEs being present that support *A. holmgreniorum* life processes. For *A. ampullarioides*, four units, including two subunits, are designated based on PCEs being present that support *A. ampullarioides* life processes. Most units contain all PCEs; however, some segments contain only a portion of the PCEs necessary to support *A. holmgreniorum*'s and *A. ampullarioides*'s particular use of that habitat. A brief discussion of each area designated as critical habitat is provided in the Critical Habitat Designation section below.

Special Management Considerations or Protections

When designating the three critical habitat units, including Subunits 1a, 1b, 1c, 2a, and 2b, for *Astragalus holmgreniorum*, and the four critical habitat units, including Subunits 4a and 4b, for *A. ampullarioides*, we assessed whether the areas determined to be occupied at the time of listing and containing the primary constituent elements may require special management considerations or protections. As discussed in more detail in the proposed critical habitat designation (71 FR 15966, September 26, 2006) and in the unit and subunit descriptions below, we found that the features essential to the conservation of *A. holmgreniorum* and *A. ampullarioides*, in all areas we are designating, may require special management considerations and protections, including measures necessary to alleviate the effects of urban development, retaining plants and their habitat on Federal lands, fencing small populations, removing or limiting access routes, ensuring vehicles and pedestrians stay on designated routes, reducing land use practices that disturb the hydrologic regime, minimizing the effects of grazing and recreation use, managing invasive nonnative plant species, evaluating revegetation and restoration with native plant species, developing adequate fire management buffers for these plant species and their habitat, and educating fire management staff on the location of the plants. Additionally these areas may require special management considerations and protections for ground-nesting and local pollinator communities.

Critical Habitat Designation

Astragalus holmgreniorum

We are designating three units, including five subunits, as critical habitat for the *Astragalus holmgreniorum*. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, that contain the primary constituent elements essential for the conservation of the species, and that may require special management or protection. We determined that no additional areas were essential to the conservation of *A. holmgreniorum*. The units and subunits designated as critical habitat are listed in Table 1 and occupied areas are displayed in Table 2.

TABLE 1.—CRITICAL HABITAT UNITS DESIGNATED FOR ASTRAGALUS HOLMGRENIORUM

Unit or subunit name	BLM AZ Federal	BLM UT Federal	Arizona state lands	Utah state lands	County land	Private lands	Totals
Occupied Acres (Hectares)							
Unit 1—Utah-Arizona Border:							
1a State Line	362 (146)	1,767 (715)	934 (378)	752 (304)	.....	21 (9)	3,836 (1,552)
1b Gardner Well	.....	.....	564 (228)	.....	.....	.....	564 (228)
1c Central Valley	.....	.....	.....	1,144 (463)	.....	2 (1)	1,146 (464)
Unit 2—Santa Clara:							
2a Stucki Spring	.....	438 (177)	.....	.....	.....	.....	438 (177)
2b South Hills	.....	124 (50)	.....	.....	.....	5 (2)	129 (52)
Unit 3—Purgatory Flat	.....	118 (48)	.....	.....	22 (9)	36 (15)	176 (72)
Totals	362 (146)	2,447 (990)	1,498 (606)	1,896 (767)	22 (9)	64 (27)	6,289 (2,545)

TABLE 2.—OCCUPANCY OF CRITICAL HABITAT UNITS DESIGNATED FOR THE ASTRAGALUS HOLMGRENIORUM

Unit or subunit name	Occupied at time of listing?	Occupied currently?	Acres (Hectares)
Unit 1—Utah Arizona Border:			
1a State Line	yes	yes	3,836 (1,552)

TABLE 2.—OCCUPANCY OF CRITICAL HABITAT UNITS DESIGNATED FOR THE ASTRAGALUS HOLMGRENIORUM—Continued

Unit or subunit name	Occupied at time of listing?	Occupied currently?	Acres (Hectares)
1b Gardner Well	yes	yes	564 (228)
1c Central Valley	yes	yes	1,146 (464)
Unit 2—Santa Clara:			
2a Stucki Spring	yes	yes	438 (177)
2b South Hills	yes	yes	129 (52)
Unit 3—Purgatory Flat	yes	yes	176 (72)
Total			6,289 (2,545)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Astragalus holmgreniorum*, below.

Unit 1—Utah-Arizona Border

This unit consists of approximately 5,546 ac (2,244 ha) divided into three 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 3,836 ac (1,552 ha), 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 Arizona and Utah, 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 boundaries on the west and east sides of the unit, and 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, p. 3) and BLM UT (Van Buren 2005) west and east of I–15 confirmed occupancy of *Astragalus holmgreniorum* individuals, and BLM AZ (Hughes 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.

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 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 (Douglas 2005). As a large population, subunit 1a retains importance as representative of the species' potential range of genetic diversity. Species surveys documented a high number of seedlings (Van Buren 2004, p. 2; 2005, p. 16), 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 the species (Van Buren 2003, p. 6). Seed bank protection is necessary for long-term species persistence (McCue and Holtsford 1998, p. 35).

Special management considerations may be required to control invasive plant species, to control habitat degradation due to activities that lead to erosion, to maintain the identified vegetation types, and to maintain 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 worked in partnership with the Service on a recovery plan for the species (71 FR 57557, September 29, 2006). The BLM UT states that the timing of cattle grazing has been adjusted to avoid the flowering period for the species (Douglas 2004). Additionally SITLA is signatory to a Letter of Intent intended to place roughly 175 ac (71 ha) of land occupied by *A. homgreniorum* into long-term conservation (SITLA et al. 2005, pp. 3–4).

Subunit 1b—Gardner Well

Subunit 1b consists of 564 ac (228 ha), entirely managed by ASLD. This subunit is found in Arizona, south of the Arizona-Utah State border, 2 mi (3.2 km) 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 Arizona 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, p. 6). In 2005, the Gardner Well monitoring site contained an estimated 150 plants, all seedlings (Van Buren 2005). The abundance of seedlings indicates a persistent seed bank that is considered important for genetic diversity and local survivorship (McCue and Holtsford 1998, pp. 34–35; Van Buren 2003, p. 6; Van Buren 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, to maintain the identified vegetation types, and to maintain 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 1,146 ac (464 ha), 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 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, p. 5).

Approximately 99.8 percent of plants identified in the 2003 surveys were seedlings (Van Buren 2003, p. 6). The high number of seedlings and near lack of reproductive adults indicates a historic seed bank (Van Buren and Harper 2004a, pp. 3–4). Protection of known seed banks is essential for long-term survival of the species. The retention of these seeds can have a dramatic effect on demography and reduce the expected inbreeding coefficient (McCue and Holtsford 1998, p. 34). Seed banks also ensure population persistence during periods of changing environmental conditions (Facelli, Chesson, and Barnes 2005, pp. 3001–3003).

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, pp. 5–6).

Unit 2—Santa Clara Unit

Unit 2 comprises 567 ac (229 ha) divided into two subunits: Stucki Spring and South Hills. 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, p. 46). Therefore, the two subunits in the Santa Clara Unit are needed to conserve genetic variation held within the gene pool for this taxon (Van Buren 2005). Additionally, this unit represents one of only three known populations of the species.

Subunit 2a—Stucki Spring

Subunit 2a consists of 438 ac (177 ha) 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 (Van Buren 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 *Astragalus 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 ORV use. Additionally, BLM is considering selling adjacent areas for urban development; we anticipate that the proximity of the development would result in an indirect effect to *Astragalus holmgreniorum.* BLM UT does not currently have a management plan specific to *A. holmgreniorum*, but the agency worked with us to develop a recovery plan for this species (71 FR 57557, September 29, 2006). The objective of the Santa Clara River Reserve Recreation and Open Space Management Plan is development of user-specific trails and areas of activities to reduce the effects of unregulated and potentially damaging activities on habitat components, including plants (USDI 2005, p. 10). However, specific details regarding facility locations, impacts, and conservation measures have not been identified.

Subunit 2b—South Hills

Subunit 2b consists of approximately 129 ac (52 ha), 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 2005 survey of the area documented a healthy number of plants in this subunit (Van Buren 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 represents the northcentral-most occupied site of the species. The land within this subunit supports the PCEs necessary for the growth, reproduction, and establishment of *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, maintain the identified vegetation types, and maintain 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 (Crisp 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 *Astragalus 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 176 ac (72 ha) of land; 68 percent is managed by BLM UT, and 32 percent is under private ownership or county ownership. Part of the critical habitat contains lands within a regional shooting range. The final listing rule (66 FR 49561, September 28, 2001) indicated that there were 30 to 300 plants at this location. More recent site visits confirm the presence of individual plants (Barnes 2005; Van Buren 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 the farthest from all other 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, p. 756). The land within this unit supports the PCEs that are necessary for the growth, reproduction, and establishment of *A. holmgreniorum.*

Special management may be required to minimize disturbance to the surface structure within this subunit, control invasive species, maintain the identified vegetation types, and maintain pollinator habitat essential to the conservation of the species.

Astragalus ampullarioides

We are designating four units, including two subunits, as critical habitat for *Astragalus ampullarioides.*

The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, that contain the primary constituent elements essential for conservation of the species, and that may require special management, and additional areas found to be essential to the conservation of *A. ampullarioides.*

Table 3 summarizes areas that meet the definition of critical habitat for *Astragalus ampullarioides* but are excluded from critical habitat under section 4(b)(2) of the Act (discussed below). Table 4 provides the approximate area designated as critical habitat for *A. ampullarioides* by land ownership. Table 5 indicates current occupancy.

TABLE 3.—AREAS DETERMINED TO MEET DEFINITION OF CRITICAL HABITAT FOR ASTRAGALUS AMPULLARIOIDES (DEFINITIONAL AREA) BUT THAT ARE EXCLUDED UNDER SECTION 4(b)(2)

Unit	Definitional area acres (Hectares)	Excluded area acres (Hectares)	Total Acres (Hectares)
Unit 2—Shivwits	240 (97)	240 (97)	240 (97)

TABLE 4.—CRITICAL HABITAT UNITS DESIGNATED FOR ASTRAGALUS AMPULLARIOIDES

Unit or Subunit name	BLM-UT Federal	NPS Federal	Tribal lands Shivwits Band of Pauite	Utah State lands	Private lands	Totals
Occupied Acres (Hectares)						
Unit 1—Pahcoon Spring Wash	134 (54)					134 (54)
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)		76 (31)	85 (34)	2,181 (883)

TABLE 5.—OCCUPANCY OF CRITICAL HABITAT UNITS DESIGNATED FOR ASTRAGALUS AMPULLARIOIDES

Unit or Subunit name	Occupied at time of listing?	Occupied currently?	Acres (hectares)
Unit 1—Pahcoon Spring Wash	yes	yes	134 (54)
Unit 3—Coral Canyon	yes	yes	87 (35)
Unit 4—Harrisburg Junction	yes	yes.	
4a—Harrisburg Bench & Cottonwood	yes	yes	297 (120)
4b—Silver Reef	yes	yes	462 (187)
Unit 5—Zion	yes	yes	1,201 (486)
Totals			2,181 (883)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the *Astragalus ampullarioides* below.

Unit 1—Pahcoon Spring Wash

This unit includes 134 ac (54 ha), 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, p. 3). In 2005, this population was estimated to contain approximately 300 to 350 individuals (Van Buren 2005). Unit 1 is determined to be critical habitat because it contains features essential to conservation of *A. ampullarioides*, is occupied by the species, and represents the northwestern-most occurrence of the species. 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, to maintain the identified vegetation types, and to maintain pollinator habitat essential to the conservation of the species. Cattle grazing activities are present within this unit. 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 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 was estimated to contain 100 individuals in 2005 (Van Buren 2005). Land ownership for the 87 ac (35 ha) is 87 percent SITLA, 12 percent BLM UT, and 1 percent private. We 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 759 ac (307 ha) 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 4 sites contained approximately 300 plants (England 1999; Utah Natural Heritage Program 1999; Van Buren 2000).

In the area of Harrisburg Junction, *Astragalus ampullarioides* populations or subpopulations are restricted to outcroppings of the Chinle soil. Each area may be relatively self-sustaining; however, their long-term persistence and stability relies on a balance of site extinctions and colonization of suitable, unoccupied outcroppings through dispersal events (Hanski 1985, p. 341; Olivieri *et al.* 1990, pp. 207–209; Hastings and Harrison 1994, pp. 175–176, 180).

Subunit 4a—Harrisburg Bench and Cottonwood

This 297–ac (120–ha) subunit is 88 percent BLM land and 12 percent private land. Approximately 100 individual plants were located in this subunit during 2005 surveys (Van Buren 2005). This subunit contains PCEs necessary to support *Astragalus ampullarioides* growth, reproduction, and establishment. Land found between the northbound and southbound lanes of I–15 contains an occupied site. This intervening area within the highway right-of-way may allow pollinator flow between occupied sites (Douglas 2005). Habitat areas between known occupied sites are included in the 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 Tscharntke 1999, pp. 437–438; Steffan-Dewenter 2003, pp. 1039–1040; Greenleaf 2005, pp. 72–74; Van Buren and Harper 2003a, p. 242).

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, *Bromus tectorum* (cheatgrass) is a closely associated species (Van Buren 2005, p. 14). 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 above-ground stems and foliage died back at the time of the fire (Van Buren 2005, p. 14). Revisits in 2006 indicated that *Astragalus ampullarioides* occupies the site and was not adversely affected by the fire (Van Buren 2006).

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 maintain the identified soil and vegetation types. BLM UT and TNC have entered into a cost-share agreement to provide signs and protective fencing to minimize human use at one occupied area within this subunit.

Subunit 4b—Silver Reef

The 462 ac (187 ha) in this subunit are composed of 90 percent BLM lands and 10 percent 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 (Van Buren 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 soil surface and subsurface structure, control invasive plant species and domestic animals, maintain the identified vegetation types, and maintain pollinator habitat essential to the conservation of the species. Quantitative information on impacts from cattle grazing 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. Monitoring will be used to 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 to reduce impacts to habitat.

Unit 5—Zion

The 1,201 ac (486 ha) in Unit 5 occur entirely on lands managed by Zion National Park. The population consisted of approximately 300 to 500 individuals in 2000 (66 FR 49560; September 28, 2001). More recent surveys document almost 4,200 individuals in the unit (Miller 2006).

This unit is determined to be critical habitat because it contains features essential to conservation of *Astragalus ampullarioides*, 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 the species. The land within this unit supports the PCEs necessary for growth, reproduction, and establishment.

Special management is necessary in this unit to minimize recreation disturbance to the soil surface and subsurface structure, control invasive weedy species, maintain the identified vegetation types, and maintain pollinator habitat essential to the conservation of the species. Recreational use of Zion National Park and disturbance from park visitors and horses may affect *Astragalus ampullarioides*. An established hiking and horse trail that is used infrequently from November through April occurs near populations of *Astragalus ampullarioides*.

Plants and habitat within this unit also are threatened by invasive 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. No management plan exists specific to *Astragalus ampullarioides* in Zion National Park; however, the current Zion National Park Fire Management Plan includes restrictions on fire management within a 0.75-mi (1.2-km) buffer zone of the area where *A. ampullarioides* is found. Zion National Park worked with us to complete a recovery plan for the species (71 FR 57557, September 29, 2006), and is partnering with the USGS to investigate

biotic soil conditions and invasive weed interactions with *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. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action 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 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; 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.

When 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 reinitiate 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 reinitiation 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 the *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 U.S. Army Corps of Engineers 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 Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) also will 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

Following designation of critical habitat, the Service will apply 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 the species. 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 will be 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 (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of *A. 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 the *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 the *A. 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* and their PCEs, including ORV 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* and *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, *e.g.*, supplemental feeding of livestock, ORV use that causes ground disturbance, road construction, creation and maintenance of utility corridors, seeding with nonnatives, and other activities that cause soil disturbance;

(5) Activities that directly or indirectly result in increased erosion, decreased soil stability, and changes in vegetation communities, *e.g.*, placing off-road trailheads along critical habitat, which may lead 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.

We consider all of the units designated as critical habitat to contain features essential to the conservation of *Astragalus holmgreniorum* and *A. ampullarioides*. All units are within the geographic range of the species, all were occupied by the species at the time of listing (based on observations made within the last 5 years), and all are likely to be used by *A. holmgreniorum* and *A. ampullarioides*. Federal agencies already consult with us on activities in areas currently occupied by *A. holmgreniorum* and *A. ampullarioides* to ensure that their actions do not jeopardize the continued existence of *A. holmgreniorum* and *A. ampullarioides*.

Exclusions Under Section 4(b)(2) of the Act

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 section 4(b)(2) 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, and 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. In the following sections, we address a number of general issues that are relevant to the exclusions we considered. The information provided in the next several sections applies to all the discussions below concerning the benefits of inclusion and exclusion of critical habitat.

After consideration under section 4(b)(2) of the Act, the following lands have been excluded from the designation of critical habitat for the *Astragalus ampullarioides*. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act by critical habitat unit is provided in the paragraphs that follow.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation under section 7 of the Act to ensure that these actions are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal action; if there is no Federal action, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat

designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, Tribes, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Astragalus holmgreniorum* and *A. ampullarioides*. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Tribal Lands

Tribal lands of the Shivwits Band of Paiute Indians (Band) were proposed for designation, and included 240 ac (97 ha) of Unit 2 for *Astragalus ampullarioides*. We received comments from the Band requesting assistance in understanding the designation of their lands as critical habitat and in creating a management plan. The Shivwits Band of Paiutes Management Plan for *Astragalus ampullarioides* was signed by Chairman Glenn Rogers on September 18, 2006.

Benefits of Inclusion

Designation of Unit 2 would benefit *Astragalus ampullarioides* because it contains the PCEs and is the type locality for the species. The site provides the common name for this taxon, Shivwits milk-vetch. It has a low amount of human use, contains features essential to conservation of *A. ampullarioides*, is occupied by the species, and is one of five known populations.

As described above, designation of critical habitat can generally result in educational benefits. However, we believe that there would be little additional informational benefit gained from designating Shivwits Tribal lands because the Band is already aware of the species presence and takes pride in this species as a namesake plant. We believe that the informational benefits are already provided because the Band is knowledgeable about the species location and has provided protection through fencing of occupied habitat (G. Rogers 2006). In addition, since lands excluded are Tribal lands, they are unlikely to be managed under State laws or local ordinances.

Since the listing of *Astragalus ampullariodes*, only one Section 7 consultation has occurred on tribal lands in an area containing the species, *and no projects are expected to occur within the foreseeable future. Therefore, we would not expect any additional benefits from the inclusion of this habitat. In addition, the Band has developed a management plan for this species that will be implemented for all future projects regardless of whether or not a federal nexus exists.*

Benefits of Exclusion

In accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951, May 4, 1994); Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments;'' and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Additionally, critical habitat designation may be viewed by Tribes and members of Bands as an unwanted intrusion into Tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

At the time of the proposal, the Shivwits Band of Paiute Indians was already providing protective management for the majority of individual plants on their lands. Additionally, they were interested in creating a management plan that would address threats specific to *Astragalus ampullarioides* on their lands. The Band, with the assistance of the Service and Bureau of Indian Affairs, developed a set of conservation and educational

actions that are the basis for exclusion from critical habitat of lands governed by the Band. These actions include, but are not limited to: identification, protection, and retention of occupied habitat; management of livestock activities, invasive weeds, and fire; protection of vegetation communities and ecosystems, which includes native plants and pollinators; restriction of motorized vehicles in occupied areas; participation in recovery efforts and research; and development of educational materials. We believe the management plan provides greater protection than critical habitat designation would provide, and have a reasonable expectation that it will be implemented because it was developed by the Band, with the assistance of the Service and Bureau of Indian Affairs.

The Band has developed a management plan for this species in response to the proposed designation for the purpose of maintaining management and conservation authority and thus having the critical habitat designation removed. Therefore, the inclusion of this land is likely to damage inter-governmental relationships and result in poorer conservation if we designated critical habitat without the implementation of this management plan.

Since the listing of Astragalus ampullariodes, only one Section 7 consultation has occurred on tribal lands in an area containing *A. ampullarioides and no projects are expected to occur within the foreseeable future. Even though the expectation of future Section 7 consultation is low,* this management plan provides recommended measures for best management practices to avoid and minimize impacts to *A. ampullarioides* and surrounding habitat within a half mile (approximately 2,624 ft or 800m) of known sites. This area is twice the distance of the 1,312 ft (400 m) radius of the known plant locations used in proposing designated critical habitat for the protection of PCEs and as such is expected to provide greater continuous land protection. Additionally any new sites found on tribal lands will be afforded the same management practices.

Benefits of Exclusion Outweigh Benefits of Inclusion

The benefits of inclusion occur in Section 7 consultations, which may commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project. However, very few Section 7 consultations have occurred in the past and are anticipated for this area. The outweighing benefits of the Shivwits management plan are that it provides conservation and management with and without a federal nexus. Under a Section 7 consultation, no commitment exists to provide conservation or long-term benefits to areas not affected by the proposed project, whereas the Shivwits management plan of this species is expected to provide conservation and long-term management of a larger area, prior to Section 7 consultation, than the proposed critical habitat designation and, if sites are found, these sites will carry the same measure of conservation and protection. Inclusion of current occupied sites into the designated habitat on tribal lands will provide no future benefits to new sites, if any should exist.

Critical habitat can also have valuable educational benefits in some cases (see above). The educational benefit of inclusion or exclusion of the critical habitat designation on tribal lands is duplicated with the Shivwits management plan, due to the participation of the Band, BIA, and the Service. Other benefits such as those gained by informed State agencies and local governments are unlikely to increase or provide conservation on tribal lands. As the Band is already educated, currently conserving the species on their lands, and has included educational component to their management plan, we see no educational benefits to the inclusion of Tribal land in the final critical habitat rule.

We believe that conservation of *Astragalus ampullarioides* will be achieved by the Shivwits management due to their display of proactive conservation. Given the importance of the Band's management plan to the current and future conservation of *A. ampullarioides* and our government-to-government relationship with them, the benefit of excluding these lands outweighs the benefit of including them in critical habitat. Therefore, Tribal lands have not been designated as critical habitat under section 4(b)(2) of the Act.

Exclusion Will Not Result in Extinction of the Species

Exclusion of this 140ac (97 ha) of Tribal lands will not result in extinction of *Astragalus ampullarioides* because these lands will be conserved and managed for the benefit of this species pursuant to the approved Shivwits Band of Paiutes Management Plan for *Astragalus ampullarioides*. The jeopardy standard of section 7 and routine implementation of habitat protection through the section 7 process also provide assurances that the species will not go extinct.

We anticipate no impact to national security, partnerships, or habitat conservation plans from this critical habitat designation. Based on the best available information including the prepared economic analysis, we believe that all final designated units contain the features that are essential for the conservation of this species. Our economic analysis indicates an overall low cost resulting from the designation. Therefore, we have found no other areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not excluded any areas from this designation of critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* based on economic impacts. As such, we have considered but not excluded any lands from this designation based on the potential impacts from economic factors.

Other areas no longer contained in the final designation of critical habitat no longer meet the definition of critical habitat. We made an effort to avoid developed areas such as buildings, paved areas, boat ramps and other structures that lack PCEs for *Astragalus holmgreniorum* and *A. ampullarioides*. This resulted in the reduction of designated land for A. holmgreniorum in Subunit 1a from the proposed 4,027ac (1,630ha) to 3,836ac (1,552ha) and in Subunit 1c from 1,148ac (466ha) to 1,146ac (464ha).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. We published a notice of availability and request for public comments for the draft analysis on September 26, 2006 (71 FR 56085). We accepted comments on the draft analysis until October 26, 2006.

The primary purpose of the economic analysis was to estimate the potential economic impacts associated with the designation of critical habitat for *Astragalus holmgreniorum* and *A.*

ampullarioides. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation.

This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis estimates potential costs attributed to listing and critical habitat designation ranging between $9.3 and $14.7 million, in undiscounted 2006 dollars, over a 20-year period from 2006 to 2025. In discounted terms, potential post-designation economic costs are estimated between $9.0 and $13.6 million (using a 3 percent discount rate) or between $8.7 and $12.7 million (using a 7 percent discount rate).

Our economic analysis of the proposed critical habitat designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of these species and proposed designation of their critical habitat. The activities affected by *Astragalus holmgreniorum* and *A. ampullarioides* conservation efforts may include land development, transportation and utility operations, and conservation on public and Tribal lands. More than 98 percent of the prospective economic costs (based on upper-bound future undiscounted cost figures) associated with conservation activities for these species are expected to be borne by Federal agencies (primarily BLM) and State departments of transportation. Impacts to land development (*e.g.*, BLM land disposal) and transportation and utilities operations (*e.g.*, Western and Southern Corridor projects) are not expected to affect small entities.

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting the Service (see **ADDRESSES** section) or for downloading from the Internet at *http://mountain-prairie.fws.gov/species/plants/milkvetche/index.htm.*

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 will not 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. As explained above, we prepared an economic analysis for this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying an area as critical habitat, unless we determine, 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.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (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 effect 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are

required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Astragalus holmgreniorum* and *A. ampullarioides*. Federal agencies also must consult with us if their activities may affect critical habitat. Therefore, designation of critical habitat could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In our economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of these species and proposed designation of their critical habitat. The activities affected by *Astragalus holmgreniorum* or *A. ampullarioides* may include land development, transportation and utility operations, and conservation on public and Tribal lands. The economic analysis identifies potential costs estimated to range between $9.3 and $14.7 million, in undiscounted 2006 dollars, over a 20-year period from 2006 to 2025. In discounted terms, potential post-designation economic costs are estimated to range between $9.0 and $13.6 million (using a 3 percent discount rate) or between $8.7 and $12.7 million (using a 7 percent discount rate).

More than 98 percent of the prospective economic costs (based on upper-bound future undiscounted cost figures) associated with conservation activities for *Astragalus holmgreniorum* and *A. ampullarioides* are expected to be borne by Federal agencies (primarily BLM) and State departments of transportation. Thus, impacts to land development (*i.e.*, BLM land disposal) and transportation and utilities operations (*i.e.*, Western and Southern Corridor projects) are not expected to affect small entities. Therefore, we do not believe that the designation of critical habitat for the *A. holmgreniorum* and *A. ampullarioides* will result in disproportionate effect to small business entities. Please refer to our draft economic analysis for the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on *Astragalus holmgreniorum* and *A. ampullarioides* and their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We also may identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations under section 7 of the Act for all listed species, virtually all projects, including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations, can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the U.S. Forest Service and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(6) Activities funded by the Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect *Astragalus holmgreniorum* and *A. ampullarioides*. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule (66 FR 49560, September 28, 2001)and proposed critical habitat designation (71 FR 15966, March 29, 2006). These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include permits we may issue under section 10(a)(1)(B) of the Act, FHWA funding for road improvements, and regulation of grazing, mining, and recreation by the USFS and BLM. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U. S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

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 final rule to designate critical habitat for *Astragalus holmgreniorum* and *A. ampullarioides* 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 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) A condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or 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 it will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Arizona and Utah. The designation of critical habitat in areas currently occupied by the *Astragalus holmgreniorum* and *A. ampullarioides* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have 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 are designating critical habitat in accordance with the provisions of the Act. This final 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 holmgreniorum* 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 Act. 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 conducted a NEPA analysis for this critical habitat designation, and we notified the public of the availability of the draft environmental assessment for the proposed rule on September 26, 2006 (71 FR 56085). The final environmental assessment and Finding of No Significant Impact is available upon request from the Field Supervisor, Utah Fish and Wildlife Office (see **ADDRESSES** section) or on our Web site at *http://mountain-prairie.fws.gov/species/plants/milkvetche/index.htm*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

Tribal lands of the Shivwits Band of Paiute Indians (Tribe) included in the proposed designation included 240 ac (97 ha) of Unit 2 for *Astragalus ampullarioides*. The Shivwits Band of Paiutes Management Plan for *Astragalus ampullarioides* was signed by Chairman Glenn Rogers on September 18, 2006. We determined that the management plan, and the conservation actions it includes, provide greater protection than critical habitat designation would provide; therefore, this unit is excluded from critical habitat under section 4(b)(2) of the Act.

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 Heather Barnes, Utah Fish and Wildlife Office, Salt Lake City, Utah.

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 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		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus ampullarioides.	Shivwits milk-vetch	U.S.A. (UT)	Fabaceae	E	711	17.96(a)	NA
*	*	*	*	*	*		*
Astragalus holmgreniorum.	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 and as described 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 and the Dinosaur Canyon Member of the Moenave Formation, at elevations from 920 to 1,330 m (3,018 to 4,367 ft);

(ii) Topographic features/relief, including alluvial fans and fan terraces, and gently rolling to steep swales with little to moderate slope (3 to 24 percent), that are often markedly dissected by water flow pathways from seasonal precipitation; 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. clavescens,* 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 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—*A. ampullarioides*) follows:

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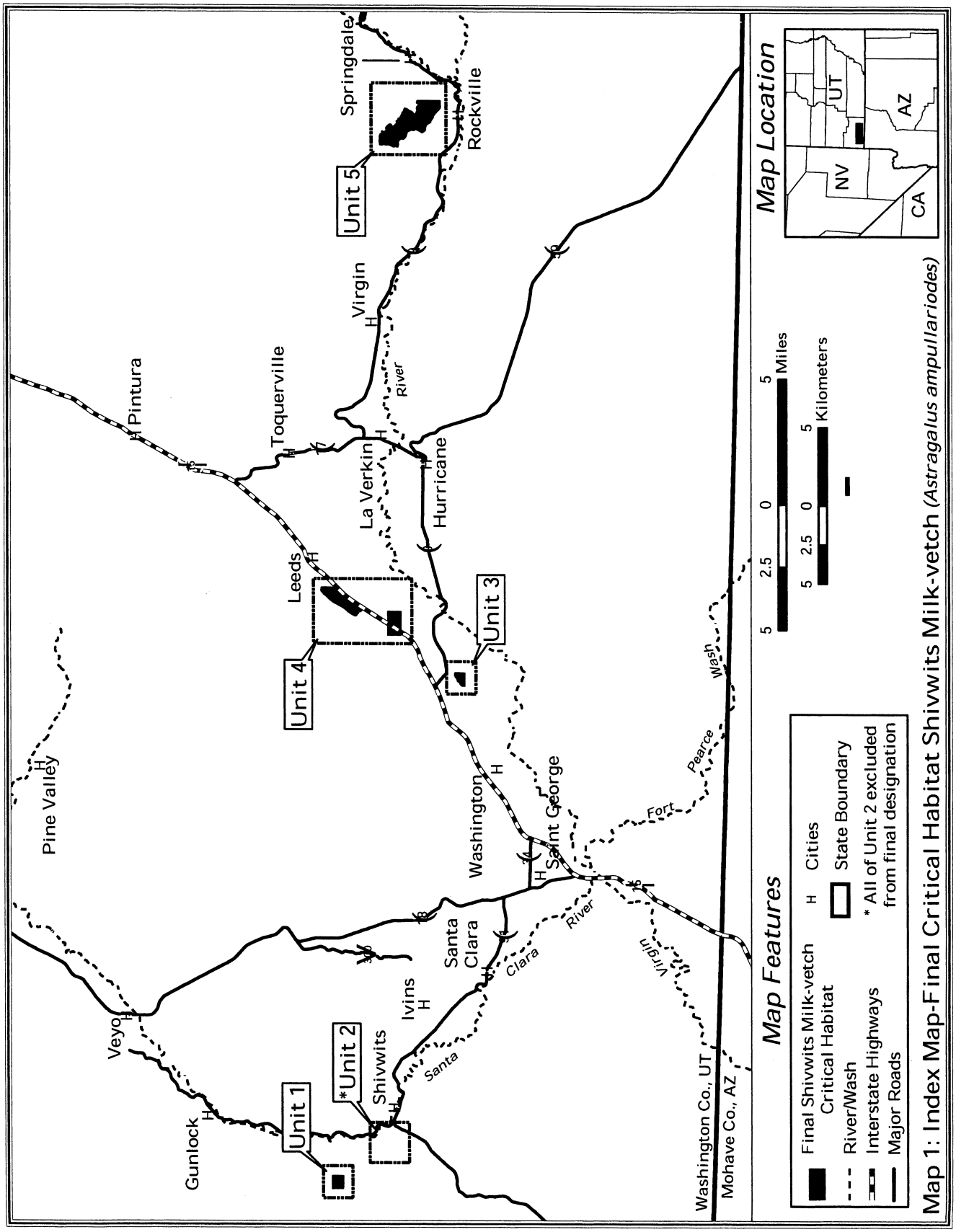

Map 1: Index Map-Final Critical Habitat Shivwits Milk-vetch (*Astragalus ampullariodes*)

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(6) Unit 1—Pahcoon Spring Wash, Washington County, Utah.

(i) 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) Note: Map of Unit 1 (Map 2—*A. ampullarioides*) follows:

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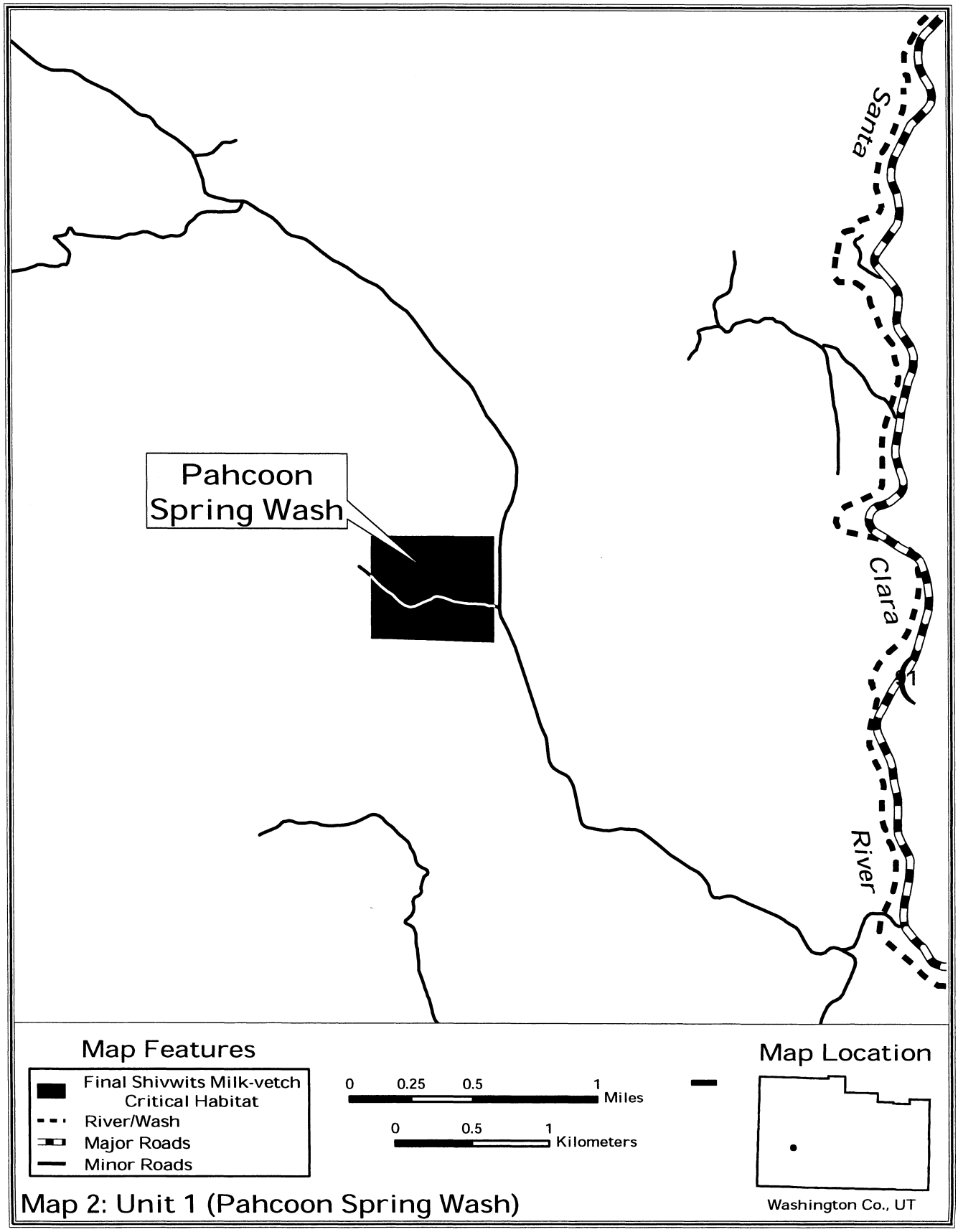

Map 2: Unit 1 (Pahcoon Spring Wash)

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(7) Unit 3—Coral Canyon, Washington County, Utah.

(i) 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.

(8) Unit 4—Harrisburg Junction, Washington County, Utah.

(i) Unit 4 is divided into two subunits: 4a, Harrisburg Bench and Cottonwood, and 4b, Silver Reef.

(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—*A. ampullarioides*) follows:

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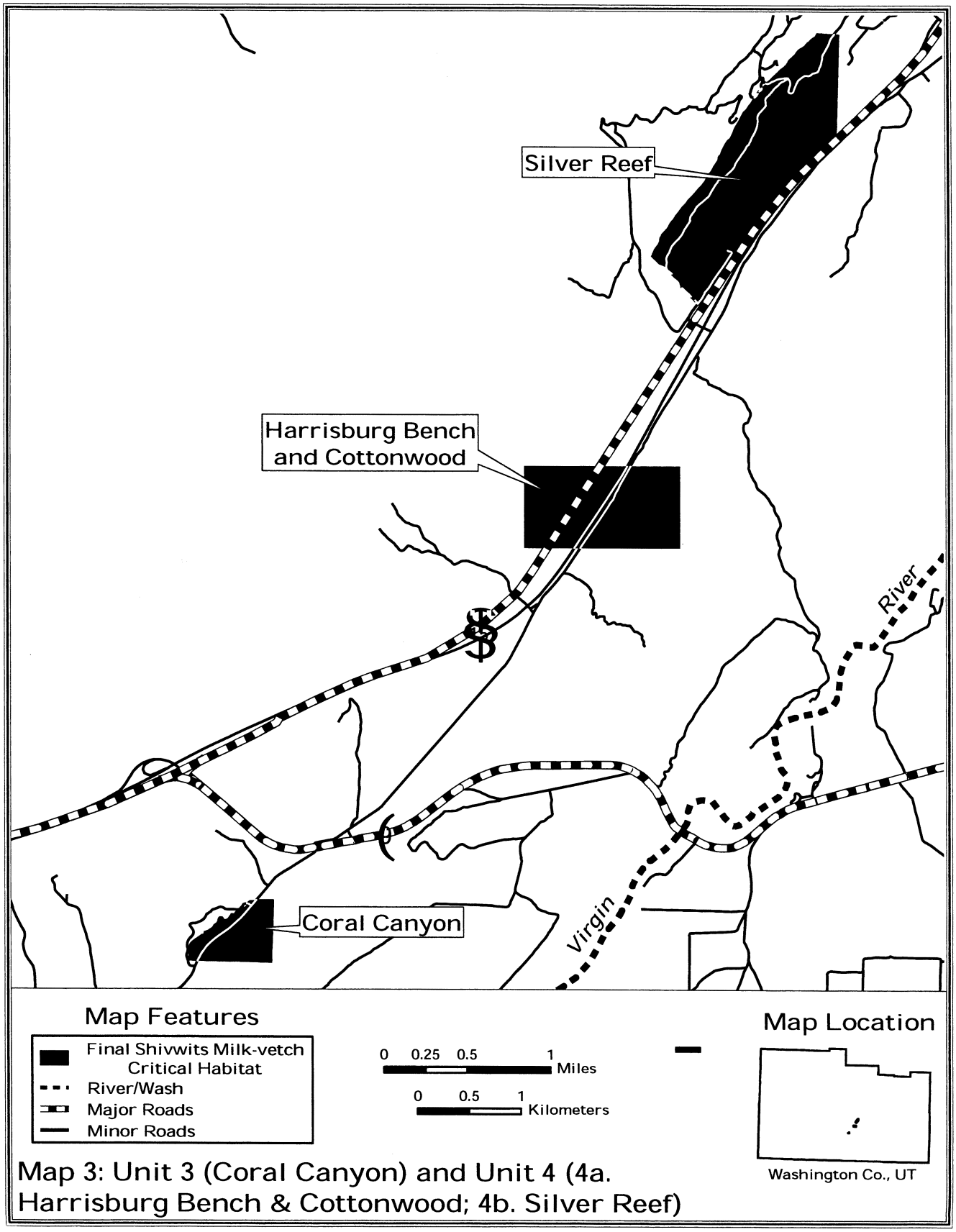

Map 3: Unit 3 (Coral Canyon) and Unit 4 (4a. Harrisburg Bench & Cottonwood; 4b. Silver Reef)

BILLING CODE 4310–55–C

(9) 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; 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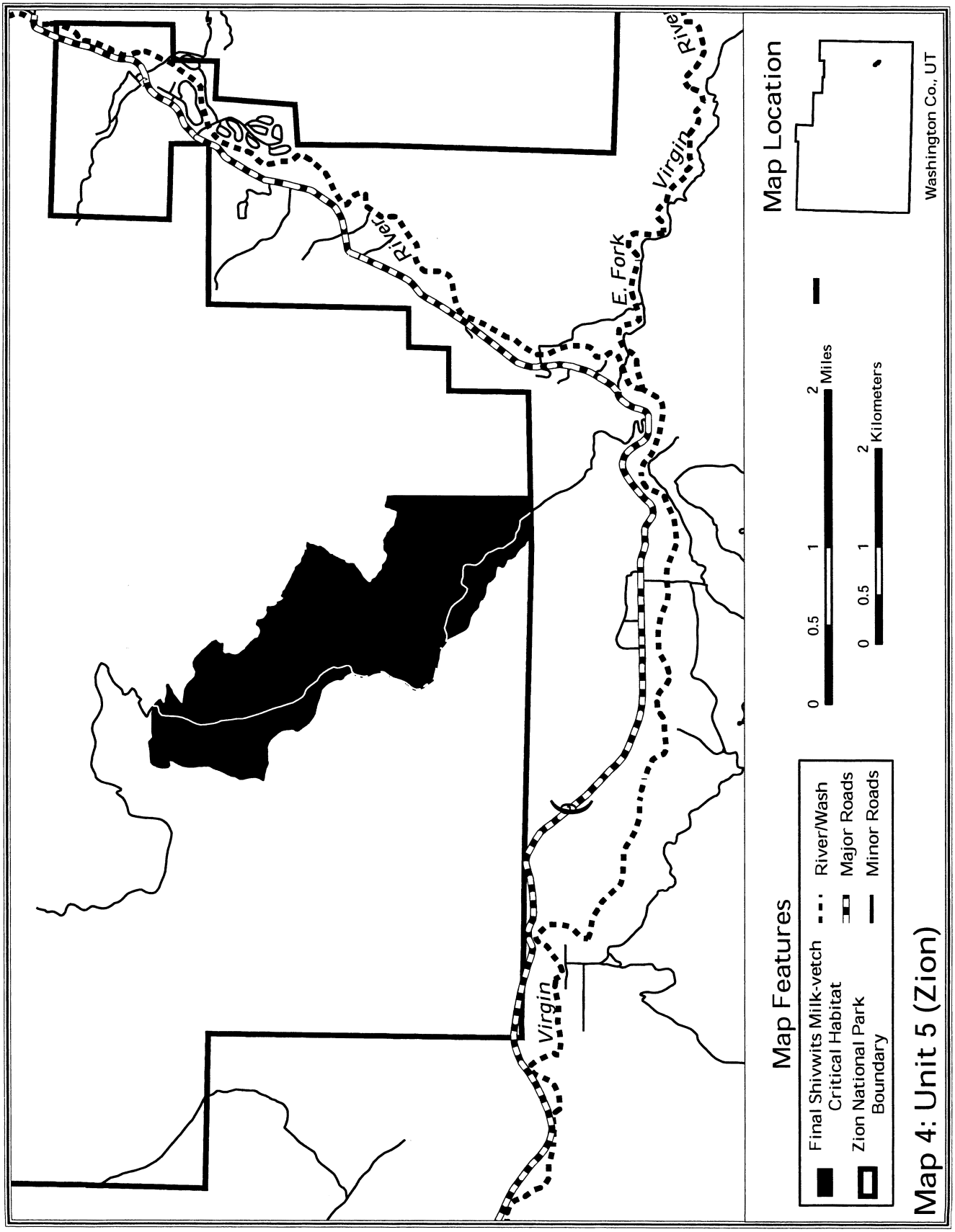
(ii) Note: Map of Unit 5 (Map 4—*A. ampullioides*) follows:

BILLING CODE 4310–55–P



Map 4: Unit 5 (Zion)

BILLING CODE 4310–55–C

* * * * *

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 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

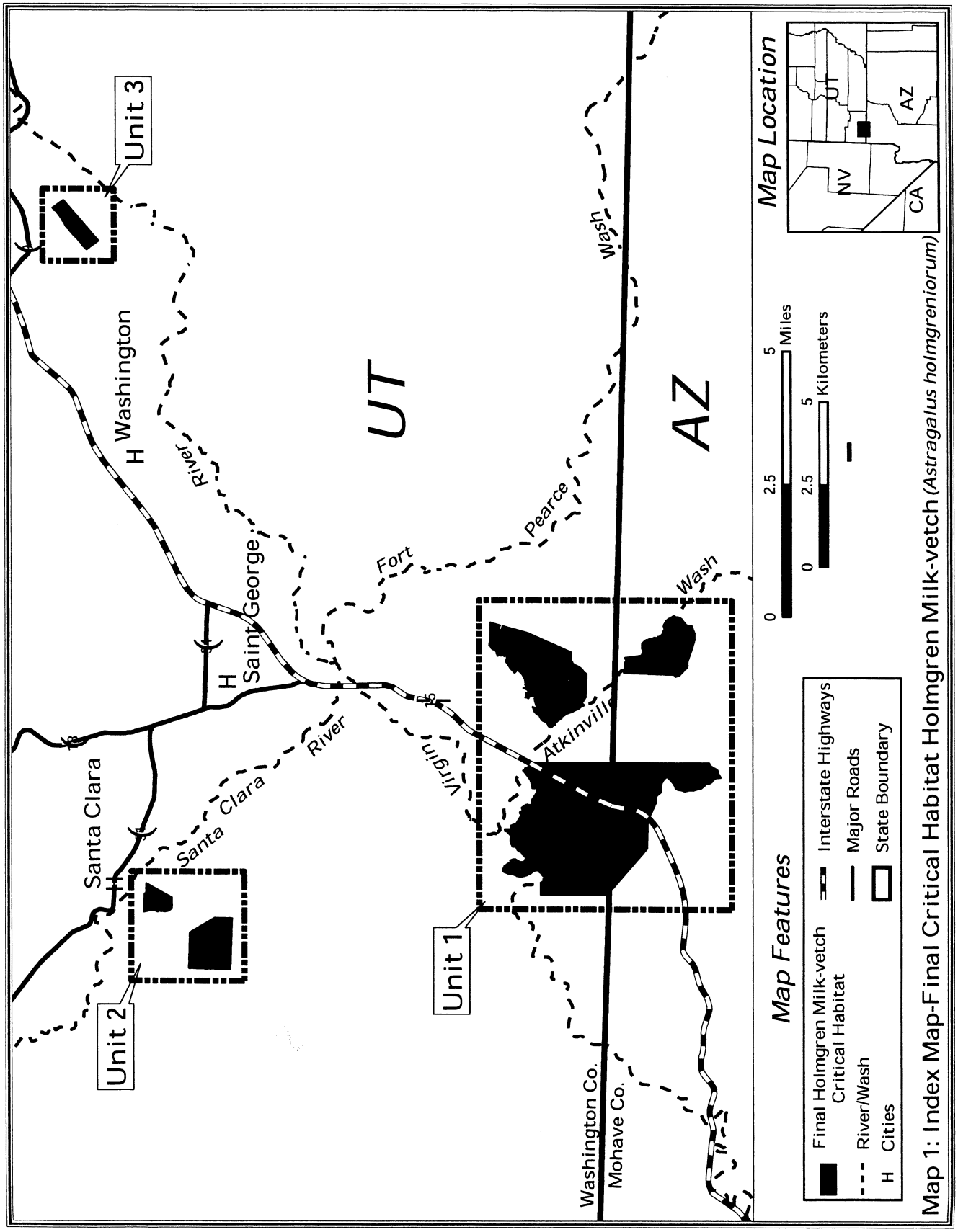
(iii) The presence of insect visitors or pollinators, such as *Anthophora captognatha, A. damnersi, A. porterae,* other *Anthophora* species, *Eucera quadricincta, Omia titus,* and two types of *Dialictus* species.

(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 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—*A. holmgreniorum*) follows:

BILLING CODE 4310–55–P



Map 1: Index Map-Final Critical Habitat Holmgren Milk-vetch (*Astragalus holmgreniorum*)

BILLING CODE 4310–55–C

(6) Unit 1—Utah-Arizona Border, 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. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N): 263931,4098206; 263933,4100207; 264297,4100206; 264324,4100152; 264361,4100090; 264389,4100059; 264420,4100041; 264445,4100041; 264486,4100066; 264528,4100107; 264560,4100151; 264578,4100184; 264588,4100206; 264599,4100221; 264614,4100232; 264631,4100246; 264647,4100256; 264657,4100269; 264663,4100289; 264669,4100308; 264663,4100349; 264653,4100399; 264639,4100426; 264620,4100454; 264601,4100482; 264579,4100527; 264568,4100555; 264563,4100578; 264555,4100596; 264540,4100617; 264530,4100643; 264509,4100682; 264486,4100742; 264483,4100793; 264481,4100853; 264483,4100885; 264494,4100904; 264505,4100920; 264518,4100937; 264524,4100963; 264537,4101013; 264553,4101091; 264563,4101143; 264565,4101160; 264574,4101176; 264581,4101197; 264594,4101236; 264603,4101265; 264616,4101294; 264636,4101316; 264655,4101327; 264685,4101328; 264713,4101321; 264745,4101296; 264792,4101262; 264831,4101225; 264867,4101180; 264895,4101133; 264906,4101094; 264909,4101006; 264910,4100916; 264917,4100838; 264918,4100770; 264926,4100713; 264935,4100694; 264947,4100670; 264959,4100658; 264977,4100648; 264998,4100642; 265010,4100638; 265032,4100630; 265061,4100626; 265092,4100626; 265118,4100629; 265151,4100647; 265170,4100667; 265187,4100692; 265205,4100736; 265221,4100782; 265228,4100802; 265243,4100832; 265261,4100861; 265292,4100894; 265337,4100917; 265385,4100947; 265434,4100981; 265464,4100994; 265509,4101009; 265550,4101020; 265562,4101023; 265609,4101039; 265657,4101057; 265679,4101062; 265703,4101072; 265716,4101084; 265731,4101105; 265747,4101116; 265762,4101126; 265769,4101131; 265778,4101141; 265797,4101160; 265818,4101168; 265834,4101180; 265837,4101186; 265835,4101202; 265841,4101223; 265846,4101236; 265845,4101253; 265850,4101262; 265861,4101261; 265871,4101258; 265889,4101257; 265919,4101271; 265921,4101273; 265916,4101084; 266032,4101081; 266085,4100924; 266312,4100788; 266347,4100773; 266380,4100795; 266392,4100805; 266402,4100815; 266442,4100812; 266466,4100750; 266484,4100740; 266506,4100739; 266547,4100754; 266557,4100762; 266572,4100761; 266656,4100635; 266665,4100590; 266650,4100540; 266658,4100460; 266749,4100469; 266793,4100460; 266812,4100450; 266877,4100411; 266973,4100352; 267038,4100312; 267070,4100300; 267083,4100299; 267136,4100300; 267163,4100310; 267156,4100330; 267145,4100361; 267143,4100385; 267145,4100423; 267153,4100456; 267168,4100452; 267195,4100451; 267221,4100452; 267262,4100461; 267379,4100492; 267432,4100512; 267626,4100667; 267673,4100704; 267697,4100726; 267705,4100713; 267722,4100666; 267724,4100661; 267744,4100607; 267775,4100561; 267814,4100526; 267826,4100519; 267842,4100508; 267855,4100499; 267906,4100469; 267917,4100463; 267932,4100459; 267933,4097163; 267933,4096673; 267934,4095506; 267934,4095144; 267912,4095140; 267892,4095136; 267870,4095127; 267837,4095084; 267820,4095058; 267798,4095019; 267776,4094979; 267756,4094951; 267736,4094923; 267722,4094903; 267681,4094881; 267640,4094875; 267614,4094871; 267519,4094815; 267492,4094810; 267486,4094849; 267482,4094879; 267480,4094892; 267477,4094916; 267474,4094940; 267470,4094952; 267463,4094969; 267455,4094989; 267448,4094998; 267435,4095013; 267425,4095026; 267404,4095040; 267389,4095051; 267374,4095063; 267363,4095073; 267351,4095083; 267337,4095095; 267324,4095120; 267310,4095149; 267308,4095176; 267305,4095199; 267301,4095220; 267298,4095240; 267280,4095257; 267266,4095272; 267253,4095284; 267230,4095307; 267219,4095318; 267202,4095340; 267185,4095360; 267169,4095383; 267160,4095397; 267151,4095419; 267143,4095436; 267140,4095468; 267138,4095492; 267131,4095517; 267125,4095541; 267114,4095575; 267100,4095615; 267094,4095640; 267094,4095679; 267095,4095714; 267097,4095762; 267099,4095790; 267091,4095805; 267079,4095831; 267073,4095855; 267070,4095877; 267072,4095903; 267087,4095935; 267099,4095962; 267101,4095985; 267104,4096007; 267106,4096030; 267113,4096063; 267119,4096088; 267123,4096109; 267148,4096146; 267160,4096155; 267177,4096168; 267199,4096177; 267217,4096185; 267263,4096207; 267300,4096219; 267327,4096243; 267349,4096264; 267379,4096289; 267407,4096313; 267425,4096330; 267454,4096362; 267473,4096383; 267496,4096415; 267509,4096435; 267502,4096450; 267490,4096461; 267479,4096471; 267470,4096480; 267454,4096493; 267434,4096509; 267411,4096525; 267390,4096536; 267371,4096546; 267340,4096566; 267315,4096583; 267300,4096584; 267280,4096587; 267256,4096590; 267246,4096591; 267234,4096593; 267214,4096592; 267171,4096591; 267142,4096590; 267097,4096592; 267052,4096595; 267037,4096610; 267007,4096638; 266973,4096692; 266897,4096752; 266896,4096752; 266895,4096753; 266855,4096750; 266800,4096744; 266744,4096736; 266729,4096740; 266703,4096758; 266682,4096769; 266359,4096909; 266306,4096995; 266037,4097000; 265906,4097003; 265906,4097003; 265325,4097015; 265139,4097174; 263931,4098206.

(ii) Unit 1b—Gardner Well, Washington County, Utah. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N): 271132, 4097585; 271154, 4097406; 271173, 4097277; 271180, 4097203; 271233, 4097154; 271275, 4097136; 271324, 4097129; 271370, 4097147; 271416, 4097165; 271451, 4097161; 271493, 4097165; 271518, 4097154; 271539, 4097133; 271574, 4097094; 271606, 4097055; 271628, 4097040; 271645, 4097017; 271658, 4096995; 271664, 4096976; 271680, 4096960; 271693, 4096929; 271698, 4096899; 271700, 4096880; 271702, 4096849; 271710, 4096825; 271728, 4096800; 271730, 4096782; 271718, 4096747; 271711, 4096697; 271721, 4096652; 271748, 4096601; 271795, 4096549; 271831, 4096521; 271866, 4096521; 271885, 4096521; 271913, 4096509; 271946, 4096509; 271990, 4096511; 272026, 4096514; 272051, 4096521; 272101, 4096517; 272149, 4096496; 272194, 4096466; 272263, 4096388; 272301, 4096328; 272317, 4096291; 272341, 4096229; 272356, 4096176; 272356, 4096098; 272329, 4096025; 272288, 4095973; 272218, 4095916; 272194, 4095890; 272156, 4095871; 272123, 4095845; 272103, 4095805; 272089, 4095777; 272089, 4095743; 272099, 4095684; 271975, 4095633; 271847, 4095582; 271742, 4095579; 271672, 4095582; 271424, 4095648; 270979, 4095805; 270884, 4095787; 270808, 4095801; 270768, 4095867; 270702, 4095929; 270640, 4095987; 270574, 4096049; 270560, 4096104; 270545, 4096159; 270574, 4096184; 270603, 4096202; 270649, 4097638; 270652, 4097721; 270768, 4097702;

270830, 4097691; 270873, 4097691; 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. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N): 268995,4099879; 268995,4099902; 269009,4099933; 269035,4099958; 269054,4099974; 269076,4099978; 269100,4099987; 269120,4100000; 269143,4100027; 269162,4100052; 269179,4100082; 269197,4100110; 269214,4100143; 269244,4100175; 269285,4100198; 269309,4100212; 269325,4100226; 269361,4100238; 269376,4100258; 269387,4100289; 269415,4100322; 269432,4100348; 269451,4100367; 269483,4100384; 269520,4100400; 269553,4100408; 269587,4100423; 269608,4100437; 269610,4100440; 269616,4100443; 269621,4100439; 269618,4100426; 269618,4100414; 269612,4100404; 269600,4100387; 269599,4100386; 269595,4100374; 269584,4100349; 269578,4100326; 269584,4100309; 269601,4100290; 269620,4100293; 269631,4100312; 269652,4100322; 269686,4100335; 269715,4100348; 269725,4100348; 269725,4100348; 269726,4100346; 269740,4100352; 269761,4100358; 269781,4100365; 269802,4100375; 269827,4100375; 269850,4100375; 269867,4100375; 269878,4100381; 269886,4100375; 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272092,4101397; 271963,4101441; 271943,4101364; 272070,4101319; 272020,4101140; 271940,4100852; 271861,4100577; 271752,4100334; 271625,4100053; 271488,4099746; 271377,4099511; 271328,4099394; 271287,4099296; 271287,4099296; 271227,4099294; 271179,4099296; 271145,4099296; 271102,4099297; 271061,4099295; 271038,4099287; 271010,4099268; 270994,4099257; 270977,4099247; 270954,4099236; 270933,4099226; 270919,4099215; 270904,4099188; 270878,4099136; 270861,4099099; 270839,4099061; 270817,4099026; 270788,4098984; 270763,4098959; 270719,4098929; 270691,4098913; 270681,4098912; 270658,4098879; 270641,4098853; 270628,4098832; 270610,4098812; 270578,4098812; 270551,4098818; 270521,4098818; 270494,4098824; 270467,4098835; 270423,4098828; 270401,4098827; 270344,4098826; 270294,4098830; 270278,4098835; 270237,4098831; 270211,4098825; 270170,4098825; 270142,4098828; 270099,4098835; 270065,4098845; 270047,4098849; 270017,4098846; 269993,4098842; 269956,4098843; 269926,4098850; 269895,4098865; 269858,4098891; 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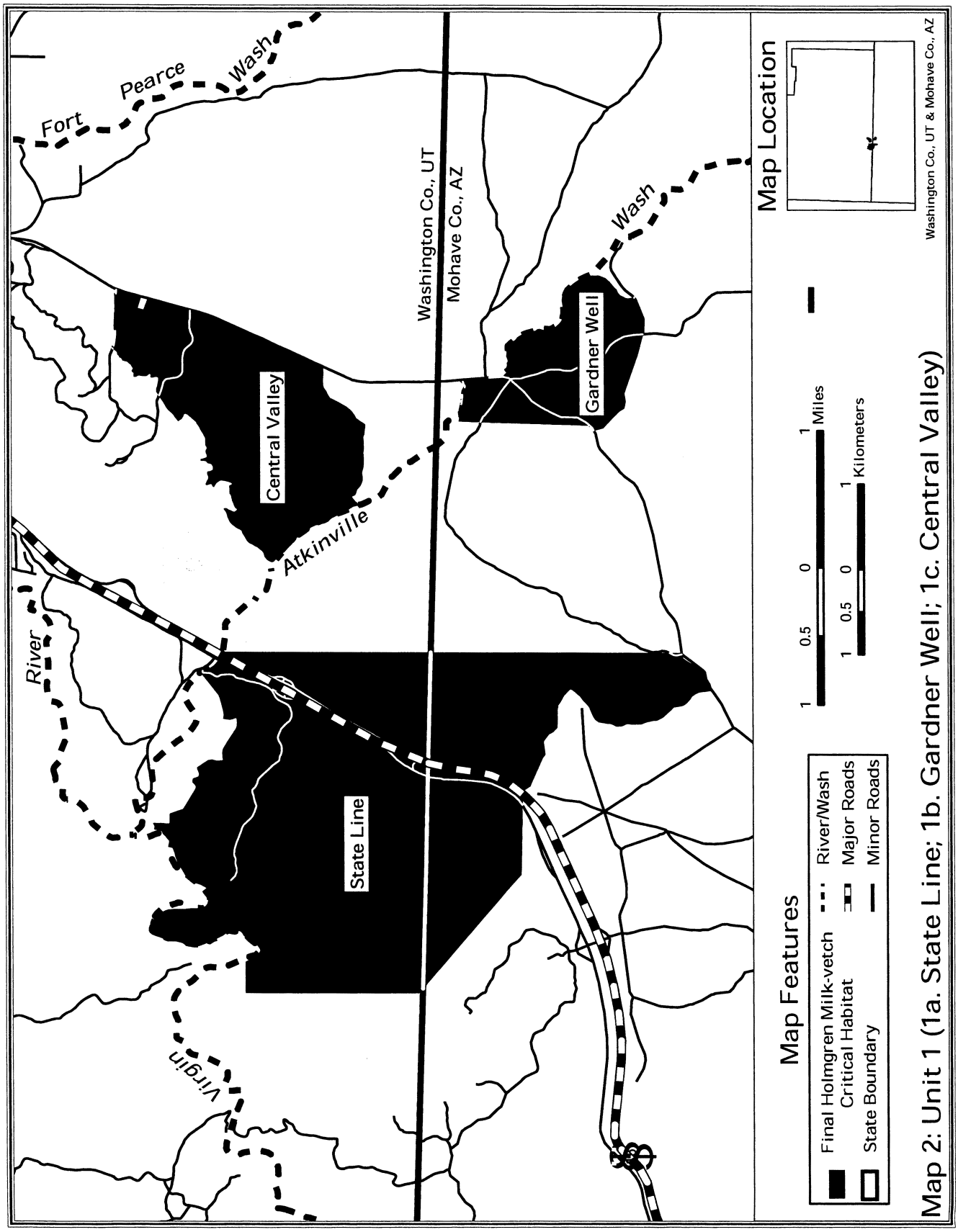
(iv) Note: Map of Unit 1 (Map 2—*A. holmgreniorum*) follows:

BILLING CODE 4310–55–P



Map 2: Unit 1 (1a. State Line; 1b. Gardner Well; 1c. Central Valley)

BILLING CODE 4310–55–C

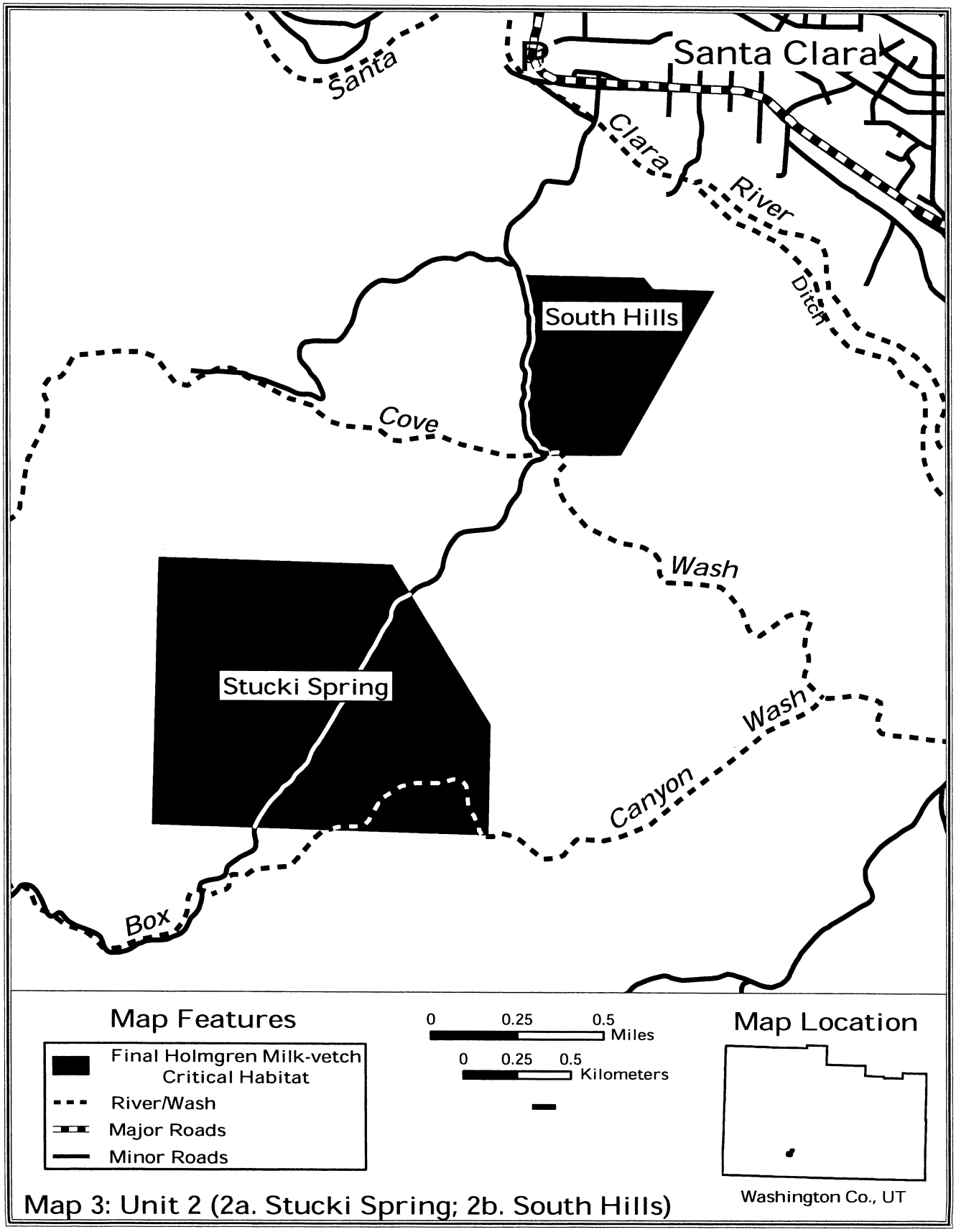
(7) Unit 2—Santa Clara, Washington County, Utah. This unit consists of two subunits: Stucki Spring and South Hills.

(i) Unit 2a—Stucki Spring, Washington County, Utah. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N): 261650,4109466; 261683,4110718; 262761,4110687; 263214,4109938; 263203,4109419; 261650,4109466.

(ii) Unit 2b—South Hills, Washington County, Utah. Land bounded by the following UTM Zone 12 NAD 83 coordinates (meters E, meters N): 263385,4112054; 263932,4112044; 263975,4111990; 264261,4111983; 263824,4111209; 263504,4111208; 263503,4111213; 263502,4111218; 263501,4111220; 263498,4111226; 263494,4111234; 263489,4111239; 263485,4111243; 263481,4111246; 263476,4111248; 263475,4111249; 263463,4111252; 263462,4111253; 263456,4111254; 263454,4111259; 263453,4111262; 263447,4111274; 263443,4111280; 263427,4111298; 263418,4111308; 263413,4111323; 263409,4111337; 263406,4111354; 263406,4111366; 263406,4111383; 263406,4111386; 263405,4111403; 263405,4111407; 263402,4111422; 263400,4111427; 263396,4111440; 263394,4111449; 263395,4111455; 263397,4111460; 263400,4111464; 263405,4111473; 263406,4111478; 263407,4111479; 263408,4111493; 263408,4111503; 263406,4111515; 263405,4111516; 263403,4111529; 263402,4111534; 263407,4111547; 263409,4111553; 263411,4111568; 263412,4111572; 263413,4111592; 263412,4111597; 263411,4111609; 263409,4111615; 263407,4111620; 263405,4111624; 263399,4111631; 263398,4111634; 263397,4111644; 263401,4111660; 263408,4111679; 263421,4111711; 263422,4111714; 263429,4111738; 263430,4111746; 263431,4111767; 263431,4111772; 263428,4111792; 263428,4111822; 263430,4111853; 263429,4111860; 263428,4111865; 263428,4111866; 263420,4111884; 263419,4111888; 263421,4111904; 263421,4111913; 263417,4111935; 263416,4111937; 263405,4111976; 263399,4112013; 263398,4112017; 263390,4112041; 263390,4112042; 263385,4112054.

(iii) Note: Map of Unit 2 (Map 3—*A. holmgreniorum*) follows:

BILLING CODE 4310–55–P



Map 3: Unit 2 (2a. Stucki Spring; 2b. South Hills)

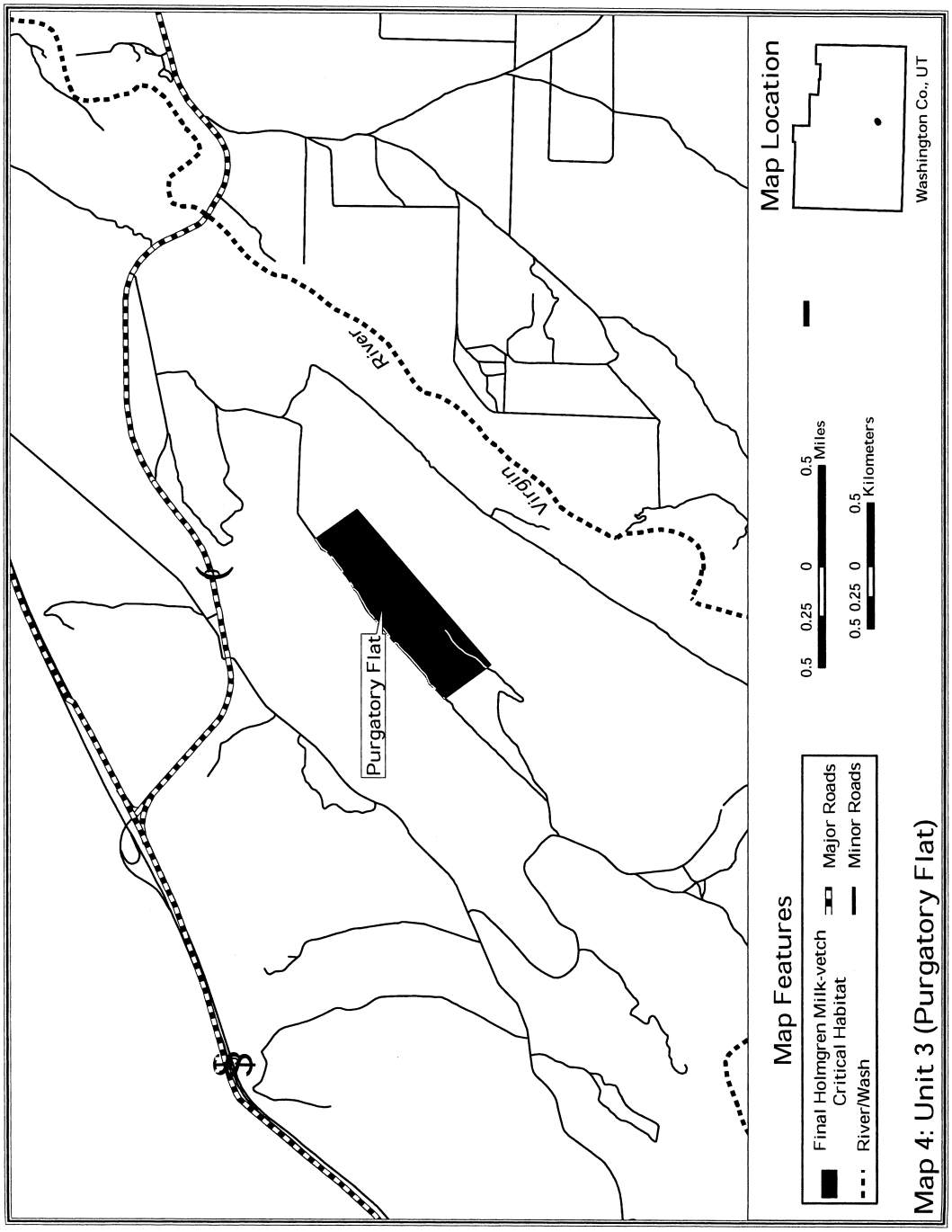
BILLING CODE 4310–55–C

(8) Unit 3—Purgatory Flat, 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; 283737, 4113995; 283810, 4114065; 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 4—*A. holmgreniorum*) follows:

BILLING CODE 4310–55–P



* * * * *

Dated: December 12, 2006.

Julie MacDonald,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–9794 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
December 27, 2006

Part IV

Department of Housing and Urban Development

24 CFR Part 941

Streamlined Application Process in Public/Private Partnerships for the Mixed–Finance Development of Public Housing Units; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 941

[Docket No. FR–4924–P–01]

RIN 2577–AC55

Streamlined Application Process in Public/Private Partnerships For the Mixed-Finance Development of Public Housing Units

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current application process for participation in mixed-finance public housing development programs, including HOPE VI, to simplify and streamline the application, review, and approval processes. Currently, a public housing agency (PHA) is required to submit a variety of closing documents to HUD, both before closing and after recordation. Under this proposed rule, this two-step process would be retained, but rather than submitting all documents related to the closing, a PHA would be required to complete and retain for inspection or audit all of the closing documents, and to submit to HUD only a portion of the closing documents, along with all necessary certifications of the fulfillment of the closing requirements. This change would significantly reduce the document submission burdens on PHAs while still enabling HUD to ensure that the PHAs meet the program requirements.

DATES: *Comments Due Date:* February 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule 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 eRulemaking Portal at *http://www.regulations.gov.* Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, 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, please schedule an appointment to review the comments by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number). Copies of electronically submitted comments are also available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dominique Blom, Deputy Assistant Secretary, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812, extension 4181 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 35 of the U.S. Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437z–7) made mixed-finance public housing projects eligible for funding under the 1937 Act. HUD's mixed-finance regulations permit PHAs to use public housing capital funds and other development funds to assist mixed-finance developments, including by permitting PHAs to provide those funds to a non-PHA entity to develop and own the resulting public housing units. HUD's original mixed-finance regulations, published prior to the addition of section 35 to the 1937 Act, interpreted the 1937 Act to permit PHAs to use public housing development funds and operating assistance to develop and assist units owned and/or operated by a non-PHA entity to develop and own the resulting public housing units (see the preamble explanation at 61 FR 19708 (May 2, 1996); see also 24 CFR 941.600(a)).

Section 35 of the 1937 Act codifies the Department's mixed-finance program that authorizes a PHA to fund a mixed-finance project from the operating fund, the capital fund, or both. Units receiving capital or operating funds must be developed and maintained as public housing for the period required under both the 1937 Act and the PHA's annual contributions contract (ACC). This period may be 10 years for the period operating funds are received, 20 years for modernization activities, or 40 years for development activities, as applicable, and are extended as additional operating or capital funds are provided in accordance with the 1937 Act. Mixed-finance development of public housing is subject to regulations at 24 CFR part 941, subpart F. Under the regulations, the PHA must submit information about the project to HUD for review and approval. Otherwise, HUD will not release funds for the development activity. Currently, two HUD approvals are required: (i) One for the mixed-finance proposal prepared in accordance with 24 CFR 941.606, including all legal documents and other materials submitted for review prior to closing in accordance with 24 CFR 941.610; and (ii) one for release of funds after HUD has received and approved final binders for the project containing final, fully executed, and, where appropriate, recorded copies of all closing documents.

II. This Proposed Rule

This proposed rule would streamline the mixed-finance application process by reducing the number of closing documents that must be submitted to HUD to receive these approvals. This rule would revise the proposal submissions in 24 CFR 941.606 to include certifications of compliance with applicable public housing requirements. Under this rulemaking, PHAs would be required to submit their proposals along with certifications required by 24 CFR 941.606(l) (formerly § 941.606(n)). The certifications listed in this section would also act as guidance for PHAs submitting a proposal to ensure the PHA's comprehensive regulatory compliance.

The proposed new § 941.606(l)(1)(iv) is intended to ensure that the PHA obtains all of the project documents relative to development and operation that are required to be kept on file and available for HUD review. This proposed new regulatory section also would provide HUD with assurances that the PHA has properly reviewed the closing documents to ensure that they are consistent with the public housing requirements. The proposed new § 941.606(l)(1)(v) would assure that operating funds provided under section 9 of the 1937 Act will only be used for eligible activities. The proposed new § 941.606(l)(1)(vi) would require PHAs to comply with the provisions of section 30 of the 1937 Act relating to mortgages and security interests. The proposed new § 941.606(l)(1)(viii) would require PHAs to keep records in accordance with 24 CFR 85.20. The proposed new § 941.606(l)(1)(ix) would ensure that none of the parties participating in a mixed-finance proposal and development under this rule are suspended, debarred, or subject to a limited denial of participation under 24

CFR part 24, subtitle A. The proposed new § 941.606(l)(1)(x) would ensure that any transformation remedies included in the project documents are consistent with section 35(h) of the 1937 Act, and that such remedies may not be implemented until such time as HUD establishes procedures or requirements developed by regulations.

This proposed rule would add a statement to 24 CFR 941.608(b) that HUD will perform a subsidy layering review. This new paragraph would not be a change in legal requirements, as section 102(d) of the Department of Housing and Urban Development Reform Act (HUD Reform Act) (42 U.S.C. 3545(d)), requires HUD to certify (after taking into account other government assistance) that any HUD assistance to any housing project shall not be more than is necessary to provide affordable housing. This paragraph would be included in order to make the requirement explicit for this program.

Currently, as part of its initial proposal, pre-closing submission, a PHA submits a complete evidentiary package required by 24 CFR 941.610 for HUD review prior to closing. This proposal submission includes all necessary programmatic, underwriting, and legal documents, including a formal mixed-finance proposal, partnership documents, management documents, ground leases, development agreements, title policies showing lien priority, land surveys, financing agreements, subordinate loan documentation, and other drafts of all project-specific documentation. After receiving HUD's approval for this submission, the PHA may go to closing and record all necessary documentation. Thereafter, prior to release of federal funds, the PHA must resubmit final, fully executed, and recorded copies of all closing documentation to HUD.

With the streamlined review, the project will continue to be subject to this two-stage review process prior to release of funds, including a proposal review and a post closing review. However, the documentation submission requirements will be substantially reduced at each stage. The proposal review will include a limited legal review and review by the program office prior to closing, to safeguard the interests of HUD. This limited review will ensure that the documents submitted are acceptable to HUD prior to the execution and recording of the documents. In addition to the mixed-finance proposal (the rental term sheet form (HUD–50031) and additional submissions), the proposal review submission will include the following: A draft Declaration of Restrictive Covenants for review by the Office of General Counsel (OGC); a draft mixed-finance amendment to the PHA's ACC with HUD (Mixed-Finance ACC Amendment); and lastly, a certification to HUD that all closing documents, those submitted to HUD, and those retained by the PHA are in conformance with all laws, regulatory and statutory requirements, and executive orders that are applicable to the project. HUD has also made available sample provisions to assist PHAs in developing closing documentation that conform to the program requirements. These provisions are available on HUD's Web site, *http://www.hud.gov.*

The post-closing review follows execution and recording of documents, but is conducted prior to HUD approval of the release of public housing funds for development. This proposed rule would shorten the list of required post-closing submissions in 24 CFR 941.610(a). The PHA would be required to provide the following additional materials for HUD review: (1) An executed Mixed-Finance ACC Amendment, in the form approved by HUD prior to closing; (2) an executed Declaration of Restrictive Covenants date-stamped by the appropriate land records office; (3) a Final Title Policy evidencing the Declaration's recordation priority in the first lien position, unless another order or recording is approved by the Department; (4) a written opinion from legal counsel for the PHA stating that the entities that executed the closing documents have the legal authority to enter into them as required by 24 CFR 941.606(n)(1)(i) of the current rule (this section would be redesignated § 941.606(l)(1)(i) by this proposed rule), that the documents are legally binding instruments, and that the documents comply with all applicable public housing requirements; (5) the revised and updated mixed-finance proposal; and (6) evidence, which may be in the form of a certification stating that all necessary closing documents were executed and recorded, that all funds necessary for the development (as outlined in the mixed-finance proposal) have been committed to the project, and that all project documents will be retained by the PHA and made available for inspection upon request.

Section 941.610(b) of this proposed rule would require a PHA to submit various certifications and assurances. These submissions would include assurances that the Mixed-Finance ACC Amendment and related materials are complete, remain in the form and with the content approved by HUD at closing, and are consistent with the mixed-finance proposal. In addition, the PHA would be required to submit a certification that the Declaration of Restrictive Covenants required under § 941.610(a)(2) of this proposed rule is enforceable, has priority over all other liens, and is the first recorded document, unless otherwise approved by HUD. Prior to closing, the PHA may request a HUD review of the pro-forma title policy if there are certain circumstances that may prohibit recordation of the Declaration of Restrictive Covenants in first lien position. The terms of the Declaration of Restrictive Covenants must include that there must be no disposition of the public housing units or of the ownership entity's partnership or membership interests without HUD's approval during the entire operating subsidy period plus 10 years; and that for a 40-year period, which may be extended by an additional 10 years, the public housing units must be operated in accordance with all applicable public housing requirements.

The certifications and assurances required in § 941.610(b)(4) of this proposed rule would be generally similar to those required under § 941.610(a)(8) of the current regulations. These include certifications regarding the number or percentage of public housing units in the project; and an acknowledgment that the transfer of development funds from the PHA to the partner or other owner entity shall not be deemed an assignment. The certifications would also include an acknowledgment that the ACC, Mixed-Finance ACC Amendment, and other contracts involved shall not create any third-party rights or any partnership, joint venture, principal and agent relationship, or any other business relationship involving HUD. They would include: (1) An assurance that all agreements and contracts are legally binding on the owner entity or partner and contain an agreement by the PHA to take any necessary enforcement action; (2) a certification of compliance with Davis-Bacon wage rate requirements; (3) an assurance that the PHA will take all steps necessary to ensure, in the event of a foreclosure or other adverse action brought against the owner entity, that the operation of the public housing units in the project will not be adversely affected; and (4) any details or additional documentation HUD may require.

Additionally, this rule would update the legal authority for 24 CFR part 941 to include the requirements of section 35 of the 1937 Act (42 U.S.C. 1437z–7) and section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)) on subsidy layering, and would also update 24 CFR

941.606 to reflect statutory changes. Specifically, the requirement for a life-cycle analysis of heating and cooling systems reflects authority that was removed and replaced by section 515 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L 105–276). Accordingly, this rule removes 24 CFR 941.606(k).

The provision for the section 213 clearance of new public housing by local government officials in current 24 CFR 941.606(l) references a provision that was repealed by section 551 of QHWRA. Accordingly, this rule also removes 941.606(l).

Material on common area improvements currently under § 941.610(a)(8)(i)(B) would be removed from the rule as unnecessary, but not to change the basic requirement that common area improvements benefit all residents. Section 941.608(b)(4)(ii) (which is unaffected by this rulemaking) requires HUD, as part of its technical processing, to ensure that common area improvements will benefit all residents of the development. As a policy matter, HUD applies a pro rata test to ensure that the amount spent on the project from public housing funds reflects the appropriate share of public housing units in the project.

The proposed rule would add § 941.610(c) to provide the Department access to the development documents. Although this regulatory change would remove the requirement to submit certain documents to the Department for review, the PHAs would be required to provide HUD with copies of any or all of the development documents immediately upon written request from HUD.

This proposed rule would make a technical revision to 24 CFR 941.612(b) on standard drawdown requirements. This change would be to remove the term ''evidentiary materials'' in the relevant paragraph and replace it with language that reflects the fact that HUD will accept certifications in lieu of many of these materials.

Lastly, 24 CFR 941.616, which addresses sanctions, would be revised to include certifications and assurances. The resulting provision would state that if the public housing units are not developed in accordance with all applicable requirements, including all certifications and assurances, the PHA may be liable for sanctions.

III. Findings and Certifications

Paperwork Reduction Act

This rule contains collection of information requirements, which have been submitted to OMB for review under Section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). These new collection of information requirements are not effective until such time that OMB grants its approval. The approval numbers will be published in the **Federal Register** through separate notice. Information on these requirements is provided as follows:

Estimates of the total reporting and recordkeeping burden that will result from the collection of information are as follows:

The burden of information collection in this final rule is estimated as follows:

Form/document	Number of respondents	Frequency	Total responses	Hours per response	Total hours
HUD–50030 Mixed-Finance Rental Term Sheet	70	1	70	40	2,800
Mixed-Finance Amendment to the Annual Contributions Contract	70	1	70	8	560
Mixed-Finance Certifications and Assurances	70	1	70	0.25	17.5
Mixed-Finance Declaration of Restrictive Covenants	70	1	70	0.25	17.5
Mixed-Finance Final Title Policy	70	1	70	0.25	17.5
Mixed-Finance Legal Opinion	70	1	70	1	70
Totals			420		3,483

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within 30 days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4924–P–01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947, and Aneita Waites, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4116, Washington, DC 20410.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made with respect to this proposed rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities. Indeed, this rule reduces the administrative burden on all PHAs participating in a mixed-finance development program.

Although HUD has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.850.

List of Subjects in 24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 941, subpart F, as follows:

PART 941–PUBLIC HOUSING DEVELOPMENT

1. The authority citation for part 941 is revised to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, 1437z–7, 3535(d), and 3545(d).

Subpart F—Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units

2. Amend § 941.606 as follows:

a. Remove paragraphs (k) and (l);

b. Redesignate paragraphs (m) and (n) as paragraphs (k) and (l), respectively; and

c. Amend newly designated paragraph (l) by adding paragraphs (l)(1)(iv) through (x) to read as follows:

§ 941.606 Proposal.

* * * * *

(l)(1) *Certifications and assurances.*

* * *

(iv) Has obtained or will obtain any documents needed to establish its rights and responsibilities associated with the development and operation of the project, and that such documents will be consistent with the applicable public housing requirements. Such documents shall include, but not be limited to:

(A) A regulatory and operating agreement between the PHA and owner entity that provides binding assurances that the operation of the public housing units will be in accordance with applicable public housing requirements;

(B) A partnership agreement, membership agreement, development agreement, or other agreement between any of the participating parties, including an agreement between the agency and the owner entity, its partner, or other participating parties, that establishes the rights and liabilities (financial and otherwise) of the parties;

(C) A management agreement for the public housing units if the units will be managed by an entity other than the agency;

(D) An opinion of counsel for the applicable jurisdiction that the existing cooperation agreement between the jurisdiction and the agency includes the project or development, or a certification from the jurisdiction that the project is consistent with the jurisdiction's Comprehensive Housing Affordability Strategy;

(E) All financing documents, including notes, mortgages, deeds of trust, loan agreements, bond documents, or such other documents that evidence the availability of the participating party(ies) financing, and the amount and source of financing committed to the development;

(F) The organizational documents of the owner entity;

(G) Evidence of control of the site by the agency, partner, or owner entity for such a period of time as may be required by HUD; and

(H) Evidence that all applicable permits and zoning requirements are in place or, if not in place, a certification that permits and zoning will be in place prior to start of construction, along with an explanation of the process and barriers to obtaining such permits and zoning, which may be in the form of a certification from the owner entity or its counsel.

(v) Will ensure that operating funds provided under section 9 of the 1937 Act will be used only for the eligible activities identified in the agency's Mixed Finance ACC Amendment. It will also ensure that operating funds will not be used for exit taxes in connection with any low-income housing tax credit program or to initially fund any operating reserve account, and that operating funds must not be used for the payment of debt service without prior HUD approval;

(vi) Will not, without HUD's prior written approval, authorize any mortgages or otherwise grant a security interest in the development, including under section 30 of the 1937 Act;

(vii) Will ensure that the ownership entity will not make, without HUD's prior written approval, any transfer or grant any security interest in the ownership entity;

(viii) Will keep records in accordance with 24 CFR 85.20 and facilitate an audit to determine compliance with program requirements. All records must be available at all times for HUD inspection and review;

(ix) Will ensure that, to the greatest extent feasible, none of the parties participating in this mixed-finance proposal and development are suspended, debarred, or subject to a limited denial of participation under 24 CFR, part 24, subtitle A; and

(x) Will ensure that any transformation remedies made available to the owner-entity are consistent with section 35(h) of the 1937 Act.

3. Add § 941.608(b)(7) to read as follows:

§ 941.608 Technical processing and approval.

* * * * *

(b) * * *

(7) *Subsidy layering analysis.* After the PHA submits the proposal, HUD (or its designee) shall carry out a subsidy layering analysis pursuant to section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (See 24 CFR part 4) to determine whether the aggregate amount of assistance being provided for the development is more than necessary to make the assisted activity feasible.

* * * * *

4. Revise § 941.610 to read as follows:

§ 941.610 Post-Closing materials and other documents.

(a) *Submission requirements.* After the closing but prior to the disbursement of grant funds under 24 CFR 941.612, the PHA must submit the

materials listed in this section to HUD for approval. The materials must be in the form as approved by HUD at the time of the approval of the proposal under 24 CFR 941.606, or in a form approved by HUD prior to release of funds. These required materials include, but shall not be limited to:

(1) The PHA-executed Mixed-Finance ACC Amendment to the PHA's ACC, along with any required exhibits, as applicable;

(2) A Declaration of Restrictive Covenants in the form and recorded in the order approved by HUD. The restriction must assure that the public housing units will be available for use by eligible low-income families in accordance with all applicable public housing requirements for the maximum period required by law;

(3) A Final Title Policy showing HUD's Declaration in a first lien priority position against the fee estate of the Project, or other order of recording approved by HUD;

(4) A legal opinion prepared by PHA counsel after due diligence and based on information that is, to the knowledge of counsel, true and correct, warranting that the PHA has the legal authority under federal, state, and local law to take all actions and enter into all agreements referenced or required under, or executed pursuant to, § 941.606(l)(1)(i) of this subpart and that all such agreements are in accordance with federal, state, and local law, including the 1937 Act and all HUD regulations;

(5) A revised and updated proposal consistent with the Mixed-Finance ACC Amendment; and

(6) The certifications and assurances required by HUD, including, but not limited to, those described in paragraph (b) of this section.

(b) *Certifications and assurances.* The PHA's certification must include the following statements, as well as any others that HUD may deem necessary to the proper operation of the program. The PHA must certify that:

(1) The PHA is responsible for ensuring that the public housing units are developed, operated, and maintained in accordance with all applicable public housing requirements, including the 1937 Act, the ACC (as amended by the Mixed Finance Amendment) and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time;

(2) These certifications are made under penalty of perjury and subject to HUD's authority to prosecute false claims or statements;

(3) The submissions under paragraph (a)(1) of this section are consistent with the mixed-finance proposal and any other legal documents or representations related to the project;

(4) HUD's declaration of restrictive covenants is legally enforceable and recorded in the order approved by HUD. The terms of the restriction must include the following:

(i) There shall be no disposition of the public housing units without the prior written approval of HUD during, and for 10 years after the end of, the period in which the public housing units receive operating subsidy from the PHA; and

(ii) During a 40-year period (which may be extended for 10 years after the end of the period in which the public housing units receive operating subsidy from the PHA, or as may be otherwise required by law), the public housing units shall be maintained and operated in accordance with all applicable public housing requirements (including the ACC), as those requirements may be amended from time to time;

(5) The PHA shall develop at least the same number of public housing units as were approved by HUD as part of the PHA's proposal, and will do so within the total development cost (TDC) and housing construction cost (HCC) limits;

(6) If the PHA's proposal provides that public housing units within a development will not be specifically designated as public housing units (i.e., floating units), but shall instead constitute a fixed percentage of the housing units and number of bedrooms developed under the proposal, the PHA shall assure that, at a minimum, the percentage of public housing units, as approved by HUD, will be maintained as public housing by the owner entity, and that all of the requirements of this subpart will be satisfied with respect to those units;

(7) The PHA shall include, or cause to be included, in all agreements or contracts with the partner, owner entity, or any other participating parties receiving funds under this subpart:

(i) An acknowledgement that a transfer of the development funds by the PHA to the partner, the owner entity, or other participating party, shall not be deemed to be an assignment of development grant funds and that, accordingly, the partner, the owner entity, or other participating party shall not succeed to any rights or benefits of the PHA under the ACC, or ACC amendment, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC or ACC amendment;

(ii) A provision stating that nothing in the ACC or ACC amendment providing such funds, nor any agreement or contract between the parties, shall be deemed to create a relationship of third-party beneficiary, principal, and agent; limited or general partnership; joint venture; or any association or relationship involving HUD;

(iii) A provision to ensure that the requirements of this subpart are binding upon the owner entity and any partner of the PHA and upon any other participating party. In addition, in the event of any noncompliance with the requirements of this subpart by any participating party, the PHA agrees to take all necessary enforcement action to ensure such compliance or, alternatively, to pursue any legal or equitable remedies that HUD deems appropriate;

(8) The PHA shall ensure that the development of the public housing units will be in compliance with labor standards applicable to the development of public housing including, but not limited to, wage rates under the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) and that wherever HUD financial assistance is expended for housing or community development, economic opportunities will be made available, to the greatest extent feasible, to low- and very low-income persons and businesses pursuant to section 3 of the Housing and Urban Development Act of 1968. If the proposed development will include public housing units that are not specifically designated units, the PHA shall ensure that such labor requirements are met with respect to the development of all units that may, at any time, be used as the public housing units;

(9) The PHA shall take all steps necessary to ensure that, in the event of a foreclosure or other adverse action brought against the owner entity with respect to the housing units (including, but not limited to, the public housing units), the operation of the public housing units developed under this subpart shall not be adversely affected;

(10) The PHA shall certify that it has ensured and shall ensure the availability of the participating party or parties' financing, the amount and source of financing committed to the proposal by the participating party or parties, and the irrevocability of those funds. Irrevocability of funds means that binding legal documents, such as loan agreements, mortgages/deeds of trust, partnership agreements, operating agreements, or similar documents committing funds have been executed by the applicable parties, though disbursement of such funds may be subject to meeting progress milestones, avoiding default, and meeting other

commercially reasonable conditions precedent under such documents. For projects involving revolving loan funds, the irrevocability of funds means that funds in an amount identified to HUD as the maximum revolving loan have been committed pursuant to legally binding documents, though disbursement of such funds may be subject to meeting progress milestones, the absence of default, and meeting other commercially reasonable conditions precedent under such documents. The PHA has ensured the commitment of funds by the participating parties through reviewing the legal documents described above, confirming the terms of the documents committing the funds as described above, and confirming that such documents are duly executed by the participating parties. The PHA is not required to ensure the availability of funds by enforcing documents to which it is not a party. The PHA may certify as to the irrevocability of funds through the submission of an opinion of the PHA's counsel attesting that counsel has examined the availability of the participating party or parties' financing, has examined the amount and source of financing committed to the proposal by the participating party or parties, has determined that such financing has been irrevocably committed by the participating party or parties for use in carrying out the proposal, and has determined that such commitment is in the amount required under the terms of the proposal;

(11) The PHA shall provide such additional certifications as may be required by HUD.

(c) *Recordkeeping.* The PHA must retain for inspection, upon request by HUD, all documentation of the mixed-finance closing including, but not limited to: all development agreements, related management agreements, surveys, title policies, zoning assurances, environmental reports and approvals, partnership agreements, ground leases, regulatory agreements, project financing documents, and any recorded documents encumbering the use of the land. The documentation should be retained in one comprehensive binder for the period required by law.

5. Revise § 941.612(b) introductory text to read as follows:

§ 941.612 Disbursement of grant funds.

* * * * *

(b) *Standard drawdown requirements.* HUD will review the documents and certifications submitted pursuant to § 941.610, and, upon determining that such documents and certifications are satisfactory, may approve a drawdown of development funds, consistent with the following requirements:

* * * * *

6. Revise § 941.616 to read as follows:

§ 941.616 Sanctions.

In the event the public housing units that are proposed to be developed under this part are not developed in accordance with the projected development schedule, with the approved proposal, with all certifications and assurances, and with all applicable federal requirements, or if the units are not operated in accordance with applicable certifications, assurances, and requirements, HUD may impose sanctions on the PHA or seek other legal or equitable relief, or both, in accordance with the requirements prescribed by HUD in the Mixed-Finance ACC Amendment.

Dated: November 27, 2006.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E6–22165 Filed 12–26–06; 8:45 am]

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Federal Register

Wednesday,
December 27, 2006

Part V

Department of Housing and Urban Development

Hurricanes Katrina, Rita, and Wilma Disaster Areas; Extension of Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs To Assist With Recovery and Relief; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5018–N–02]

Extension of Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs To Assist With Recovery and Relief in Hurricanes Katrina, Rita, and Wilma Disaster Areas

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice advises the public of HUD's decision to extend for an additional period ending December 31, 2007, or for such other period as specified in this notice (*e.g.*, Uniform Financial Reporting Standards (UFRS) and Public Housing Assessment System (PHAS) waivers) certain HUD regulations and other administrative requirements governing HUD's Office of Public and Indian Housing (PIH) programs that were identified and waived or deferred under notices of *Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricanes Katrina, Rita, and Wilma Disaster Areas*, published October 3, 2005, November 1, 2005, and March 13, 2006. The requirements in these three notices were waived or deferred in order to facilitate the delivery of safe and decent housing under these programs to families and individuals who were displaced from their housing by Hurricanes Katrina, Rita, and Wilma.

This notice provides that entities that administer PIH programs, which include public housing agencies (PHAs), tribally designated housing entities (TDHEs), and local and tribal governments, and that are located in an area declared by the President to be a federal disaster area as a result of Hurricane Katrina, Rita, or Wilma, and that previously notified HUD that they were deferring compliance with the program requirements identified in the three **Federal Register** notices, may continue to defer compliance with the regulations and requirements listed in this notice for an additional period ending December 31, 2007, or for such other period as specified in this notice (*e.g.*, for UFRS and PHAS waivers). The additional waiver period is subject to the program administrator submitting a notification to HUD, within 45 calendar days of the effective date of this notice, advising of the intent to defer compliance with the program requirements identified in this notice, unless a specific waiver provision states: (1) That the waiver will be applied automatically or (2) the specific waiver does not require such notification.

PIH program administrators that are not located in a disaster area but are continuing to assist with Hurricane Katrina, Rita, or Wilma recovery and relief and have requested and were approved for waiver of the regulations and administrative requirements listed in this notice under the original waiver notices, may request waiver or deferral of the requirements for an additional period ending December 31, 2007, or for such other period as specified in this notice (*e.g.*, under UFRS and PHAS waivers), with justification of the need for more time, unless a specific waiver provision states it will be applied automatically. HUD will review and respond to waiver requests through an expedited process that assigns priority to these requests and maximizes use of electronic communications to speed response time. PIH program administrators, located in an area declared a federal disaster area as a result of Hurricane Katrina, Rita, or Wilma, or PIH program administrators not located in such an area but continuing to assist with Hurricane Katrina, Rita, or Wilma relief and recovery efforts, may defer compliance or request waiver of a regulation or other administrative requirement, respectively, through the expedited waiver process provided in this notice.

This notice applies only to PIH programs or to cross-cutting regulatory or administrative requirements that are applicable to PIH program administrators.

In addition to the regulatory and administrative requirements cited in the notice of waivers granted to assist with recovery and relief in Hurricane Katrina disaster areas, this notice includes a waiver, identified in Section III.A.2 of the notices of waivers granted to assist with recovery and relief in Hurricane Rita disaster areas, for an extension for improved performance by certain PHAs located in areas declared a federal disaster area as a result of Hurricane Katrina.

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

FOR FURTHER INFORMATION CONTACT: PIH Disaster Relief Officer, Office of Policy Programs and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000; telephone numbers (202) 708–4016, extension 4245, or (202) 708–0713, extension 7651. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

In late August 2005, Hurricane Katrina hit the Gulf Coast area of the United States, causing unprecedented and catastrophic damage to property, significant loss of life, and the displacement of tens of thousands of individuals and families from their homes and communities. Hurricane Rita soon followed, adding to the damage to property and displacement of individuals and families from their homes and communities that already had been caused by Hurricane Katrina. After Hurricane Katrina struck, the President called upon all federal agencies to do everything in their power to assist the victims, with the top priority to save and sustain lives. The President later directed federal agencies to include victims of Hurricane Rita in relief and recovery efforts underway for victims of Hurricane Katrina. With recognition that shelter is key to saving and sustaining lives, and following the President's direction to eliminate or reduce ''red tape'' that would impede the delivery of federal financial assistance and other needed benefits, the October 3, 2005, and November 1, 2005, notices identified HUD regulations and other administrative requirements governing HUD's PIH programs that were waived or temporarily suspended or deferred in an area declared by the President to be a federal disaster area as a result of Hurricanes Katrina or Rita (''disaster area''). In addition, HUD provided an expedited review process to waive the requirements listed in the notices, upon request from PIH program administrators that were not located in disaster areas but were assisting with Hurricane Katrina or Rita recovery and relief efforts. In a notice published March 13, 2006, similar relief from the same regulatory and administrative requirements was offered to PIH program administrators in areas declared a disaster as a result of Hurricane Wilma (71 FR 12988).

In developing the waiver notices, PIH examined the regulations governing its programs and recommended waiver or temporary suspension or deferral of those regulations that it believed could impede PIH program administrators from expeditiously helping to house PIH program participants who lost housing as a result of Hurricanes Katrina and

Rita, as well as others who needed housing assistance under PIH programs as a result of the hurricanes. The waivers allowed PIH program administrators located in disaster areas to defer compliance with the requirements listed in the notices for an initial period of 12 months under the notification process described in the three notices. The requirements listed in the notices that were deferred, or temporarily suspended by waiver, included regulatory and other administrative provisions that require periodic reporting and other information delivery by PHAs, Indian tribes, and TDHEs. While such reporting is important to ensure effective and efficient administration of PIH programs, those requirements were waived so that PIH program administrators could focus their time and resources on identifying and providing decent and safe housing during the period of unparalleled displacement of families and individuals.

For the majority of the regulations and administrative requirements listed in the previously published notices and for which a waiver was granted, HUD did not waive the requirements entirely but deferred compliance until such time as compliance would be feasible. For example, in many cases HUD extended deadlines for reports or other documents that PIH program administrators must submit to HUD. Because the devastation caused by Hurricanes Katrina and Rita was unprecedented, and the need for housing and other basic life-saving and sustaining relief was widespread and immediate, HUD relied on its experienced local partners in the HUD housing-assistance programs who are in the front-line of recovery efforts to meet the challenge of providing decent, safe, and sanitary housing as expeditiously as possible and to comply to the extent possible with the regulations that promote that goal. HUD did not want the time and resources of PHAs, Indian tribes, and TDHEs diverted by requirements that are important but could be deferred until a degree of normalcy in operations returned in the disaster areas. As the recovery period proceeded, HUD indicated it might: (1) identify other regulations for which waiver or temporary deferral or suspension is needed or (2) determine that other alternative requirements may be necessary to assist with facilitation of delivery of housing to those most in need. Any additional HUD waivers or suspensions or other alternative requirements would be announced by direct notice to PIH program administrators and by **Federal Register** publication.

PIH program administrators not located in a disaster area but assisting with Hurricane Katrina recovery and relief efforts could request waiver of the regulations and administrative requirements through the expedited waiver request and response process set forth in the waiver notices.

In addition to HUD's waiver of regulatory requirements in the previously published notices, HUD also identified statutory provisions that contain built-in waiver provisions that allow administrative waiver of the statutory requirements for cause. Certain of those provisions were included in Section III.A of the October 3, 2005, notice. An additional provision was included in Section III.A.2 of the November 1, 2005, notice, for an extension for improved performance by certain PHAs located in areas declared a federal disaster area as a result of Hurricane Katrina.

The three previously published notices listed HUD regulatory and administrative requirements that PIH determined needed to be waived or temporarily deferred or suspended during the Hurricanes Katrina, Rita, and Wilma recovery periods. If PHAs, Indian tribes, and TDHEs, and other PIH program administrators identified other regulations that they believed should be waived, they were advised to seek a waiver by submitting a waiver request that specified the need for a waiver. Section II of each notice described the expedited waiver process, and that process is explained in Section II of this notice.

The extension of certain requirements provided by this notice underscores the unprecedented devastation caused by the hurricanes of 2005, and the additional time needed to recover from such devastation.

II. Waiver Process

A. For PIH Program Administrators in Declared Disaster Areas

1. The Waiver Process Previously Established. This notice continues the process for notification to HUD by program administrators of their intent to use, or their actual use of, the waived or deferred requirements under the previously published notices, with some exceptions, as described here in section II. The previous notices provided that entities that administer public or Indian housing or voucher programs and were located in the areas declared a federal disaster area as a result of Hurricanes Katrina, Rita, and Wilma could defer or suspend compliance with the regulations and other administrative requirements listed in each notice, with the exception of the waiver of the provision in Section III.B.12, upon the effective date of each notice, for an initial period of 12 months or for such other period as may be specified in each notice. These entities, however, were advised to notify HUD within 2 weeks of the determination of any need to utilize the waived requirements in each notice, or as soon as possible, by contacting HUD in the manner detailed in the following paragraph.

An official of the PHA, TDHE, or tribal or local government that had a need and intended to suspend compliance with or defer the requirements listed in each notice was required to contact HUD in writing (e-mail communication was allowed) and identify the requirements by section and number utilized in each notice (*e.g.*, Section III.A.2, Section III.B.1, 2, or 3, etc., or ''all of the waived or suspended requirements in Section III.''). The following e-mail addresses were established in order to expedite the process: PIH_Disaster_Relief@hud.gov, *PIH_Ritadisaster_Relief@hud.gov, and PIH_Wilmadisaster_Relief@hud.gov.*

This process was described as a notification only, and HUD asked that the notification be made to HUD no later than 2 weeks after a PHA determined the need to rely on one or more or all of the waived or suspended requirements in each notice. While, as noted earlier in this notice, HUD did not want to impose additional administrative requirements on PIH program administrators located in the disaster areas during the recovery period, it was important for HUD to know (and helpful for HUD to know) how these entities were administering their PIH programs during the recovery period. HUD maintains information on the PHAs, Indian tribes, and TDHEs that elected to defer compliance with certain regulatory and administrative requirements in accordance with each notice. A list of those PHAs, Indian tribes, or TDHEs are included as an appendix to this notice. The previously published notices provide that certain regulations or administrative requirements would remain inapplicable for a period of 12 months and would be considered waived or suspended by HUD for an additional 3 months upon notification to HUD, following the same notification process described above.

2. The Waiver Process for this Notice. HUD will continue to use the waiver process previously established, with some exceptions. First, HUD has since

determined that timely notification of an entity's intent to use, or its actual use of the waivers or deferral periods is essential to effective program administration, and in light of the intervening period for entities to determine whether they need relief, HUD is now requiring that such notifications or waiver requests must be submitted to HUD within 45 calendar days of the publication of this notice as described in Section IV, unless a specific waiver provision states the waiver will be applied automatically, or the specific waiver does not require such notification. Secondly, under this notice there is not an additional 3-month deferral period beyond the initial 12-month period granted under the original notices, and the period for deferral ends December 31, 2007, regardless of the expiration dates of the 15-month deferral periods granted under the original three notices. Finally, some regulatory or administrative requirements included in the original notices are not eligible for continued deferral in this notice, and are identified in Section III below.

B. For PIH Program Participants in Non-Disaster Declared Areas

The previous notices provided that PIH program administrators not located in a disaster area but that were contributing to Hurricanes Katrina and Rita relief and recovery efforts could request a waiver of the regulations or administrative requirements listed in each of the original notices by e-mailing a request for a waiver to *PIH_Disaster_Relief@hud.gov, PIH_Ritadisaster_Relief@hud.gov,* or *PIH_Wilmadisaster_Relief@hud.gov.* The request was required to specify the need for the waiver of the requirement. HUD would review and respond to waiver requests submitted through the e-mail addresses using an expedited waiver process that would assign a priority to such requests and maximize the use of electronic communications.

As with the previous notices, this notice provides that PIH program administrators not located in a disaster area but contributing to the relief and recovery efforts must request a waiver of the regulations or administrative requirements by e-mailing the request for a waiver to *PIH_Disaster_Relief@hud.gov, PIH_Ritadisaster_Relief@hud.gov,* or *PIH_Wilmadisaster_Relief@hud.gov.* This process remains in effect unless a specific waiver provision (*e.g.*, under UFRS or PHAS) states that it will be applied automatically to the non-disaster PHAs that previously requested and received the waivers under the original notices, or if a specific waiver is not eligible for continued deferral, as identified in Section III below.

C. Regulations and Requirements Not Waived in This Notice

In the three prior notices published previously, HUD provided that, for any regulation or other administrative requirement not listed in each notice for which a PIH program administrator sought a waiver or suspension, the program administrator could seek a waiver by e-mailing a request to *PIH_Disaster_Relief@hud.gov, PIH_Ritadisaster_Relief@hud.gov,* and *PIH_Wilmadisaster_Relief@hud.gov.* Any such request had to specify the need for the waiver of the requirement. As noted earlier in this notice, waiver requests submitted through each e-mail address would receive expedited and priority processing, and HUD would respond to the requestor by e-mail.

That expedited waiver process was provided only for waiver or suspension of requirements that would assist with Hurricanes Katrina, Rita, and Wilma relief and recovery efforts. HUD would not respond to any waiver requests submitted to any of the hurricane designated e-mail addresses that were unrelated to relief and recovery of the disaster areas.

This process remains in effect for this notice.

III. Authority to Grant Waivers

In general, waivers of HUD regulations are handled on a case-by-case basis. Under statutory requirements set forth in section 7(q) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), a regulated party that seeks a waiver of a HUD regulation must request a waiver from HUD in writing and the request must specify the need for the waiver. HUD then responds to the request in writing and, if the waiver is granted, HUD includes a summary of the waiver granted (and all regulatory waivers granted during a 3-month period) in a **Federal Register** notice that is published quarterly. Since the damage to property and the displacement of families and individuals in the disaster areas was massive, and the need for regulatory relief in many areas pertaining to HUD-assisted housing readily apparent, HUD suspended its usual regulatory waiver protocols for the disaster areas and substituted an expedited process that meets the requirements of section 7(q).

In its quarterly notice of regulations waived, HUD identifies the PIH program administrators in the disaster areas that are utilizing: (1) One or more of the waived regulations in the three notices or (2) other regulations for which a waiver was requested or granted. The quarterly notice also identifies PIH program administrators that are located in non-federally declared disaster areas and are contributing to Hurricane Katrina, Rita, or Wilma relief and recovery efforts, and that requested and were granted waivers in accordance with the waiver process, as provided in each notice.

The regulatory and administrative requirements set forth in Section III of each of the prior notices were waived or temporarily deferred or suspended, as provided in each notice. This action was determined necessary to help PIH program administrators in the disaster areas in the identification and delivery of housing for families and individuals displaced from their homes by Hurricanes Katrina, Rita, and Wilma.

With respect to this notice, the term ''PIH program administrators,'' as referenced in Section III of this notice, includes those PHAs, tribes, and TDHEs located in disaster areas.

As the preceding discussion discloses, the process for deferring compliance with certain requirements listed in this notice is similar to the process utilized under the previously published notices, with some exceptions. First, PHAs, tribes, and TDHEs located in a federally declared disaster area will be required to notify HUD within 45 calendar days of the effective date of this notice that they intend to continue deferring compliance during the extended waiver period. If the PHAs, tribes, and TDHEs are outside the disaster areas but are continuing to assist recovery efforts, they must submit a new waiver request during the extended waiver period. Secondly, some waivers (*e.g.*, UFRS, PHAS) will be automatically applied to PHAs, tribes, and TDHEs that previously notified HUD they were deferring compliance or that requested the waiver and were granted approval to defer compliance. Finally, this notice does not provide an extension of deferral of compliance with the following requirements:

A. Requirements for Which No Waiver Extension Is Provided by This Notice

1. Waiver of Indian Community Development Block Grant Program (ICDBG) 50 Percent Downpayment Assistance Limitation for Low- and Moderate-Income Homebuyers. Section 122 of the Housing and Community Development Act of 1974 (''Act'') (42 U.S.C. 5321) authorizes the Secretary to suspend requirements for activities that address the damage in a Presidentially declared disaster area. Section

105(a)(24)(D) of the Act (42 U.S.C. 5305) permits a grantee to provide downpayment assistance to low- and moderate-income homebuyers, but limits the assistance to 50 percent of the amount of downpayment the homebuyer must provide. Because of the extraordinary need for housing among low- and moderate-income evacuees, HUD found good cause to permit downpayment assistance of up to 100 percent for the purchase of homes in the disaster area. Based on consultation with affected entities, this waiver is not extended.

2. 24 CFR 5.216(g)(5) (Disclosure and Verification of Social Security and Employer Identification Numbers). Section 5.216 addresses the disclosure and verification of Social Security Numbers and employer identification numbers of applicants for assistance under certain HUD-assisted housing programs. Section 5.216(g) imposes special documentation requirements on applicants, and subsection (g)(5) establishes the time limit for submission of this documentation. The time period required for submission of verification documents was waived for a period of 3 months, in the case of all families, and, with HUD approval, for a period not to exceed 12 months.

Under this notice, this waiver is not extended. The use of Social Security and employer identification numbers is essential for updating and maintaining HUD's management information systems and the Department's key initiatives for ensuring accurate reporting. As a result, HUD believes it is not advisable to further extend the time frames for disclosures and submitting verification documents.

3. 24 CFR 5.512(c) (Verification of Eligible Immigration Status; Secondary Verification). Section 5.512 provides the process by which verification of eligible immigration status must be undertaken for families seeking assistance under certain HUD programs. While the declaration of eligibility and this verification process is required by statute and cannot be waived, HUD does have the authority to waive certain deadlines. Section 5.512(d) provides the time frame under which a secondary verification must be requested from the Immigration and Customs Enforcement (ICE), by the responsible entity, when the primary verification (the automated verification system) is not conclusive of immigration status. The responsible entity must submit a request to ICE to undertake a secondary verification within 10 days of receipt of the results of the primary verification, and must provide the ICE with all records on the applicant, evidencing citizen or eligible immigration status, that the applicant has provided to the responsible entity. The three previous notices expanded the time frame under which a secondary verification must be requested, from 10 days after the date of the results of the primary verification to 90 days after such date.

Under this notice, this waiver is not extended. HUD believes it is not advisable to further extend the time frames for requesting from ICE the secondary verifications of eligible immigration status.

4. 24 CFR 1000.156 and 1000.158 Indian Housing Block Grant (IHBG) Moderate Design Requirements for Housing Development. The IHBG program regulations at §§ 1000.156 and 1000.158 require that housing developed with IHBG funds must be of moderate design. Under these regulatory sections, IHBG recipients must either adopt written moderate design standards or comply with the total development cost (TDC) limits issued by HUD. In recognition of the higher development costs in communities affected by Hurricane Katrina, and to facilitate the development of housing for families in such communities, these moderate design requirements were waived for IHBG recipients until issuance of new TDC levels. Based on consultation with affected entities, this waiver is not extended.

5. 24 CFR 1000.214 (Indian Housing Plan (IHP) Submission Deadline). To receive an IHBG formula allocation, an Indian tribe or its TDHE must annually submit an IHP to HUD describing the affordable housing activities the Indian tribe or TDHE will undertake. Section 1000.214 requires that the IHP must be submitted to HUD no later than July 1 of each year. This section was waived to permit tribes and TDHEs to undertake affordable housing activities on behalf of families displaced by Hurricane Katrina, Rita, or Wilma, although such activities may not have been identified in the IHP originally submitted by the tribe or TDHE.

Based on consultation with affected entities, this waiver is not extended.

6. 24 CFR 1003.400(c) and Section I.C. of Fiscal Year (FY) 2005 ICDBG Program Notice of Funding Availability (NOFA) (Grant Ceilings for ICDBG Imminent Threat Applications). The ICDBG regulations at § 1003.400(c) provide that HUD will establish grant ceilings for imminent threat applications. On March 21, 2005, HUD published its FY2005 ICDBG NOFA as part of HUD's FY2005 SuperNOFA (70 FR 13655). Section I.C. of the FY2005 ICDBG NOFA specifies that the grant ceiling for ICDBG imminent threat requests for FY2005 is $425,000. This grant ceiling was waived to permit applicants to request imminent threat funding in excess of $425,000, if necessary to address disaster-related needs in their communities.

This waiver is not extended. The grant ceiling requirement was included as part of the FY2005 ICDBG grant funding cycle, which has passed.

7. 24 CFR 1003.401 and Section I.C. of FY2005 ICDBG NOFA (Application Requirements for ICDBG Imminent Threat Funds). The ICDBG regulations at § 1003.401 provide that, in response to applications for assistance, HUD may make ICDBG funds available to applicants to address imminent threats to health and safety. The regulations further provide that applications must contain the information specified by the annual ICDBG NOFA. For FY2005, the required information that must be contained for imminent threat applications is located in Section I.C. of the FY2005 ICDBG NOFA. These application requirements were waived to permit Indian tribes located in areas affected by Hurricane Katrina to more expeditiously request and receive ICDBG imminent threat funds.

This waiver is not extended. The application requirements waived were part of the FY2005 ICDBG grant funding cycle, which has passed.

8. 24 CFR 1003.604 (ICDBG Citizen Participation Requirements). The ICDBG regulations at § 1003.604 require applicants to consult with residents prior to submitting their funding applications. The consultation requirements have the potential to delay the ability of ICDBG recipients to address urgent housing, health, and safety needs of persons displaced by Hurricane Katrina. Accordingly, this section was waived to permit eligible ICDBG applicants to address disaster-related needs without the need for prior resident consultation.

This waiver is not extended. The resident consultation requirement was waived as part of the FY2005 ICDBG grant funding cycle, which has passed.

9. 24 CFR 982.206 (Waiting List; Opening and Public Notice). This section requires a PHA to give public notice that families may apply for tenant-based assistance. The regulation requires a PHA to publish, in a local newspaper of general circulation, and also by minority media and other suitable means, a notice of the opening of the waiting list. The requirement to publish in a newspaper of general circulation and also by minority media was waived, and a PHA was permitted to provide such information on its website and at any of its offices, and in

a voice mail message for any callers that may inquire whether a list is opened.

Under this notice, the waiver of the requirement for publishing a notice of the opening of a waiting list, in local newspapers of general circulation and in minority media or other means, is not extended. In the 15 months after the hurricanes, PHAs should now have the ability to secure publication of the opening of their waiting lists. It is especially important to relocation efforts that PHAs advertise, in a variety of media, that they are now ready to accept tenant applications.

B. Requirements Eligible under this Notice for Continued Extension of Deferral of Compliance

The following requirements are eligible for continued deferment of compliance, in accordance with the procedures of this notice and subject to any specific conditions that may be identified in the description of the requirement for which compliance may be deferred.

1. Statutory Requirements with Built-In Waiver Authority.

a. Extension of Deadline for Obligation and Expenditure of Capital Funds. Section 9(j)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)(2)) (1937 Act) authorizes the Secretary to extend the time period for obligation of capital funds by PHAs, as set forth in section 9(j)(1), for such period as the Secretary determines necessary if the Secretary determines that the failure of the PHA to obligate assistance in a timely manner is attributable to, among other criteria listed, an event beyond the control of the PHA, or any other reason established by the Secretary by notice published in the **Federal Register**. Pursuant to section 9(j)(1) of the 1937 Act, PHAs are required to obligate capital funds not later than 24 months after the date on which the funds became available, or the date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units, plus the period of any extension approved under section 9(j)(2). Because Hurricane Katrina was beyond the control of the PHAs located in the disaster areas and caused such massive and widespread destruction and displacement, the obligation deadline under section 9(j)(1) of the 1937 Act is hereby extended, pursuant to section 9(j)(2) of the 1937 Act, for an additional 12 months for PHAs located in the areas declared a federal disaster area.

In addition, section 9(j)(5)(A) of the 1937 Act requires a PHA to expend capital funds not later than 4 years after the date on which the funds become available for obligation, plus the period of any extension approved under section 9(j)(2). The expenditure period under section 9(j)(5) is accordingly also extended in the affected areas for 12 months to include the extension approved under section 9(j)(2). The extension of the section 9(j) obligation and extension deadlines made in this notice also apply to the implementing regulation for section 9(j) at 24 CFR 905.120.

Under this extension notice, the original deadlines for obligation and expenditure of capital funds may be extended an additional 12 months from the initial 12 months plus subsequent 3 months made available under the Katrina, Rita, and Wilma regulatory and administrative waiver notices for all PHAs in federally declared disaster areas that previously notified HUD they were suspending compliance with this requirement, thereby allowing a total of 27 additional months beyond the original obligation and expenditure deadlines, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice.

b. Extension of Deadlines for Improvement of PHAs Designated Troubled or Substandard (Extension Available for PHAs in Hurricane Rita as well as Hurricane Katrina Disaster Areas). Sections 6(j)(3)(B)(ii)(I) and (II) of the 1937 Act (42 U.S.C. 1437d(j)(3)(B)(ii)(I) and (II)) and the implementing regulations for these sections at 24 CFR 902.75(d)(1) and (2) require that a PHA designated as troubled improve its performance by 50 percent within one year of such designation, and improve its performance to no longer be designated as troubled within 2 years of such designation. The implementing regulations also apply these one- and 2-year deadlines for improvement to PHAs designated as overall troubled and substandard. The consequences for failure to timely achieve the required improvements could require the appointment of a receiver for the PHA, pursuant to section 6(j)(3)(B)(ii)(III) of the 1937 Act and 24 CFR 902.77 of the implementing regulations. The apparent meaning of the provision is that Congress intended that a troubled PHA would have one or 2 uninterrupted years of continuous operation during which to improve its performance so that it is no longer designated as troubled, before the actions by the Secretary required under section (6)(j)(3)(B)(ii)(III) would be triggered.

HUD has determined that because the extraordinary conditions created by Hurricanes Katrina and Rita cited throughout this notice and the notice published on October 3, 2005 (70 FR 57716), were caused by acts outside the control of any PHA, and outside the control of any government or private entity, and because such conditions interrupted the one-or 2-year period of contemplated continuous operation of the troubled agency in the disaster areas, the Secretary will extend, by 12 months, each of the respective periods for improvement under sections 6(j)(3)(B)(ii)(I) and (II) of the 1937 Act and the implementing regulations for these sections (at 24 CFR 902.75(d)(1) and (2)) for troubled or substandard PHAs in the disaster area that were substantially impacted by Hurricanes Katrina and Rita. This action will permit the administrators of affected PHAs designated as troubled or substandard to devote their attention to the fullest extent necessary to address the problems created by the disaster.

Under this extension notice, the respective periods for improvement are extended by an additional 12 months from the initial 12 months plus subsequent 3 months made available under the prior Katrina, Rita, and Wilma regulatory and administrative waiver notices, for a total of 27 months beyond the standard deadlines for the respective periods for improvement, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice.

2. Regulatory Requirements.

a. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform Financial Reporting Standards (UFRS); Reporting Due Date). These sections establish uniform financial reporting standards for PHAs and other owners and administrators of HUD-assisted housing. Section 5.801(c) establishes the financial information requirements and § 5.801(d)(1) establishes the filing deadline for financial information and provides that PHAs must submit their unaudited financial information no later than 60 days after the end of their fiscal year. In addition, § 5.801(d)(1) requires that PHAs submit their audited financial information no later than 9 months after the PHA's fiscal year end. Under the original three notices, the deadline for the submission of unaudited financial information was changed from 60 days to 180 days after the end of the PHA's fiscal year. Also, under the original three notices, the deadline for the submission of audited financial

information was changed from 9 months to 13 months after the end of the PHA's fiscal year, for PHAs with fiscal years ending December 31, 2004, and March 31, 2005.

Under this notice, the deadline for submitting unaudited financial information is automatically changed from 60 days to 180 days after the end of the PHA's fiscal year for PHAs in the federally declared disaster areas that previously notified HUD they were utilizing the extended deadlines for unaudited financial submissions set forth in the original Hurricane Katrina, Rita, and Wilma waiver notices, as well as for PHAs in non-disaster declared areas contributing to Hurricanes Katrina, Rita, and Wilma recovery efforts that requested and were granted an extended deadline for unaudited financial submissions under the original three waiver notices. The extended deadline will apply only to eligible PHAs with fiscal years ending December 31, 2006, March 31, 2007, June 30, 2007, and September 30, 2007. The deadline for submitting audited financial information is not changed and remains 9 months after the end of the PHA's fiscal year.

Although PHAs are still required to submit unaudited and audited financial information pursuant to UFRS, they will not be scored under the Public Housing Assessment System (PHAS), as more fully discussed in Section III.B.2.b.

b. 24 CFR part 902 (Public Housing Assessment System (PHAS)). Part 902 sets out the indicators by which HUD measures the performance of a PHA. These indicators measure a PHA's physical condition, financial condition, management operations, and resident service and satisfaction.

In the original three notices, for PHAs in the federally declared disaster area beginning with a fiscal year ending September 30, 2005, and for those with fiscal years ending March 31, 2005, and June 30, 2005, that had not yet received their physical condition inspections for 2005, the PHAS score would be the same as their previous year score. However, PHAs were still required to submit unaudited and audited information in accordance with Section III.B.3 of the original notice.

Under this extension notice, PHAs in the federally declared disaster areas that previously notified HUD they were suspending the requirements set forth in the Hurricane Katrina, Rita, and Wilma waiver notices, as well as PHAs in non-disaster declared areas contributing to Katrina, Rita, and Wilma recovery efforts that requested and were granted a waiver by HUD, will be automatically waived for fiscal years ending December 31, 2006, March 31, 2007, June 30, 2007, and September 30, 2007, and will receive the same PHAS score that they received for the most recent year that they were fully assessed under PHAS. However, these PHAs must submit unaudited and audited information in accordance with Section III.B.2.a. Beginning with fiscal years ending December 31, 2007, and continuing for all fiscal years thereafter, these PHAs will be fully assessed under PHAS, unless they notify HUD within 45 calendar days of the effective date of this notice that they want to be scored under PHAS sooner. Thus, on January 1, 2007, the affected PHAs must begin to prepare for their PHAS assessments that will start with the PHAs with fiscal years ending December 31, 2007.

c. 24 CFR 903.5 (Annual Plan Submission Deadline). Section 5A(h)(2) of the 1937 Act (42 U.S.C. 1437c–1(h)(2)) and 24 CFR 903.5 provide that a PHA Annual Plan must be submitted no later than 75 days before the commencement of a PHA's fiscal year. Each PHA affected may have a different fiscal year and for those PHAs that are approaching this submission deadline, this requirement may be impossible to meet because the PHAs are not operating. Because this requirement is a statutory one and not waivable by HUD without further authority, HUD is currently seeking legislative relief. In the interim, HUD will accept, as a submission, a letter from the PHA stating that HUD should consider its existing annual plan to be the plan for the next year or until it submits another annual plan. For Capital Fund activities, PHAs may obligate their Capital Funds for any activity listed in their existing and approved 5-year plan. PHAs should also submit amendments to their 5-year plan to the extent necessary.

For this extension period ending December 31, 2007, HUD will continue to accept, as a PHA Plan submission, a letter from the PHA stating that HUD should consider its existing annual plan to be the plan for the next year or until it submits another annual plan, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in Section II.A.(2) of this notice. PHAs are still required to submit the Capital Fund Annual Statement and Performance and Evaluation Report for each open grant.

d. 24 CFR 905.10(i) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development). Section 905.10 describes the Capital Fund formula. Section 905.10(i) limits the use of replacement housing funds to the development of new public housing. This section is waived to allow replacement housing funds to be used for two other areas: (1) Public housing modernization and (2) homeownership for public housing families, which will help address housing needs caused by Hurricane Katrina.

Under this extension, the time frame during which the PHA has the authority to use Replacement Housing Factor (RHF) grants for modernization or homeownership is extended for an additional period ending December 31, 2007, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice. PHAs are required to resubmit their RHF Plans and identify which RHF grants will be used for modernization or homeownership.

e. 24 CFR 941.306 (Maximum Project Cost). Section 941.306 establishes the calculation of maximum project cost and the calculation of the total development cost. In order to facilitate the use of capital funds for repairs and construction for needed housing in the disaster areas, HUD has waived the total development cost (TDC) and housing cost cap limits for all work funded by the Capital Fund and HOPE VI funds until issuance of new TDC levels. Until new TDC levels are issued, PHAs should strive to keep housing costs reasonable in light of local market conditions.

Under this waiver extension notice, the time frame during which PHAs have the authority to waive the TDC and housing cost cap limits is extended for an additional period, ending December 31, 2007, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice, and in recognition of the higher development costs in communities affected by Hurricanes Katrina, Rita, and Wilma, and to facilitate the development of housing for families in these communities.

f. 24 CFR 965.302 (Requirements for Energy Audits). This section establishes the requirement that all PHAs complete an energy audit for each PHA-owned project under management, not less than once every 5 years. PHAs that were required to conduct or update an audit this year are given an additional 12 months after September 30, 2005, to complete the audit. HUD is relieving PHAs of this administrative burden so that they may focus on the more urgent need to house impacted families.

Under this notice, PHAs that are required to conduct or update an audit

in the current year are given until December 31, 2007, to complete the audit, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice.

g. 24 CFR 982.54 (Administrative Plan). This section provides that a PHA must adopt, in accordance with HUD requirements, a written administrative plan that establishes local policies for the administration of the Housing Choice Voucher Program. In order to allow PHAs to exercise maximum flexibility with program administration as a result of Hurricane Katrina, the PHA may temporarily revise the administrative plan to address unique circumstances without PHA Board of Commissioners approval or other authorized PHA official approval, if such Board or officials also waive this requirement.

Under this notice, the waiver is extended an additional time period, ending December 31, 2007, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice.

h. 24 CFR 982.401(d) (Housing Quality Standards: Space Requirements). By regulation, § 982.401 establishes housing quality standards. Section 982.401(d) provides, among other things, the requirement for adequate space for the family. With respect to space, this section provides that each dwelling unit must have at least one bedroom or living/sleeping room for every two persons. The spacing requirements of this section can be waived only if the family understands and consents to a waiver of this provision. Again, as noted from the outset, the waiver of these regulations does not represent a long-term change but rather a temporary suspension of requirements to address emergency needs.

Under this notice, the waiver of space requirements is extended an additional time period, ending December 31, 2007, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in Section II.A.(2) of this notice.

i. 24 CFR 982.503(b) (Waiver of Payment Standard Limit; Establishing Payment Standard Amounts). [Waiver of this Provision Available through Waiver Request.] Section 982.503(b) imposes a cap on the amount a PHA may establish as its payment standard amount at 110 percent of the published fair market rent (FMR). In order to expand the housing available to families displaced by Hurricane Katrina, PHAs in disaster areas may establish separate payment standard amounts up to 120 percent of the published FMR. Higher exception payment standards above 120 percent may be requested through the expedited waiver process, but must be justified by rental housing data. In all cases, the actual gross rent for the unit leased by the family may not exceed what is charged for comparable unassisted units in the area.

Note that areas outside of disaster areas in which rental housing markets have been significantly affected by families displaced by Hurricane Katrina may request a waiver through the expedited waiver review process, set forth in Section II of this notice, for approval of payment standards in excess of 110 percent of the published FMRs. However, the PHA must provide information indicating that: (1) They have a significant number of displaced families and (2) area rents have increased.

Under this notice, the waiver of payment standard limits is extended an additional time period, ending December 31, 2007, subject to submission to HUD of the necessary waiver request to cover the extended waiver period as explained in the Summary and Section II.A.(2) of this notice, and upon HUD approval of waiver requests submitted through the expedited waiver process.

j. 24 CFR 984.303 (Contract of Participation; Family Self-Sufficiency (FSS) Program; Extension of Contract) and 24 CFR 984.105 (Minimum Program Size). Part 984 of HUD's regulations provide the requirements for the Section 8 and Public Housing FSS Program. Section 984.303 sets out the requirements for the contract of participation, and § 984.303(d) allows for an extension of the FSS program for a period not to exceed 2 years. For those families at the end of their initial contract term, the 2-year limitation is waived and PHAs may provide an extension for a period not to exceed 3 years. This additional time period would account for any time lost on the FSS contract as a result of the displacement of families participating in the FSS program. Section 984.105 sets out the requirements for minimum FSS program size. This notice exempts PHAs from the minimum program size (§§ 984.105(a) and (b)) for a period of 2 years.

Under this waiver extension notice, the 2-year limitation continues to be waived and PHAs may extend the extension period an additional 12 months, not to exceed 4 years; and the minimum program size exemption may be extended an additional 12 months, for a period of 3 years, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice.

k. 24 CFR part 985 (Section 8 Management Assessment Program (SEMAP)). Part 985 sets out the requirements by which Section 8 tenant-based assistance programs are assessed. Similar to the action that HUD has taken with respect to the PHAS regulations in 24 CFR part 902, PHAs administering a Section 8 tenant-based assistance program are eligible to defer compliance with the SEMAP requirements for a period of 12 months.

Under this waiver extension notice, eligibility to defer compliance with SEMAP requirements is extended another 12 months, similarly to eligibility to defer compliance with PHAS requirements, except that this waiver is subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice. That is, PHAs in the federally declared disaster areas that notify HUD they are suspending this requirement during the extended waiver period, and PHAs in non-disaster declared areas contributing to Hurricanes Katrina, Rita, and Wilma recovery efforts that request and are granted a waiver by HUD during the waiver extension period with fiscal years ending December 31, 2006, March 31, 2007, June 30, 2007, and September 30, 2007, will receive the same SEMAP score that they received for the most recent year that they were fully assessed under SEMAP. Beginning with fiscal years ending December 31, 2007, these PHAs will be fully assessed under SEMAP.

l. 24 CFR 990.145 (Dwelling Units with Approved Vacancies). Section 990.145 of the Operating Fund Program regulation lists the categories of vacant units that are eligible to receive operating subsidy and, therefore, are considered approved vacancies. PHAs that had vacant units during the reporting period that were not ''approved'' vacancies pursuant to § 990.145, but were available for occupancy, may treat those units as approved vacancies if: (1) The PHA anticipates the units will be occupied by families and individuals affected by the disaster during the upcoming funding year or (2) the PHA is holding the units vacant for families and individuals affected by the disaster.

Under this notice, PHAs may continue to treat vacant units as approved, if the subject conditions are met, for FY2007 operating subsidy calculations, subject to submission to HUD of the necessary notification or waiver request to cover the extended waiver period, as explained in the Summary and Section II.A.(2) of this notice.

IV. Twelve-Month Extension of Waivers

Due to the lengthy recovery period brought about by Hurricanes Katrina, Rita, and Wilma, HUD will automatically extend for an additional period, ending December 31, 2007, or for such other period as specified in this notice (e.g., for UFRS and PHAS waivers): (1) Those waivers that PHAs in the disaster-declared areas notified HUD they were utilizing and (2) those waivers that PHAs outside of the disaster declared areas that were assisting with recovery efforts in the disaster areas requested and were approved for by HUD under the waiver notices published for each hurricane. A list of those PHAs is included with this notice. The expiration date for waivers granted under the Hurricane Katrina notice published October 3, 2005, is December 28, 2006; the one for the Hurricane Rita notice published November 1, 2005 (70 FR 66222), is January 26, 2007; and the one for the Hurricane Wilma notice published on March 13, 2006, is June 7, 2007.

Any PHA that does not wish for or need an automatic extension must notify HUD within 45 calendar days of the effective date of this notice by using the e-mail addresses identified in Section II of this notice.

Dated: December 21, 2006.

Roy A. Bernardi,

Deputy Secretary.

APPENDIX A.—PHAS/TRIBES/TDHES THAT SUBMITTED WAIVER SUSPENSION NOTIFICATIONS OR REQUESTS UNDER ORIGINAL WAIVER NOTICES

Disaster (Katrina, Rita or Wilma)	Agency type (PHA/TDHE/ tribe/local government)	Agency code	Agency or government name
Katrina Suspension Notifications Received			
Katrina	PHA	AL165	Foley Housing Authority
Katrina	PHA	LA001	Housing Authority of New Orleans
Katrina	PHA	LA003	East Baton Rouge Parish Housing Authority
Katrina	PHA	LA004	Lake Charles Housing Authority
Katrina	PHA	LA005	Lafayette Parish Housing Authority
Katrina	PHA	LA011	Westwego Housing Authority
Katrina	PHA	LA012	Housing Authority of Kenner
Katrina	PHA	LA013	Jefferson Parish Housing Authority
Katrina	PHA	LA024	Bogalusa Housing Authority
Katrina	PHA	LA026	Kaplan Housing Authority
Katrina	PHA	LA029	Crowley Housing Authority
Katrina	PHA	LA036	Morgan City Housing Authority
Katrina	PHA	LA043	Donaldsonville Housing Authority
Katrina	PHA	LA045	Arcadia Housing Authority
Katrina	PHA	LA055	Housing Authority of the City of Opelousas
Katrina	PHA	LA063	Sulphur Housing Authority
Katrina	PHA	LA070	Housing Authority of the Town of Patterson
Katrina	PHA	LA076	Ferriday Housing Authority
Katrina	PHA	LA080	Housing Authority of Lafourche Parish
Katrina	PHA	LA090	Houma-Terrebonne Housing Authority
Katrina	PHA	LA092	St. James Parish Housing Authority
Katrina	PHA	LA094	St. Charles Parish Housing Authority
Katrina	PHA	LA095/ LA181	Housing Authority of St. John the Baptist Parish
Katrina	PHA	LA103	Slidell Housing Authority
Katrina	PHA	LA254	Pearl River Housing Authority
Katrina	PHA	LA122	Colfax Housing Authority
Katrina	PHA	LA132	Avoyelles Parish Section 8 Program
Katrina	PHA	LA178	St. Martin Parish Police Jury
Katrina	PHA	LA207	Tangipahoa Parish Government
Katrina	PHA	LA215	Assumption Parish Police Jury
Katrina	PHA	LA219	City of Baton Rouge Office of Community Development
Katrina	PHA	LA221	Morgan City Housing Authority
Katrina	PHA	LA238	Covington Housing Authority
Katrina	PHA	LA253	Housing Authority of Lafourche Parish
Katrina	PHA	LA262	East Carroll Parish Housing Authority
Katrina	PHA	MS001	Hattiesburg Housing Authority
Katrina	PHA	MS002	City of Laurel Housing Authority
Katrina	PHA	MS003	The Housing Authority of the City of McComb City, Mississippi
Katrina	PHA	MS004	The Housing Authority of the City of Meridian
Katrina	PHA	MS005	Biloxi Housing Authority
Katrina	PHA	MS030	Mississippi Regional Housing Authority No. V
Katrina	PHA	MS040	Mississippi Regional Housing Authority No. VIII
Katrina	PHA	MS047	The Housing Authority of the City of Starkville, Mississippi
Katrina	PHA	MS057	Mississippi Regional Housing Authority No. VII
Katrina	PHA	MS058	Mississippi Regional Housing Authority No. VI
Katrina	PHA	MS061	Canton Housing Authority
Katrina	PHA	MS064	Bay St. Louis Housing Authority

APPENDIX A.—PHAS/TRIBES/TDHES THAT SUBMITTED WAIVER SUSPENSION NOTIFICATIONS OR REQUESTS UNDER ORIGINAL WAIVER NOTICES—Continued

Disaster (Katrina, Rita or Wilma)	Agency type (PHA/TDHE/tribe/local government)	Agency code	Agency or government name
Katrina	PHA	MS066	Picayune Housing Authority
Katrina	PHA	MS067	Richton Housing Authority
Katrina	PHA	MS071	Aberdeen Housing Authority
Katrina	PHA	MS077	Tupelo Housing Authority
Katrina	PHA	MS082	Winona Housing Authority
Katrina	PHA	MS084	Housing Authority of the Town of Summit
Katrina	PHA	MS086	Vicksburg Housing Authority
Katrina	PHA	MS094	Hazlehurst Housing Authority
Katrina	PHA	MS101	Waveland Housing Authority
Katrina	PHA	MS103	Housing Authority of the City of Jackson, Mississippi
Katrina	PHA	MS105	Natchez Housing Authority
Katrina	PHA	MS107	Greenwood Housing Authority
Katrina	PHA	MS109	Long Beach Housing Authority
Katrina	Tribe	Tribe	Tunica-Biloxi Tribe of Louisiana
Katrina	TDHE	Indian HA	Choctaw Housing Authority
Katrina	Tribe	Tribe	Chitimacha Tribe of Louisiana
Katrina	Tribe	Tribe	Poarch Band of Creek Indians
Katrina Waiver Requests Submitted			
Katrina	PHA	AR006	Housing Authority of the City of Conway
Katrina	PHA	CA004	Housing Authority of the City of Los Angeles
Katrina	PHA	CA052	Housing Authority of the County of Marin
Katrina	PHA	CA058	Berkeley Housing Authority
Katrina	PHA	CO005	Housing Authority of the City of Trinidad
Katrina	PHA	CT001	Housing Authority of the City of Bridgeport
Katrina	PHA	FL003	Tampa Housing Authority
Katrina	PHA	FL089	Hillsborough County—OCC
Katrina	PHA	GA059	Gainesville Housing Authority
Katrina	PHA	GA148	Housing Authority City of Dallas, Georgia
Katrina	PHA	MA029	Pittsfield Housing Authority
Katrina	PHA	MD002	Housing Authority of Baltimore City
Katrina	PHA	MI024	Bay City Housing Commission
Katrina	PHA	MO004	Housing Authority of St. Louis County
Katrina	PHA	MO006	Saint Charles City Housing Authority
Katrina	PHA	NJ050	East Orange Housing Authority
Katrina	PHA	NY086	North Hempstead Housing Authority
Katrina	PHA	TN001	Housing Authority of the City of Memphis
Katrina	PHA	TX063	Hearne Housing Authority
Katrina	PHA	TX431	Tarrant County Housing Assistance Office
Rita Suspension Notifications Received			
Rita	PHA	LA046	Housing Authority of the Town of Vinton
Rita	PHA	LA065	Housing Authority of the Town of Delcambre
Rita	PHA	LA084	Parks Housing Authority
Rita	PHA	LA090	Houma-Terrebonne Housing Authority
Rita	PHA	LA172	Calcasieu Parish Housing Department
Rita	PHA	LA261	Fenton Housing Authority
Rita	PHA	LA889	Pilgrim Rest Community Development Agency
Rita	PHA	TX004	Fort Worth Housing Authority
Rita	PHA	TX005	Housing Authority of the City of Houston
Rita	PHA	TX006	San Antonio Housing Authority
Rita	PHA	TX009	Housing Authority of the City of Dallas, Texas
Rita	PHA	TX018	Lubbock Housing Authority
Rita	PHA	TX023	Housing Authority of the City of Beaumont
Rita	PHA	TX029	Mercedes Housing Authority
Rita	PHA	TX034	City of Port Arthur Housing Authority
Rita	PHA	TX037	Orange Housing Authority
Rita	PHA	TX223	Newton Housing Authority
Rita	PHA	TX225	Woodville Housing Authority
Rita	PHA	TX383	San Augustine Housing Authority
Rita	PHA	TX431	Tarrant County Housing Assistance Office
Rita	PHA	TX436	City of Mesquite Housing Authority
Rita	PHA	TX451	Asherton Housing Authority
Rita	PHA	TX492	Jasper Housing Authority
Rita	PHA	TX512	Deep East Texas Council of Governments (DETCOG) Regional Housing Authority
Rita	PHA	TX526	Brazos Valley Council of Governments

APPENDIX A.—PHAS/TRIBES/TDHES THAT SUBMITTED WAIVER SUSPENSION NOTIFICATIONS OR REQUESTS UNDER ORIGINAL WAIVER NOTICES—Continued

Disaster (Katrina, Rita or Wilma)	Agency type (PHA/TDHE/ tribe/local government)	Agency code	Agency or government name
Rita	PHA	TX540	Brenham Section 8 Program, City of (BVDC)
Wilma Suspension Notifications Received			
Wilma	PHA	FL005	Miami Dade Housing Authority
Wilma	PHA	FL010	Housing Authority of Fort Lauderdale
Wilma	PHA	FL013	Housing Authority City of Key West
Wilma	PHA	FL017	Housing Authority City of Miami Beach
Wilma	PHA	FL021	Pahokee Housing Authority
Wilma	PHA	FL025	Housing Authority of the City of Titusville
Wilma	PHA	FL066	Hialeah Housing Authority
Wilma	PHA	FL076	Riviera Beach Housing Authority
Wilma	PHA	FL116	Dania Beach Housing Authority
Wilma	PHA	FL136	Hollywood Housing Authority
Wilma	PHA	FL144	Monroe County Housing Authority
Wilma Waiver Requests Submitted			
Wilma	PHA	FL003	Tampa Housing Authority

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- Supplemental standards of ethical conduct for employees; comments due by 1-3-07; published 12-4-06 [FR E6-20400]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 394/P.L. 109–419

To direct the Secretary of the Interior to conduct a boundary study to evaluate the significance of the Colonel James Barrett Farm in the Commonwealth of Massachusetts and the suitability and feasibility of its inclusion in the National Park System as part of the Minute Man National Historical Park, and for other purposes. (Dec. 20, 2006; 120 Stat. 2884)

H.R. 758/P.L. 109–420

To establish an interagency aerospace revitalization task force to develop a national strategy for aerospace workforce recruitment, training, and cultivation. (Dec. 20, 2006; 120 Stat. 2886)

H.R. 854/P.L. 109–421

To provide for certain lands to be held in trust for the Utu Utu Gwaitu Paiute Tribe. (Dec. 20, 2006; 120 Stat. 2889)

H.R. 864/P.L. 109–422

Sober Truth on Preventing Underage Drinking Act (Dec. 20, 2006; 120 Stat. 2890)

H.R. 1285/P.L. 109–423

Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005 (Dec. 20, 2006; 120 Stat. 2900)

H.R. 1674/P.L. 109–424

Tsunami Warning and Education Act (Dec. 20, 2006; 120 Stat. 2902)

H.R. 4057/P.L. 109–425

To provide that attorneys employed by the Department of Justice shall be eligible for compensatory time for travel under section 5550b of title 5, United States Code. (Dec. 20, 2006; 120 Stat. 2910)

H.R. 4416/P.L. 109–426

To reauthorize permanently the use of penalty and franked mail in efforts relating to the location and recovery of missing children. (Dec. 20, 2006; 120 Stat. 2911)

H.R. 4510/P.L. 109–427

To direct the Joint Committee on the Library to accept the donation of a bust depicting Sojourner Truth and to display the bust in a suitable location in the Capitol. (Dec. 20, 2006; 120 Stat. 2912)

H.R. 4583/P.L. 109–428

Wool Suit Fabric Labeling Fairness and International Standards Conforming Act (Dec. 20, 2006; 120 Stat. 2913)

H.R. 5132/P.L. 109–429

River Raisin National Battlefield Study Act (Dec. 20, 2006; 120 Stat. 2916)

H.R. 5136/P.L. 109–430

National Integrated Drought Information System Act of 2006 (Dec. 20, 2006; 120 Stat. 2918)

H.R. 5646/P.L. 109–431

To study and promote the use of energy efficient computer servers in the United States. (Dec. 20, 2006; 120 Stat. 2920)

H.R. 6111/P.L. 109–432

Tax Relief and Health Care Act of 2006 (Dec. 20, 2006; 120 Stat. 2922)

H.R. 6131/P.L. 109–433

To permit certain expenditures from the Leaking Underground Storage Tank Trust Fund. (Dec. 20, 2006; 120 Stat. 3196)

H.R. 6316/P.L. 109–434

To extend through December 31, 2008, 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. (Dec. 20, 2006; 120 Stat. 3197)

H.R. 6407/P.L. 109–435

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Michigan Lighthouse and Maritime Heritage Act (Dec. 20, 2006; 120 Stat. 3264)

S. 1998/P.L. 109–437

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S. 3938/P.L. 109–438

Export-Import Bank Reauthorization Act of 2006 (Dec. 20, 2006; 120 Stat. 3268)

S. 4044/P.L. 109–439

Religious Liberty and Charitable Donation Clarification Act of 2006 (Dec. 20, 2006; 120 Stat. 3285)

S. 4046/P.L. 109–440

Iraq Reconstruction Accountability Act of 2006 (Dec. 20, 2006; 120 Stat. 3286)

H.R. 1492/P.L. 109–441

To provide for the preservation of the historic confinement sites where Japanese Americans were detained during World War II, and for other purposes. (Dec. 21, 2006; 120 Stat. 3288)

H.R. 3248/P.L. 109–442

Lifespan Respite Care Act of 2006 (Dec. 21, 2006; 120 Stat. 3291)

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Veterans Programs Extension Act of 2006 (Dec. 21, 2006; 120 Stat. 3304)

H.R. 6429/P.L. 109–445

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S. 2370/P.L. 109–446

Palestinian Anti-Terrorism Act of 2006 (Dec. 21, 2006; 120 Stat. 3318)

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